

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 15915 of 2015 (L)

PETITIONER:

**M.SHIJULAL,
AGED 38 YEARS,
S/O.KRISHNAN, RESIDING AT MANOTH HOUSE, PO.KANNANKARA
VIA-CHELANNUR, KOZHKODE.**

**BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH**

RESPONDENT(S):

- 1. THE CHELANNUR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, PO.KANNANKARA, CHELANNUR
KOZHIKODE-673616.**
- 2. THE SECRETARY,
CHELANNUR GRAMA PANCHAYAT, PO.KANNANKARA, CHELANNUR,
KOZHIKODE-673616.**
- 3. PRAJITH,
AGE AND FATHERS NAME NOT KNOWN
RESIDING AT KANNANKANDIYIL HOUSE, PO.KANNANKARA
VIA-CHELANNUR, KOZHIKODE-673616.**

**R1 & R2 BY ADV. SRI.E.NARAYANAN
R3 BY ADVS. SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.JOSEPH GEORGE(MULLAKKARIYIL)
SRI.ARUN KRISHNA DHAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2015,
THE COURT ON 22-07-2015 DELIVERED THE FOLLOWING:**

vmr.

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: A TRUE COPY OF THE BUILDING PERMIT ISSUED THE 1ST RESPONDENT PANCHAYATH.

EXHIBIT-P2: A TRUE COPY OF THE BUILDING PERMIT ISSUED THE 1ST RESPONDENT PANCHAYATH.

EXHIBIT-P3: A TRUE COPY OF THE BUILDING PERMIT ISSUED THE 1ST RESPONDENT PANCHAYATH.

EXHIBIT-P4: A TRUE COPY OF THE BUILDING PERMIT ISSUED THE 1ST RESPONDENT PANCHAYAT.

EXHIBIT-P5: A TRUE COPY OF THE BUILDING PERMIT ISSUED THE 1ST RESPONDENT PANCHAYAT.

EXHIBIT-P6: A TRUE COPY OF THE BUILDING PERMIT ISSUED THE 1ST RESPONDENT PANCHAYAT.

EXHIBIT-P7: A TRUE COPY OF THE BUILDING PERMIT ISSUED THE 1ST RESPONDENT PANCHAYAT.

EXHIBIT-P8: A TRUE COPY OF THE BUILDING PERMIT ISSUED THE 1ST RESPONDENT PANCHAYAT.

EXHIBIT-P9: A TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT TOWARDS PAYMENT OF BUILDING FEES.

EXHIBIT-P10: A TRUE COPY OF THE PERMIT ISSUED BY THE MINING AND GEOLOGY DEPARTMENT TO THE PETITIONER.

EXHIBIT-P11: A TRUE COPY OF THE PERMIT ISSUED BY THE MINING AND GEOLOGY DEPARTMENT TO THE PETITIONER.

EXHIBIT-P12: A TRUE COPY OF THE PERMIT ISSUED BY THE MINING AND GEOLOGY DEPARTMENT TO THE PETITIONER.

EXHIBIT-P13: A TRUE COPY OF THE PERMIT ISSUED BY THE MINING AND GEOLOGY DEPARTMENT TO THE PETITIONER.

EXHIBIT-P14: A TRUE COPY OF THE PERMIT ISSUED BY THE MINING AND GEOLOGY DEPARTMENT TO THE PETITIONER.

EXHIBIT-P15: A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C) 8851/15.

EXHIBIT-P16: A TRUE COPY OF THE REPLY SEND THE PETITIONER TO THE SHOW CAUSED ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P17: A TRUE COPY OF THE STOP MEMO.

EXHIBIT-P18: A TRUE COPY OF THE MASS COMPLAINT ALONG WITH THE REPORT OF THE INSPECTING OFFICER.

EXHIBIT - P19: TRUE COPY OF THE INFORMATION RECEIVED UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT - P20: TRUE COPY OF THE INFORMATION RECEIVED UNDER THE RIGHT TO INFORMATION ACT.

RESPONDENT(S)' EXHIBITS :

EXHIBIT R-3 (a)- A TRUE COPY OF THE PHOTOGRAPHS SHOWING THE MINING UNDERTAKEN BY THE PETITIONER AND FILLING OF THE PADDY LANDS AT CHELLANNUR PANCHAYATH.

EXHIBIT R-3 (b) - A TRUE COPY OF THE COMPLAINT DATED 15/01/2015 BEFORE THE PANCHAYAT SECRETARY.

EXHIBIT R -3(c) - A TRUE COPY OF THE REPORT DATED 26/03/2015 ALONG WITH SKETCH.

EXHIBIT R -3 (d) - A TRUE COPY OF THE NOTICE DATED 25/03/2015 ISSUED BY THE SECRETARY, CHELANNUR GRAMA PANCHAYATH.

EXHIBIT R-3 (e) - A TRUE COPY OF THE G.O. NO.12/2014 DATED 15/11/2014.

/TRUE COPY/

P.S.TO JUDGE

vmr.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.15915 of 2015

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Dated this the 22nd day of July, 2015

JUDGMENT

Ext.P17 stop memo issued by the first respondent panchayat is under challenge in this writ petition.

2. The petitioner obtained Exts.P1 to P8 permits for construction of a small residential house. The petitioner alleges that two of the constructions were over and the respondent panchayat has assessed one among them. For the purpose of construction, the petitioner has to remove certain red earth for which he has obtained permission from the Mining and Geology Department. The petitioner has removed only that much quantity of earth as permitted by the said department and the activity is without disturbing the topography or terrain of the land; it is alleged.

3. However, certain persons under the third respondent forcibly prevented the petitioner from removing the red earth for which he has received permission. The petitioner approached this Court with W.P(C) 8851 of 2015 for police protection making the third respondent and others as party respondents. Upon appearance, the party respondents filed a counter affidavit

contending that the first respondent by its order dated 25.3.2015 issued a stop memo calling upon the petitioner to stop construction. The petitioner did not receive the copy of the stop memo. However, from the counter in that writ petition, it was revealed that the same is a show cause and a stop memo calling the petitioner to show cause as to why the permit granted to him and his wife need not be cancelled. It was also revealed that it was on the basis of a representation given the third respondent and 21 others.

4. The petitioner further alleges that the show cause/stop memo is vague insofar as it does not say the details of the permit. Going by the tenure, it takes in that permit also for which the panchayat has already issued a building permit. The petitioner alleges that though the petitioner has shown cause immediately on coming to know the show cause, the first respondent has not heard him or lifted the stop memo. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by the 3rd respondent, they have contended as follows:

It is stated that the petitioner is having a commercial venture of constructing house on a commercial basis. The petitioner has purchased several properties on hill slopes in the respondent

panchayat. He had procured several building permits (some in his name and others in the name of his wife) within a very short span of about one month. The petitioner under the guise of the building permit, resorted to large scale mining of red earth by demolishing hill slopes using excavators. Copy of the photographs showing red earth mining undertaken by the petitioner and filling of the paddy lands in the respondent panchayat are produced as Ext.R3(a).

It was further stated that the residence, including the 3rd respondent are put to great hardship due to the indiscriminate removal of red earth from the hill slopes. Moreover, because of the filling of the paddy lands/wetlands done using the red earth mined by the petitioner, the ground water level has come down drastically in the area and the residents of the area are facing acute shortage of drinking water. The houses of the residents are situated on the upper region of the hills and in adjacent areas. Because of the large scale removal of the red earth, the houses in the vicinity are now facing trouble from reptiles and poisonous snakes. The rampant red earth mining by the petitioner has also resulted in grave environmental damage; it was contended. More than 21 residents of the area of which this respondent is one, filed Ext.R3(b) complaint.

It was further stated that the village officer of the respondent panchayat had conducted a detailed site inspection and enquiry into the mining activity done by the petitioner and submitted Ext.R3(c)report to the District Collector, Kozhikode. The village officer also prepared sketch showing the areas from where red earth is being removed and also the paddy fields which are being filled up and leveled using that red earth. Ext.R3(c) clearly proves the factual aspect that large scale mining of red earth was done by the petitioner. There is also specific finding in the enquiry report that the red earth was used for filling paddy lands. Ext.R3(c) also proves that the mining activities of the petitioner has resulted in environmental damage.

It was further stated that the petitioner had approached this Court with W.P(C) No.8851 of 2015 raising false and baseless allegations against the respondents by falsely alleging that they were making threats against the petitioner and praying for police protection to continue with his activities. The petitioner also feigned ignorance about the stop memo issued by the respondent panchayat. Copy of the notice dated 25.3.2015 issued by the Secretary of respondent panchayat is produced as Ext.R3(d). Therefore, this Court declined to interfere with the writ petition.

It was further stated that such large scale mining of red earth cannot be undertaken by the petitioner without obtaining environmental clearance. The petitioner cannot claim the benefit of exemption granted as per Ext.R3(e) Government order dated 15.11.2014. The true scope and intent of Ext.R3(e) is to alleviate the hardship faced by common man who wants to construct an individual residential house for himself. Ext.R3(e) does not apply in case of widespread mining of red earth resulting in environmental damage, as in the case of the petitioner. Therefore, it was contended that the petitioner is not entitled to the relief prayed for.

6. The petitioner has filed a reply affidavit.

7. No counter affidavit has been filed by the respondent panchayat.

8. Arguments have been heard.

9. The learned counsel for the petitioner would submit that Ext.P17 stop memo seems to have been taken those buildings also for which the respondent panchayat has assigned building numbers. The learned counsel for the petitioner points out that Exts.P1 to P8 building permits were issued by the first respondent after conducting inspection and on satisfaction that the same is perfectly legal. Similarly Exts.P10 to P13 mining permits were also issued on

inspection and keeping in mind the ecological factor as well; so submitted the learned counsel for the petitioner.

10. It was also pointed out that the first respondent has not chosen to hear the petitioner on Ext.P17 show cause/stop memo in spite of receiving Ext.P16 explanation. The learned counsel for the party respondents, *per contra*, would submit that large scale excavation of the soil was done by the petitioner and the soil so excavated are dumped into nearby paddy fields for reclaiming the same. According to the party respondent, the same has affected the ecological balance in the locality. It was specifically pointed out by the learned counsel for the party respondent that the excavation of the soil would cause land slides and would lead to scarcity of water in the remaining water sources.

11. It is true that the respondent panchayat has authority to cancel the building permit on the ground of fraud and misrepresentation. However, there is no such allegation in Ext.P7 stop memo. Apparently, the stop memo was issued on the basis of a complaint by the public. The learned counsel for the petitioner would submit that the petitioner has not undertaken large scale mining operations for the purpose of construction. He has only removed so much of earth as permitted by the Geologist. A copy of

the permits issued by the Mining and Geology Department are produced as Exts.P10 to P14.

12. Ext.R3(a) photographs would reveal that the construction of two buildings have already been completed and according to the learned counsel for the petitioner, those two buildings were numbered also. Though it was strenuously argued by the learned counsel for the party respondent, that the soil excavated from the area was dumped into nearby paddy field. It can be seen from the photographs itself that the soil that is seen dumped near the paddy field is different from the spoil which was excavated from the site of the construction.

13. The grievance of the party respondent is that under the guise of the building permit issued to the petitioner and wife, they are resorting to large scale mining of red earth by demolishing the hill slopes and that the same is being used to fill up paddy field and wetlands in the nearby areas. Exts.P10 to P14 are the permits issued by the Mining and Geology Department. It was pointed out by the learned counsel for the petitioner that only those quantity of earth which is permitted by the mining permits would be removed.

14. The learned counsel for the petitioner would submit that the earths removed are being deposited in low lying garden lands or

such other places. The environmental damages, if any, as alleged would be caused only due to indiscriminate laterite stone mining or removal of sand from the area. The learned counsel also invited my attention to Exts.P19 and P20 which are the informations furnished by the postal authorities which reveal that no ordinary letters or registered letters addressed to the petitioner were received at the jurisdiction post office from 25.3.2015 to 13.4.2015. This, according to the learned counsel for the petitioner, would prove the *mala fides* and the influence exerted by the third respondent over the second respondent in issuing Ext.P17 stop memo. The permits issued by the Geologist specify the area from where the soil could be excavated. It was pointed out that before the completion of the excavation, there was an intervention and the stop memo was issued.

15. On a specific query put by me during the course of argument to the learned counsel for the petitioner as to whether the petitioner would construct a retaining wall by the side of the elevated portion of the area to prevent land slides, the learned counsel would submit that in fact the petitioner was intending to construct a retaining wall with granite stones after the completion of the excavation as it is essential for the protection of the building

which he had already constructed. However, unless the petitioner is permitted to remove the soil as permitted by the Geologist, he would not be in a position to level the ground and make further constructions.

On a consideration of the entire materials now placed on records, this Court is of the view that the petitioner is entitled to succeed.

In the result, the writ petition is disposed of quashing Ext.P7 and permitting the petitioner to level up the work site in accordance with the permits already issued by the Geologist. It is hereby made clear that after the leveling is over, the petitioner shall construct a strong retaining wall (either R. C. structure or Granite structure) by the side of the elevated portion of the terrain to prevent land slides. The respondent panchayat shall ensure that this shall be done by the petitioner after the leveling process is over.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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