

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C) .No. 16923 of 2015 (M)

PETITIONER(S) :-

BINDU TOMY
S/O. JOSEPH, THARAYIL HOUSE
MANIMALA VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.MATHEW SEBASTIAN

RESPONDENT(S) :-

1. DEPUTY SUPERINTENDENT OF POLICE
PONKUNNAM, KOTTAYAM DISTRICT.
2. CIRCLE INSPECTOR OF POLICE
KANJIRAPPALLY, KOTTAYAM DISTRICT
3. STATION HOUSE OFFICER,
MANIMALA POLICE STATION, KOTTAYAM DISTRICT
4. MURALEEDHARAN NAIR
S/O. PARUKUTTY AMMA, THAKIDYPURATHU VEEDU
CHERUVALLY P.O, MANIMALA 686 543, KOTTAYAM DISTRICT
5. T.K. BINDU (DELETED)
S/O. KUTTAPPAN, THAKIDYPURATHU VEEDU, CHERUVALLY PO
MANIMALA 686 543 KOTTAYAM DISTRICT
6. VINOD V NAIR
S/O. CHANDRASEKHARAN, VALIYAPURAKKAL VEEDU
CHERUVALLY P.O, MANIMALA - 686 543, KOTTAYAM DISTRICT.
7. ANI, S/O. KUTTAPPAN, THAKIDYPURATHU VEEDU, CHERUVALLY PO
MANIMALA - 686 543, KOTTAYAM DISTRICT.

8. RANJITH
S/O. RAJAPPAN, ARACKAL HOUSE, CVHERUVALLY P.O
MANIMALA - 686 543, KOTTAYAM DISTRICT
9. JOSEPH
S/O. VARKEY P.V, PUTHENPURAKKAL, CHERUVALLY P.O
MANIMALA - 686 543, KOTTAYAM DISTRICT.
10. SASI
S/O. KUMARAN, VARIKKALIL KIZHAKKEMURI VEEDU
CHERUVALLY P.O, MANIMALA - 686 543, KOTTAYAM DISTRICT.
11. JAYAN
VARIKKALIL KIZHAKKEMURI VEEDU, CHERUVALLY P.O
MANIMALA - 686 543, KOTTAYAM DISTRICT
12. BIJESH BABU
ARACKAL HOUSE, CHERUVALLY P.O, ULLAYAM
KOTTAYAM DISTRICT - 686 543.
13. GIREESH
S/O SASIKUMARAN NAIR, KOCHUVALLAMMUIRIYIL VEEDU
CHERUVALLY P.O, ADAMATTAM, KOTTAYAM = 686 543.
14. RENJURAJ (DELETED)
ARACKAL HOUSE
CHERUVALLY, KOTTAYAM DISTRICT - 686 543

[R5 AND R14 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER
DATED 10.07.2015 IN IA 9556/15.]

R4,R7,R8,R9,R10,R11 & 12 BY ADV. SRI.LIJI.J.VADAKEDOM
R1 TO R3 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

WP(C) .No. 16923 of 2015 (M)

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXT.P1: TRUE COPY OF THE TAX RECEIPT DATED 18.5.2015 FOR PAYMENT OF TAX FOR THE PERIOD 2015-16.

EXT.P1(A) : TRUE ENGLISH TRANSLATION OF EXHIBIT P1.

EXT.P2: TRUE COPY OF THE BUILDING PERMIT FOR CONSTRUCTION OF 159.40 M2 BUILDING DATED 1.1.2014.

EXT.P3: TRUE COPY OF THE PERMIT FOR THE CONSTRUCTION OF 111.5 M2 BUILDING DATED 2.1.2014.

EXT.P4: TRUE COPY OF THE PERMIT DATED 12.5.2015 FROM THE SENIOR GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, KOTTAYAM.

EXT.P4(a) : TRUE ENGLISH TRANSLATION OF EXTHIBIT P4.

EXT.P5: TRUE COPY OF THE COMPLAINT DATED 15.5.2015 TO THE 3RD RESPONDENT.

EXT.P5(A) ; TRUE ENGLISH TRANSLATION OF EXHIBIT P4.

EXT.P6 : TRUE COPY OF THE APPLICATION SUBMITTED BY PETITIONER DATED 24.6.2015 BEFORE THE DEPARTMENT OF MINING AND GEOLOGY, KOTTAYAM DISTRICT.

EXT.P6(a) : TRUE ENGLISH TRANSLATION OF EXHIBIT P6.

EXT.P7 : TRUE COPY OF THE RECEIPT ISSUED BY THE GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY, KOTTAYAM DISTRICT DATED 24.6.2015.

EXT.P7(a) : TRUE ENGLISH TRANSLATION OF EXHIBIT P7.

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.P.(C) No.16923 of 2015

Dated this the 28th day of July 2015

J U D G M E N T

Shaffique, J

The petitioner has approached this Court seeking the following reliefs :-

- “i) Issue a writ of mandamus or other appropriate writ or direction, commanding the respondents 1 to 3 to afford adequate and effective police protection to the petitioner and his workers for carrying out the earth work, removal of the same and construction of the buildings in the property of the petitioner comprised in Sy.No.45/1, 27.40 Ares in Sy. No.43/8 and 2.02 Ares in Sy. No.45/2 of Cheruvally Village, Kottayam District ;
- ii) Issue a writ of mandamus or other appropriate writ or direction, commanding the respondents 1 to 3 to take appropriate action against respondents 4 to 15 and grant adequate support and protection to the petitioner in continuing the work.”

2. The petitioner submits that he had obtained Ext.P2 building permit for construction of a building having an extent of 159.40 sq.m. in a property situated in Survey No.43/8. He also obtained permission from the Mining and Geology Department as per proceedings dated 12.5.2015 for transportation of red earth. The quantity mentioned in Ext.P4 was 829 Metric Ton. Ext.P4 was valid till 11.6.2015. According to the petitioner, he was unable to remove red earth on account of the obstruction created by private respondents. Though complaint was given to the police seeking

-: 2 :-

necessary protection, no action has been taken in the matter and therefore, he has approached this Court.

3. Counter affidavit has been filed by respondents 4, 7, 8, 9, 10, 11 and 12 inter alia stating that though the petitioner had obtained building permit only in respect of 2.02 Ares in Survey No.43/8, the relief sought for is to excavate red earth around 3 Acres in the possession of the petitioner. It is also stated that the petitioner had already removed large extent of red earth under the guise of the aforesaid permit and therefore, he is not entitled to seek any relief from this Court.

4. Learned counsel for the petitioner would further submit that the petitioner's intention is only to remove red earth from the area having an extent of 2.02 Ares in Survey No.43/8 and attempts were made by the private respondents to obstruct the same.

5. Learned Government Pleader on instructions would submit that there is no demarcation of the aforesaid 2.02 Ares in Survey No.43/8 and the entire property belonging to the petitioner having an extent upto 3 Acres is lying as a single plot.

6. Having regard to the aforesaid factual situation, we are of the view, the writ petition can be disposed of as under :-

-: 3 :-

- (i) That the petitioner shall approach the Mining and Geology Department for renewal of the permit, Ext.P2.
- (ii) That the Geologist shall consider the said application after conducting physical inspection to ensure, whether any quantity of red earth has already been removed from the property and whether the petitioner has removed red earth from any other area than Survey No.43/8.
- (iii) The petitioner shall also produce necessary plan before the Geologist indicating the survey number and extent of property, for which, permit is to be extended. If the Geologist permits removal of red earth from the property and thereafter, if there is any obstruction from the side of the private respondents or any other person, the 3rd respondent shall look into the matter and do the needful.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE