

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 20801 of 2015 (A)

PETITIONER(S):

**JOOBIN MATHEW,
VATTAKEERIL HOUSE, MANNAR P.O., KOTTAYAM.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.NANDAGOPAL S.KURUP**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT,
THIRUVANANTGHAPURAM, PIN-695 001.**
- 2. THE NJEZHOOR GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
NJEEZHOOR GRAMA PANCHAYAT, NJEEZHOOR P.O.,
KOTTAYAM, PIN-688 029.**
- 3. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY, DISTRICT OFFICE,
KOTTAYAM DISTRICT, PIN-682 039.**
- 4. BALACHANDRAN,
PUTHUSSEERRY MANADIYEL HOUSE, THIRUVAMBADI P.O.,
MADATHIPARAMBU KARA, NJEEZHOOR VILLAGE, VIKOM THALUK,
KOTTAYAM - 688 029.**
- 5. SIJO JOY,
MANADIYEL HOUSE, ARUNOOTTIMANGALAM P.O.,
PAZHUTHURUTHUKARA, NJEEZHOOR VILLAGE, VIKOM THALUK,
KOTTAYAM - 688 029.**
- 6. JUBISH,
KAPPIL HOUSE, ARUNOOTTIMANGALAM P.O.,
PAZHUTHURUTHUKARA, NJEEZHOOR VILLAGE, VIKOM THALUK
KOTTAYAM - 688 029.**

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7. THE DISTRICT POLICE CHIEF,
KOTTAYAM DISTRICT, PIN - 688 029.
8. THE CIRCLE INSPECTOR OF POLICE,
KADUTHURUTHY POLICE STATION, KADUTHURUTHY,
KOTTAYAM, PIN-688 029.
9. THE SUB INSPECTOR OF POLICE,
KADUTHURUTHY POLICE STATION, KADUTHURUTHY,
KOTTAYAM, PIN-688 029.

* ADDITIONAL R10& R11 IMPEADED

10. M/S.ENVIRONMENTAL PROTECTION,
COUNCIL (EPC), NJEEZHUR P.O.,
REPRESENTED BY ITS SECRETARY,
SHRI.V.P.JOSEPH, AGED 48,
S/O.V.P.PAUL, VARAPADAVIL,
THIRUVAMBADY P.O., KOTTAYAM DISTRICT - 686 612.
11. ANNICE DAS, AGED 49, W/O.DEVADAS,
KUNNEL HOUSE, NJEEZHUR P.O.,
NJEEZHUR VILLAGE, VAIKOM TALUK,
KOTTAYAM DISTRICT, PRESIDENT,
M/S.ENVIRONMENTAL PROTECTION
COUNCIL (EPC), NJEEZHUR P.O.

* ADDITIONAL R10 & R11 IMPEADED AS PER ORDER DTD.17.7.2015 IN
IA.10227/2015.

R1, R3, R7 TO R9 BY SENIOR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R2 BY ADVS. SRI.P.SANKARANKUTTY NAIR

 SRI.K.SANDESH RAJA
 SRI.VENU MENON M.P

R4 & R6 BY ADVS. SRI.P.G.SURESH
 SRI.G.SUDHEER (THURAVOOR)
 SRI.RAJAN VISHNURAJ
 SRI.V.HARISH

R5 BY ADV. SRI.P.V.VARGHESE (KANJIRAMATTOM)
R10 & R11 BY ADV. SRI.VARGHESE C.KURIAKOSE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE BUILDING PLAN OF THE PROPOSED RESIDENTIAL BUILDING.**
- EXT.P2. TRUE COPY OF THE BUILDING PERMIT DATED 14-1-2015 ISSUED BY THE NJEEZHOOOR GRAMA PANCHAYAT.**
- EXT.P3. TRUE COPY OF THE RESOLUTION TAKEN BY THE 2ND RESPONDENT PANCHAYAT IN THE MEETING HELD ON 23-6-2015 WITH ENGLISH TRANSLATION.**
- EXT.P4. TRUE COPY OF THE DEVELOPMENT PERMIT DATED 24-6-2015 ISSUED BY THE SECRETARY OF THE 2ND RESPONDENT GRAMA PANCHAYAT.**
- EXT.P5. TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 1-7-2015.**
- EXT.P5A. TRUE COPY OF THE ENGLISH TRANSLATION OF THE DOCUMENT MARKED AS EXHIBIT.P5.**
- EXT.P6. TRUE COPY OF THE INTERNAL COMMUNICATION DATED 10-6-2015 BETWEEN THE ASSISTANT ENGINEER, LOCAL SELF GOVERNMENT DEPARTMENT SECTION, KUMARAKOM AND THE 3RD RESPONDENT REGARDING THE UTILIZATION THE EARTH REMOVED FROM PETITIONERS PROPERTY.**
- EXT.P6A. TRUE COPY OF THE ENGLISH TRANSLATION OF THE DOCUMENT MARKED AS EXHIBIT P6A.**
- EXT.P7. TRUE COPY OF ONE OF THE TRANSIT PASSES ISSUED BY THE 3RD RESPONDENT.**
- EXT.P8. TRUE COPY OF THE REPRESENTATION DATED 4-06-2015 MADE BY THE PETITIONER BEFORE THE 8TH RESPONDENT.**
- EXT.P8A. TRUE COPY OF THE ENGLISH TRANSLATION OF THE DOCUMENT MARKED AS EXHIBIT P8.**
- EXT.P9. TRUE COPY OF THE RECEIPT SHOWING THE ACKNOWLEDGEMENT OF EXHIBIT P8.**
- EXT.P10: TRUE COPY OF THE REPRESENTATION DTD.14.7.2015 PREFERRED BY ME BEFORE THE 3RD RESPONDENT.**
- EXT.P11: TRUE COPY OF THE RECEIPT SHOWING THE ACKNOWLEDGEMENT OF EXT.P10 BY THE OFFICE OF THE 3RD RESPONDENT.**
- EXT.P11(a): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P11.**

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**EXT.P12: TRUE COPY OF THE LOCATION SKETCH OF THE PROPERTY OF THE
PETITIONER PREPARED BY THE VILLAGE OFFICER, NEEZHOOR VILLAGE.**

**EXT.P12(a): TRUE COPY OF THE ENGLISH TRANSLATION OF THE DOCUMENT
MARKED AS EXT.P12**

RESPONDENT(S)' EXHIBITS:

**EXT.R4(a): A TRUE PHOTOCOPY OF THE ORDER DTD.18.5.2012 ISSUED BY THE
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE.**

**EXT.R4(b): A TRUE PHOTOCOPY OF THE ORDER DTD.15.11.2014 ALONG WITH ITS
TRANSLATION.**

**EXT.R4(c): A TRUE PHOTOCOPY OF THE INTERIM ORDER DTD.31.3.2015 PASSED BY
THE HON'BLE NATIONAL GREEN TRIBUNAL (SOUTHERN ZONE) IN
APPLICATION NO.67 OF 2014.**

**EXT.R4(d): A TRUE PHOTOCOPY OF THE MATHRUBHUMI EDITORIAL DTD.3.2.2015
AND ITS TRUE TRANSLATION.**

**EXT.R4(e): A TRUE PHOTOCOPY OF THE GAZATTE NOTIFICATION NO.S.O.394 (E)
DTD.16.4.1987 ISSUED BY THE MOEF.**

**EXT.R4(f): A TRUE PHOTOCOPY OF THE RECEIPT ISSUED BY THE OFFICE OF
DISTRICT COLLECTOR**

//TRUE COPY//

P.S.TO JUDGE

Msv/

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

W.P.C.No.20801 of 2015

Dated this the 27th day of July 2015

J U D G M E N T

Shaffique, J

Petitioner has approached this Court seeking police protection alleging that respondents 4 to 6 have obstructed removal of red earth from his property which has been permitted by the competent authorities. Petitioner submits that he intends to construct a building in 2.5 ares of land in Survey No.227/1-1, 230/2-1 of Njeezhoor village in Vaikkom Taluk. Ext.P2 is the building permit dated 14/01/2015. Petitioner has also obtained a permit to develop the property in terms of Ext.P4 dated 24/06/2015. He applied before the Mining and Geology Department for permission to remove the red earth. By order dated 01/07/2015, permission was granted to remove 2475 metric tons of ordinary earth from his property on certain conditions as prescribed in the order Ext.P5. Learned counsel submits that the period covered by Ext.P5 has expired and an application has been filed to extend the period, as Ext.P10. The

facts being so, it is stated that the respondents have obstructed the removal of red earth. Petitioner preferred a complaint before the police. Since no action was taken by the police in this regard, this writ petition has been filed.

2. Counter affidavit has been filed by the 4th respondent inter alia stating that the National Green Tribunal, by Ext.R4(c) order dated 31/03/2015, has issued certain interim orders by which the Government Order produced as Annexure R4(b) dated 15/11/2014 has been stayed until further orders. Further 4th respondent submits that the mining of the area requires environment clearance and that it will also affect the lateral strength of his property.

3. It is relevant to note that as per Rule 14(2) of the Kerala Minor Mineral Concession Rules, 2015, it is clearly indicated that no permit is required for removal of red earth if it is for construction of a residential building having a plinth area of 300 sq. meters. Having regard to the existence of the said rules for which there is no challenge, we are of the view that the petitioner, having obtained building permit and development permit for construction of the building having a plinth area of less than 300 sq. meters, is entitled to excavate and remove red earth

from his property. As far as the permit granted by the Mining and Geology Department is concerned, petitioner has to obtain necessary extension of time for transportation of red earth from the said property, as per the terms and conditions stipulated therein.

4. The contention of the respondents that the removal of red earth requires environmental clearance cannot be accepted especially on account of existence of Rule 14(2) of the Kerala Minor Mineral Concession Rules, 2015. In these circumstances, 4th respondent or any other person has no right to physically obstruct the excavation or removal of red earth from the property of the petitioner.

5. Learned counsel appearing for the 4th respondent submits that he had already given a complaint to the District Collector, which is pending consideration. If any competent authority like the District Collector is pleased to stop the excavation of red earth from the property of the petitioner, this judgment shall not preclude such authority from passing appropriate orders, after hearing the concerned persons.

6. As far as the claim of the 4th respondent that excavation of red earth from the property of the petitioner will

loose the lateral support of his property, it being a disputed question of fact, we are of the view that the remedy of the 4th respondent is to approach the Civil Court and obtain appropriate orders preventing the petitioner from removing red earth from his property. Under such circumstances, we are of the view that the writ petition can be disposed of as follows:

i) That in the event of any obstruction from respondents 4 to 6 or their men in the matter relating to excavation or removal of red earth from the property of the petitioner, 9th respondent shall ensure maintenance of law and order.

ii) This order shall be subject to any further orders that might be passed by the District Collector or the Civil Court, as the case may be.

iii) This order also will be subject to the petitioner obtaining necessary extension of time for transportation of red earth from the Mining and Geology Department.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

