

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 24739 of 2015 (N)

PETITIONER :

**JIJI, AGED 42 YEARS,
S/O. ALIAS, KANIKULATH HOUSE,
VANIAMPARA P.O., PEECHI VILLAGE,
THRISSUR TALUK, THRISSURDISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS :

- 1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
THRISSUR DISTRICT - 680001.**
- 2. THE ASSISTANT WILD LIFE WARDEN,
PEECHI, VAZHANI, WILD LIFE SANCTUARY,
PEECHI P.O.,THRISSUR - 680 653.**
- 3. THE WILD LIFE WARDEN
PEECHI, VAZHANI, WILD LIFE SANCTUARY,
PEECHI P.O., THRISSUR - 680 653.**
- 4. THE DIRECTOR
MINING AND GEOLOGY, OFFICE OF THE MINING ANDGEOLOGY,
KESAVADASAPURAM PATTOM, THIRUVANANTHAPURAM - 695 001.**
- 5. THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM695 001.**

BY SPL GOVERNMENT PLEADER SRI. THOMAS KUTTY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE BUILDING PERMIT 19.3.2015 ISSUED BY THE SECRETARY, PANANCHERY GRAMA PANCHAYATH.
- EXT.P-2: TRUE COPY OF THE CERTIFICATE ISSUED BY THE ASSISTANT ENGINEER, LOCAL SELF GOVERNMENT DEPARTMENT SECTION, PANANCHERY GRAMA PANCHAYATH DATED 23.3.2015 CERTIFYING THAT EXCAVATION AND REMOVAL OF EARTH IS REQUIRED FOR THE CONSTRUCTION OF PROPOSED BUILDING.
- EXT.P-3: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 24.3.2015.
- EXT.P-4: TRUE COPY OF THE PERMIT DATED 6.5.2015 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.
- EXT.P-5: TRUE COPY OF THE STOP MEMO ISSUED BY THE SECOND RESPONDENT DATED 8.5.2015
- EXT.P-6: TRUE COPY OF THE PATTa DATED 19.2.2001 ISSUED BY THE SPECIAL TAHSILDAR, LAND ASSIGNMENT UNIT NO.2, THRISSUR.
- EXT.P-7: TRUE COPY OF THE TAX RECEIPT DATED 10.9.2014 ISSUED BY THE VILLAGE OFFICER, PEECHI VILLAGE.

RESPONDENT(S)' EXHIBITS :

- EXT.R3(a): COPY OF THE LETTER NO.PW2-1005/2011 DT 28/4/2015 TO THE GEOLOGIST.
- EXT.R3(b): COPY OF THE REPORT DT 8/5/2015 OF THE SECTION FOREST OFFICER.
- EXT.R3(c): COPY OF THE REPORT APPEARED IN THE MATHRUBHUMI DAILY DT 7/7/2015.
- EXT.R3(d): COPY OF PHOTOGRAPHS SHOWING THE EARTH REMOVED/COLLECTED BY THE PETITIONER.
- EXT.R3(e): COPY OF G.O.(MS) 871 DT 6/8/1958.
- EXT.R3(f): COPY OF CIRCULAR NO. 7/2015 DT 13/5/2015.

//TRUE COPY//

P.A.TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 24739 of 2015

Dated this the 12th day of October, 2015

J U D G M E N T

Petitioner was issued with a building permit to construct a residential building. In order to extract ordinary earth from the site, the petitioner approached the Geologist. The Geologist granted Ext.P4 permit. While the petitioner attempted to remove the ordinary earth, he was issued with a stop memo. Ext.P5 is the stop memo. Ext.P5 is issued by the Assistant Wild Life Warden, Forest Department. Petitioner challenges this stop memo.

2. In the counter affidavit filed before this Court, it is stated that the attempt of the petitioner is to quarry ordinary earth within 50 metres of Peechi Wild Life Sanctuary. Therefore, it is in violation of the relevant rules.

3. Rule 10 of the Kerala Minor Mineral Concession Rules stipulates certain conditions required for issuing quarrying permit,

which includes the rule regarding distance of 50 metres from the forest land. However, it is to be noted that, that would not apply in respect of ordinary earth. Further, the petitioner does not require quarrying permit in terms of Rule 14, if petitioner is removing ordinary earth from the site covered by the residential building.

4. Essentially, the Forest Department issued stop memo for the reason that it may threaten the richness of flora and fauna in the forest.

5. No doubt, the petitioner is entitled to construct a residential building in accordance with law, but O.A. forms have been issued by the Geologist without verifying the actual state of affairs.

6. This Court is of the view that if large scale of extraction of ordinary earth has taken place, it may have an adverse effect to the flora and fauna in the forest. Therefore, the Geologist, in such circumstances, ought to have taken note of the objections of the Forest Department while granting such order. However, bona fide need of an owner of the land can not also be denied.

7. In the facts and circumstances, this Court is of the view that the Geologist shall earmark the exact areas to be extracted, taking into account the plinth area of the proposed building and mark the same for the purpose of extracting ordinary earth. This shall be done in the presence of the petitioner and various officials. Further, the Geologist shall also verify the bona fides of the petitioner as the petitioner really intends to construct the residential building and on account of such intention, he requires to extract ordinary earth. Therefore, the Geologist shall take decision in the matter after hearing the petitioner and forest officials within a period of three weeks from the date of receipt of a copy of this judgment. Based on the decision of the Geologist, the forest officials shall revoke the stop memo.

This writ petition is disposed of as above.

A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO.24739 OF 2015

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