

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 31760 of 2014 (T)

PETITIONER(S) :

**MOHANAN, AGED 51 YEARS,
S/O.KUTTAPPAN, KEEYALIL, THIRUVANIYOOR P.O,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.P.M.ZIRAJ
SRI.A.M.ABDULLA
SRI.O.M.SAJAYAN
SRI.K.S.DHANESH KUMAR
SRI.K.S.SREENATH
SMT.RESHMA P.JOSEPH
SRI.SUBI.K
SRI.P.MOHAMED SABAH
SRI.C.PAULOSE**

RESPONDENT(S) :

- 1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
ERNAKULAM DISTRICT-682 030.**
- 2. THE STATE OF KERALA,
REPRESENTED BY JOINT SECRETARY TO GOVERNMENT,
INDUSTRIAL DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 3. THIRUVANIYUR GRAMA PANCHAYATH,
THIRUVANIYUR P.O., PIN-682 308,
ERNAKULAM DISTRICT REPRESENTED BY ITS SECRETARY.**
- 4. THE SECRETARY,
THIRUVANIYUR GRAMA PANCHAYATH, THIRUVANIYUR P.O, PIN-682 308,
ERNAKULAM DISTRICT.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.JUSTIN JACOB
R3 & R4 BY ADVS. SRI.A.TANILKUMAR
SMT.V.SHYLAJA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

WP(C).No. 31760 of 2014 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE BUILDING PERMIT 09.10.2014 ISSUED BY
THE THIRD RESPONDENT.**

**EXHIBIT P2: TRUE COPY OF THE G.O.(P)NO.93/2014/ID DATED 30.06.2014 ISSUED
BY THE GOVERNMENT OF KERALA.**

**EXHIBIT P3: TRUE COPY OF THE ORDER DATED 14.11.2014 ISSUED BY THE FIRST
RESPONDENT TO THE PETITIONER.**

**EXHIBIT P4: TRUE COPY OF THE STOP MEMO ISSUED BY THE FOURTH
RESPONDENT DATED 18.11.2014 TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 31760 of 2014 (T)

Dated this the 5th day of February, 2015.

JUDGMENT

The petitioner, having obtained Ext.P1 building permit from respondents 3 and 4, approached this Court complaining of obstruction to the construction activities by the very same respondents, despite the fact that the petitioner has been carrying on his activities in strict compliance with the conditions imposed in Ext.P1 building permit.

2. The learned counsel for the petitioner submits that insofar as the construction of structures is concerned, the petitioner is governed by Ext.P1, and that to this day there has been no violation of any of the terms imposed on the petitioner by the respondent Grama Panchayath while issuing Ext.P1. He has further submitted that for the purpose of clearing the land, when the petitioner removed certain earth (red soil), which, in the words of the learned counsel for the petitioner, is ordinary earth or soil, the 3rd respondent issued

Ext.P4 stop memo.

3. Placing reliance on *Judish v. St. Jude's Shrine and others*¹ and *Shynymol v. State of Kerala and Others*², the learned counsel for the petitioner would contend that insofar as removing the earth is concerned, the said authority does not fall within the purview of the respondent Grama Panchayath. According to him, only the District Geologist is empowered under Kerala Minor Mineral Concession Rules, 1967 to monitor the act of removing any material or minor mineral. In that regard, the learned counsel has brought to my notice Ext.P3 permit issued by the first respondent.

4. In elaboration of his submissions, the learned counsel would contend that insofar as the removal of earth is concerned, no prior permission is required, if it is meant for the construction of residential building. For transportation of soil, though 'P' forms are required, according to him, Ext.P3 takes care of that issue.

¹ 2013 (1) KHC 61

² 2012(3) KHC 404

5. The learned counsel for the respondent Grama Panchayath has strenuously contended that under the guise of constructing a small structure in terms of Ext.P1 building permit issued by the Grama Panchayath, the petitioner has, in fact, moved away a mountain of red soil for commercial purpose, which is illegal and impermissible. Having conceded that the respondent Grama Panchayath cannot trace its power to issue Ext.P4 stop memo to any of the provisions under the Panchayath Raj Act or the Rules made thereunder, at any rate, the learned counsel would contend that it is in clear violation of the Minor Mineral Concession Rules, 1967. According to him, only under those circumstances, has the respondent Grama Panchayath been constrained to issue Ext.P4 stop memo.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Grama Panchayath, apart from perusing the record.

7. Indeed, the issue lies in a narrow compass: whether the respondent Grama Panchayath is empowered to issue Ext.P4

stop memo for what is said to be transgression of the provisions of the Minor Mineral Concession Rules, 1967.

8. Statutorily examined, in fact, rule 2 (ac) of the Kerala Panchayat Building Rules 2011, defines development of land thus:

“development of land means any material change on the use of land other than for agricultural purpose brought about or intended to be brought about by filling up of the land and/or water bodies, changing from the existing/former use of the land, layout, of streets and footpaths, sub-division of land, conversion of wet land and developing parks, play grounds and social amenities of the like but does not include legal partitioning of family property among heirs”

9. With reference to the above definition, especially in the back drop of Section 166 of the Kerala Panchayat Raj Act, this Court in Shynymol (supra) has held as follows:

“7. In the context in which the expression soil protection occurs in the Third Schedule, I am inclined to think that this expression has to be appreciated in the context of the functions that is entrusted to the Panchayat. If it is so appreciated, the expression soil protection should be understood in the context of the agricultural function and if so, it has to be held as one related to soil preservation for the purpose of agriculture. In other words, this expression can in no manner affect the powers entrusted to Revenue Divisional Officer to deal with minor minerals, in terms of the provisions in Kerala Minor Minerals Concession Rules. Therefore, I am not persuaded to think that the Third Schedule is meant to authorise Panchayat to deal with minor minerals to the

exclusion of the authorities created under Kerala Minor Minerals Concession Rules. Thus the third contention raised also has to be rejected and I do so.”

10. I do not have any manner of doubt, even assuming for a while that the petitioner has been committing any illegality, that the respondent Grama Panchayath cannot usurp the powers vested in some other authority under some other statute. At best, the Grama Panchayath, in the public interest, could have brought the issue of alleged violation of the statutory provisions to the notice of the authorities concerned– in this case, perhaps, the first respondent, who in turn could have initiated appropriate action, if any violation is found.

11. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayath, this Court, apart from setting aside Ext.P4 stop memo as being ultra vires of the respondent Grama Panchayath, leaves it open for the Grama Panchayath to make necessary complaint before the first respondent, if it is still of the opinion that the petitioner

has been indulging in any transgression of law in terms of the Minor Mineral Concession Rules. Once such a complaint is made, needless to observe, the first respondent may take all appropriate steps in that regard.

12. At this juncture, the learned counsel for the petitioner has brought to my notice that Ext.P3 building permit has expired. It is made clear that it is up to the petitioner to make necessary application before the first respondent, who in turn shall consider the same in accordance with law.

13. Given the objection raised by the learned counsel for the respondent Grama Panchayath, it is in the interest of justice, if the first respondent, at the time of considering the petitioner's application for renewal of lease permit, provides an opportunity of hearing to the respondent Grama Panchayath as well.

This writ petition is disposed of as above.

sd/- DAMA SESHADRI NAIDU, JUDGE.

