

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 34494 of 2014 (J)

PETITIONER :

**VIJAYA HARIPRASAD,D/O.VELAYUDAN, AGED 43 YEARS,
MAMBRA KIZHAKETHIL, CHERIYANAD P.O.,
CHERYANADU, CHENGANNUR TALUK, ALAPPUZHA DISTRICT.**

BY ADV. SRI.AJITH MURALI

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE DISTRICT COLLECTOR,
ALAPPUZHA, ALAPPUZHA DISTRICT - 688 001.**
- 3. THE REVENUE DIVISIONAL OFFICER,
CHENGANNUR, ALAPPUZHA DISTRICT-689 121.**
- 4. THE ADDITIONAL THAHASILDAR,
TALUK OFFICE, CHENGANNUR TALUK,
ALAPPUZHA DISTRICT - 689 121.**
- 5. THE VILLAGE OFFICER,
MULAKUZHA VILLAGE, CHENGANNUR TALUK,
ALAPPUZHA DISTRICT - 689 121.**
- 6. THE SECRETARY,
MULAKUZHA GRAMA PANCHAYATH, CHENGANNUR TALUK,
ALAPPUZHA DISTRICT 689 121.**
- 7. THE PRINCIPAL SECRETARY,
INDUSTRIAL DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 8. THE SENIOR GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
ALAPPUZHA DISTRICT - 688 001.**

R1 TO R5,R7 & R8 BY SR GOVERNMENT PLEADER SRI.MUHAMMED SHAFI.M.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: THE TRUE COPY OF THE BUILDING PERMIT NO.A2/4930/2014 DATED 14.10.2014 ISSUED BY THE 6TH RESPONDENT, SECRETARY OF MULAKUZHA GRAMA PANCHAYATH.
- EXT.P-2: THE TRUE COPY OF THE JUDGEMENT OF THIS HONOURABLE COURT DATED 7.10.2013 IN WPC NO.24118 OF 2013.
- EXT.P-3: THE TRUE COPY OF THE REPORT PREPARED BY THE 5TH RESPONDENT DATED 6.8.2014
- EXT.P-4: THE TRUE COPY OF THE REPORT NO.B2-9646/2013 PREPARED BY THE 4TH RESPONDENT DATED 23.10.2013
- EXT.P-5: THE TRUE COPY OF THE REPORT NO.A-6799/2013 PREPARED BY THE 3RD RESPONDENT DATED 11.8.2014
- EXT.P-6: THE TRUE COPY OF THE ORDER NO.D.O.A/3065/M.M/2014 DATED 1.12.2014 ISSUED BY THE 8TH RESPONDENT 2014.
- EXT.P-7: THE TRUE COPY OF THE JUDGEMENT OF THIS HONOURABLE COURT DATED 2.12.2014 IN WPC NO.29439 OF 2014.

RESPONDENT(S)' EXHIBITS & ANNEXURES:

- ANNEX R8(A): TRUE COPY OF THE APPLICATION DATED 20/11/2014
- ANNEX R8(B): TRUE COPY OF THE COMMUNICATION SENT TO THE HIGHER AUTHORITIES FOR CLARIFICATION DATED 12/01/2015.

/TRUE COPY/

P.A.TO.JUDGE

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 34494 of 2014

Dated this the 24th day of March, 2015

JUDGMENT

The petitioner is the owner of the landed property in Sy.No.516/8, 516/15-1, 516/13-1, 516/14-1 in Block No.17 of Mulakuzha Village. When he intended to construct a residential building in the property, the petitioner approached the concerned local authority and after considering the application, Ext.P1 'Building Permit' was issued by the 6th respondent. But the application preferred by the petitioner for permission for removal of red earth from the said property was not acted upon.

2. The petitioner had approached the concerned authority by submitting application as early as on 12.08.2013 for issuance of necessary clearance to remove red earth from his property. Since the request of the petitioner was not properly considered he was constrained to approach this Court by filing W.P.(C). No. 24118 of 2013 which was disposed of as per Ext.P2 directing the RDO to consider the matter. In furtherance to the steps taken, the Village Officer submitted report vide Ext.P3 recommending

the cause projected by the petitioner. Ext.P4 is the report submitted by the Additional Tahsildar which stands in favour of the petitioner. By the said report, the RDO recommended the matter to the District Collector for further steps. The second respondent/District Collector forwarded the matter to the 8th respondent Geologist who asked the petitioner to produce a copy of the building permit. It is true that Ext.P1 building permit obtained by the petitioner only on 14.10.2014, subsequent to the filing of application on 12.8.2013. On production of the building permit as above, application of the petitioner was rejected by the 8th respondent for want of Environmental clearance which in turn is under challenge in this writ petition.

3. The learned Government Pleader appearing for the respondents submits that the matter can be caused to be considered by the 8th respondent with reference to Rule 14(2) of the KMMC Rules, 2015. The proviso to the said Rule envisages a spot inspection, granting necessary extent of Transit Pass so as to remove and transport the optimum quantity of red earth for effecting construction. It is also submitted that the respondents

shall not issue the prescribed pass exceeding the quantity of excavation.

4. After hearing both the sides, the writ petition is disposed of directing the 8th respondent to conduct a spot inspection with notice to the petitioner and assess the actual quantity of material required to be removed so as to enable the petitioner to effect construction in terms of Ext.P1 building permit. After fixing the quantity, adequate Mineral Transit Pass shall be issued to the petitioner in Form O(A) so as to enable the petitioner to transport the excavated earth. The proceedings as above shall be finalized at the earliest, at any rate, within 'two weeks' from the date of receipt of a copy of this judgment. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE.**