

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 36146 of 2015 (P)

PETITIONER(S):

**GAZAL BUILDERS AND DEVELOPERS,
SPACE MALL, MAVOOR ROAD, CALICUT 673004,
REPRESENTED BY ITS PARTNER, ALI.M.,
S/O.AHAMMED, AGED 36 YEARS,
MANAKKODIYIL HOUSE, KOOLINAD, PAGHO POST,
MAVOOR (VIA), KOZHIKODE.**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682031.**
- 2. THE DISTRICT MAGISTRATE,
WAYANAD 673121.**
- 3. THE KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ITS ENVIRONMENTAL ENGINEER,
DISTRICT OFFICER, WAYANAD 673121.**
- 4. THE EXECUTIVE ENGINEER,
PWD BUILDINGS DIVISIONS, KALPETTA, WAYANAD 673121.**
- 5. THE DIVISIONAL FOREST OFFICER,
SOUTH WAYANAD DIVISION, KALPETTA, WAYANAD 673121.**
- 6. THE DISTRICT SOIL CONSERVATION OFFICER,
WAYANAD 673121.**
- 7. THE TAHSILDAR, VYTHIRI 673576.**
- 8. THE VYTHIRI GRAMA PANCHAYATH.
REPRESENTED BY ITS SECRETARY,
VYTHIRI, WAYANAD 673121.**

PJ

.....2/-

WP(C).No. 36146 of 2015 (P)

**9. THE GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT, WAYANAD 673121.**

**R1,2,R4-R7,R9 BY ADV. SRI.T.P.ADDL. ADVOCATE GENERAL
SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER
R3 BY ADV. SRI.B.PRASANTH, SC,**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PARTNERSHIP DEEP DATED 20.09.2010**
- P2: TRUE COPY OF THE BUILDING PERMIT ISSUED BY VYTHIRI GRAMA PANCHAYATH**
- P3: TRUE COPY OF THE CONSENT GRANTED BY THE FIRE AND RESCUE SERVICE DATED 05.05.2014**
- P4: TRUE COPY OF THE ORDER ISSUED TO THE PETITIONER BY THE DISTRICT MAGISTRATE, WAYANAD DATED 27/3/14**
- P5: TRUE COPY OF THE REPORT OF STRUCTURAL SOLUTIONS AND THE SOILD INVESTIGATION REPORT**
- P6: TRUE COPY OF THE NOTICE ISSUE TO THE PETITIONER UNDER SECTION 133 OF CR.PC DT.16/2/15**
- P7: TRUE COPY OF THE OBJECTION SUBMITTED BEFORE THE DISTRICT MAGISTRATE DATED 27.02.2015**
- P7 A: TRUE COPY OF THE ORDER DATED 28.02.2015 OF THE DISTRICT MAGISTRATE, WAYANAD**
- P8: TRUE COPY OF THE ORDER DATED 04.03.2015 OF THE DISTRICT MAGISTRATE**
- P9: TRUE COPY OF THE REPORT FILED BY THE EXECUTIVE ENGINEER, PWD ROAD DIVISION, KALPETTA, WAYANAD DATED 18.03.2015**
- P10: TRUE COPY OF THE REPORT SUBMITTED BY THE DIVISIONAL FOREST OFFICER, DATED 30.01.2015**
- P11: TRUE COPY OF THE COMMUNICATION ISSUED BY THE DISTRICT SAND PROTECTION OFFICER DATED 15.04.2015**
- P12: TRUE COPY OF THE REPORT OF THE GEOLOGIST, WAYANAD**
- P13: TRUE COPY OF THE REPORT SUBMITTED BY THE ENVIRONMENTAL ENGINEER OF POLLUTION CONTROL BOARD DATED 25.03.2015**
- P14: TRUE COPY OF THE REPRESENTATION DATED 10.06.2015**
- P15: TRUE COPY OF THE ORDERS PASSED BY THE DISTRICT MAGISTRATE, WAYANAD DATED 30.06.2015**

PJ

WP(C).No. 36146 of 2015 (P)

P16: TRUE COPY OF THE JUDGMENT IN WPC.NO.24873/2015 DATED 03.11.2015

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.36146 of 2015

Dated this the 7th day of December, 2015

JUDGMENT

The petitioner is the holder of building permit. Ext.P2 is the building permit. This was issued on 3.6.2014. The validity of the permit would expire only on 2.6.2017. The petitioner approached this Court apprehending restriction of construction in the light of Ext.P15 order issued by the District Magistrate, Wayanad. The above order is issued on 30.6.2015 by restricting construction of high rise buildings and over and above, the limits prescribed therein.

This Court considered a similar permit issued by the Local Authority in Wayanad District and ordered that the order of the District Magistrate would run only prospectively as it has to form part of the building permit. It is submitted by the petitioner that they have already constructed ground floor. This Court in Ext.P16

judgment, it is ordered as follows:

“Thus, keeping the paramount power of the District Authority under the D.M.Act, Ext.P4 proceedings of the Chairman, District Disaster Management Authority and the District Magistrate, Wayanad, produced in W.P.(C) No.29516/2015 (which is Ext.P15 in W.P.(C) No.24873/2015) can be understood only as a guideline/directive given by the District Authority to the Local Self Government Institutions and other agencies to implement as part of larger disaster management. This direction would form part of building permit to be issued in Wayanad District after 30.6.2015. Thus, the Local Self Government Institutions are bound to implement the above directives. Therefore, the proceedings can have only a prospective application from the day on which it was issued and should be read along with the power given to the Local Self Government Institutions to grant permit in terms of the Kerala Panchayat and Municipal Building Rules.”

Therefore, in the light of the above judgment, this Court is of the view that the petitioner is free to undertake the construction in accordance with the building permit and the order of the District

Magistrate on restricting the construction to a certain limit would not apply to the petitioner.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ln