IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

WP(C).No.26366 OF 2019(U)

PETITIONER:

NATIONAL BUILDERS, SUNNY ESTATE, MAMANGALAM, PALARIVATTOM P.O., ERNAKULAM-682 025, REPRESENTED BY ITS MANAGING PARTNER - M.C.SUNNY.

BY ADVS.
SRI.K.I.MAYANKUTTY MATHER
SRI.ANIMON A. JOHN

RESPONDENTS:

1. **THE SECRETARY, CHERANALLOOR GRAMA PANCHAYAT, CHERANALLOOR P.O., PIN-682 027.**

2. **CHERANALLOOR GRAMA PANCHAYAT, REPRESENTED BY SECRETARY, CHERANALLOOR P.O., PIN-682 027.**

3. **PASCAL, S/O.JAMES, VARIATH HOUSE, KANAYANNOOR TALUK, CHERANALLOOR P.O., ERNAKULAM-682 027.**

4. **JOSE V.J. @ JOSELY, S/O.V.C.JAMES, VARIATH HOUSE, KANAYANNOOR TALUK, CHERANALLOOR P.O., ERNAKULAM-682 027.**

5. **JOSEPH P.J., S/O.JACOB, PANACKAL HOUSE, KANAYANNOOR TALUK, CHERANALLOOR P.O., ERNAKULAM-682 027.**

6. **RAICHAL BENJAMIN, ASSISTANT ENGINEER (LSGD), NOW WORKING AS ASSISTANT ENGINEER, CHERANALLOOR GRAMA PANCHAYATH, CHERANALLOOR P.O., PIN-682 027.**

7 SUKANYA O.S., THENAYATH HOUSE, CHERANALLOOR P.O., ERNAKULAM-682 027.

8 P.A.GEORGE VARGHESE, AALAYAM BUILDING CONTRACTORS LTD., OPP. ST.JAMES CHURCH, CHERANALLOOR P.O., ERNAKULAM-682 027.

9 STATE OF KERALA, REP. BY ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, (LOCAL SELF GOVERNMENT DEPARTMENT),SECRETARIAT, GENERAL POST OFFICE, THIRUVANANTHAPURAM-695 014.

R1-2 BY ADV. SRI.T.K.AJITHKUMAR (VALATH)
R3-5 BY ADV. SRI.C.S.AJITH PRAKASH
R3-5 BY ADV. SRI.T.K.DEVARAJAN
R3-5 BY ADV. SMT.T.N.SREEKALA
R3-5 BY ADV. SRI.FRANKLIN ARACKAL
R3-5 BY ADV. SRI.M.B.SOORI
R3-5 BY ADV. KUM.NEETHU SOMAN
R3-5 BY ADV. SHRI.BABU M.
R7-8 BY ADV. SMT.O.H.NAZEEBA
R9 BY GOVERNMENT PLEADER
S GOPINATHAN SR GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.12.2020, ALONG WITH WP(C).12045/2020(E), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

WP(C).No.12045 OF 2020(E)

PETITIONERS:

1 PASCAL V.J., AGED 44 YEARS, S/O .JAMES,VARIATH HOUSE, CHERANALLOOR.P.O, ERNAKULAM-682 034.

2 JOSE.V.J, AGED 41 YEARS, S/O JAMES,VARRIATH HOUSE,CHERANALLOOR.P.O, KOCHI-682 034. REP.BY ITS POWER OF ATTORNEY HOLDER,MRS.MARY JAMES, VARRIATH HOUSE,CHERANALLOOR.P.O, KOCHI-682 034.

3 JOSEPH.P.J, AGED 65 YEARS, S/O JACOB,PANACKAL HOUSE,KANAYANNOOR TALUK, CHERANALLOOR.P.O, ERNAKULAM-682 034.

BY ADVS.
SRI.C.S.AJITH PRAKASH
SRI.FRANKLIN ARACKAL
SRI.M.B.SOORI
SHRI.BABU M.

RESPONDENTS:

1 SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2 CHERANALLOOR GRAMA PANCHAYAT COUNCIL,
REPRESENTED BY ITS SECRETARY,
CHERANALLOOR,PIN-682 027.

3 THE SECRETARY, CHERANALLOOR GRAMA PANCHAYAT,
CHERANALLOOR,PIN-682 027.

4 THE CHIEF TOWN PLANNER(VIGILANCE),
VIGILANCE WING,LOCAL SELF GOVERNMENT
DEPARTMENT,5TH FLOOR,SWARAJ BHAVAN,
NANTHANCODE, KOWDIAR.P.O,
THIRUVANANTHAPURAM-695 003.

5 NATIONAL BUILDERS,
'SUNNY ESTATE',MAMANGALAM,
PALARIVATTOM.P.O, ERNAKULAM-682 025,
REPRESENTED BY ITS MANAGING
PARTNER.M.C.SUNNY.

6 M.C.SUNNY,
MANAGING PARTNER,NATIONAL BUILDERS,
REGIONAL OFFICE,5TH FLOOR,NATIONAL PEARL STAR
HIGH SCHOOL JUNCTION, PALARIVATTOM.P.O,
ERNAKULAM-682 025.

R2-3 BY ADV. SRI.T.K.AJITHKUMAR (VALATH)
R5-6 BY ADV. SRI.K.I.MAYANKUTTY MATHER
R5-6 BY ADV. SMT.T.K.SREEKALA
R5-6 BY ADV. SRI.ANIMON A. JOHN

M R DHANIL ODD
S GOPINATHAN SR GP EVEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.12.2020, ALONG WITH WP(C).26366/2019(U), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[WP(C).26366/2019, WP(C).12045/2020]

Dated this the 1st day of December 2020

The Government, pursuant to the direction of this Court in W.P.(C)No. 10422/2018, constituted a Panchayat level Technical Expert Committee in accordance with Sub Rule (13) of Rule 12 of the Kerala Panchayat Building Rules, 2011 (the 'Rules'). As per Sub Rule (13) of Rule 12 of the Rules, the composition of the committee is as follows:

> ***"12. Approval of site and plans and issue of permit where excavations to a depth of more than 1.5 metres is involved.-***
> ***XXXXXXXXXXXXXXXXXXXXXXXXXXXX***
> ***(13) For the purpose of this rule, Government may, constitute Panchayat level Technical Expert Committee(s) comprising of the Secretary (Convener), an officer not below the rank of an Assistant Engineer of the Engineering wing of Local Self Government Department having jurisdiction over the area and two experts, one each in Structural Engineering and Geotechnical Engineering (to be nominated by the Government) to assess the damage, suggest protective measures and fix the compensation. The process of***

the Committee shall be completed within 3 weeks."

2. The Government constituted the committee, as per G.O.(Rt)No.551/2019/LSGD dated 07.03.2019, the composition of the same is as follows:

> ***"1) Smt.Mallika V.R., Secretary, Cheranalloor Grama Panchayat – Convenor***
> ***2) Smt.Rachael Benjamin V., Assistant Engineer, LSGD***
> ***3) Smt.Sukanya O.S., Registered Engineer -A, under the Department of Urban Affairs. She is a recognized Civil Engineer who is in the field of building construction under the Urban Affairs Department from 2012 onwards.***
> ***4) Sri. P.A. George Varghese, Registered Supervisor-A, under the Department of Urban Affairs, Working as a recognised Civil Engineer in the building Construction contract field under the Urban Affairs Department from 2005 onwards."***

3. The constitution of the committee assessed the loss to the petitioners in W.P.(C)No. 12045/2020. The constitution of the committee and Ext.P11 proceedings are challenged by the builder in W.P.(C)No.26366/2019.

4. The matter is related to the construction undertaken by the National Builders, the petitioner in W.P.(C)No.

26366/2019, in Cheranalloor Grama Panchayat. Consequent upon the construction undertaken, it appears that the petitioners in W.P.(C)No. 12045/2020 claim that they suffered loss. A mechanism has been provided as per Rule 12 of the Rules to redress the grievances of the persons consequent upon any damage suffered by them. This is how the committee was constituted based on the direction of this Court.

5. Composition of the committee as above on the face of the record itself would show that it is against the prescription under Sub- Rule (13) of Rule 12 of the Rules. The experts must have professional experience. One expert as Structural Engineer and the other as Geo-technical Engineer.

6. One of the member of the committee, Smt. Sukanya O.S., is only a Civil Engineer. The other member Sri. P.A. George Varghese is also a Civil Engineer. Nothing has been mentioned about their professional competency, to become

members of the committee. Unless and until the nominees are professionally recognised; one as a Structural Engineer and the other as Geo-Technical Engineer, they cannot form part of the committee. It is appropriate that the Government also defines the qualification of a Structural Engineer and Geo-Technical Engineer through the appropriate orders. As of now, this Court feels that Smt. Sukanya O.S and Sri. P.A. George Varghese are not competent to constitute a technical expert committee either in the capacity as a Structural Engineer or in the capacity of a Geo-Technical Engineer.

7. In the light of the above, the writ petition filed by the builder (W.P.(C)No. 26366/2019) has only to be allowed and I do so. Consequently, Ext.P11 proceedings is also set aside.

8. The learned counsel for the petitioners in W.P.(C)No. 12045/2020, submits that they suffered loss consequent upon the construction undertaken by the builder and atleast a partial

amount may be directed to be released. They filed the W.P.(C)No.12045/2020 for such a relief.

9. The Government, in the light of the urgency as above, is directed to constitute a proper committee within a period of three weeks. The committee, thereafter, shall assess the damages, after notice to the petitioners and the Secretary of the Panchayat, within a further period of three weeks. The petitioner in W.P.(C)No.26366/20119 has undertaken before this Court that they will abide by the decision of the committee as to the payment of damages as ordered by the judgment of this Court in W.P.(C)No.39438/2018.

W.P.(C)No. 12045/2020 is disposed of in the light of the directions in W.P.(C)No. 26366/2019.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

PR

APPENDIX OF WP(C) 26366/2019

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE BUILDING PERMIT NO.C4/420/2016 ISSUED BY THE 1ST RESPONDENT DATED 14.12.2016.**
EXHIBIT P2	**TRUE COPY OF THE EYE-SKETCH DRAWN BY THE PETITIONER DATED NIL.**
EXHIBIT P3	**PHOTOGRAPHS DISCLOSING THE PRESENT STAGE OF CONSTRUCTION (4 NOS.) DATED NIL.**
EXHIBIT P4	**TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 9.2.2018.**
EXHIBIT P5	**TRUE COPY OF THE JUDGMENT IN W.P.(C) 10422/2018 OF THIS HON'BLE COURT DATED 31.5.2018.**
EXHIBIT P6	**TRUE COPY OF THE ORDER OF THE TRIBUNAL IN APPEAL NO.124/2018 DATED 26.11.2018.**
EXHIBIT P7	**TRUE COPY OF THE STOP MEMO BEARING NO.C2 9195/18 ISSUED BY THE 1ST RESPONDENT DATED 3.12.2018.**
EXHIBIT P8	**TRUE COPY OF THE JUDGMENT IN W.P.(C) 39438/2018 OF THIS HON'BLE COURT DATED 10.1.2019.**
EXHIBIT P9	**TRUE COPY OF THE GOVERNMENT ORDER DATED 7.3.2019.**
EXHIBIT P10	**TRUE COPY OF THE LEGAL NOTICE DATED 12.8.2019.**
EXHIBIT P10A	**TRUE COPY OF THE REPLY NOTICE DATED 31.8.2019.**

EXHIBIT P11	**TRUE COPY OF THE COMMUNICATION/PROCEEDING SERVED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 18.9.2019.**
EXHIBIT P12	**TRUE COPY OF THE REQUEST GIVEN UNDER THE RIGHT TO INFORMATION ACT AND THE REPLY GIVEN BY THE PANCHAYATH**

RESPONDENTS EXHIBITS:

EXHIBIT R1A	**THE TRUE COPY OF THE DECISION/REPORT DATED 15-5-19 OF TECHNICAL EXPERT COMMITTEE.**
EXHIBIT R1(b)	**THE TRUE CCOPY OF THE REPORT OF THE TECHNICAL EXPERT COMMITTEE WITH RESPECT TO THE BUILDING OF THE 3RD RESPONDENT DATED NIL.**
EXHIBIT R1(c)	**THE TRUE COPY OF THE REPORT OF THE TECHNICAL EXPERT COMMITTEE WITH RESPECT TO THE BUILDING OF THE 4TH RESPONDENT DATED NIL.**
EXHIBIT R1(d)	**THE TRUE COPY OF THE REPORT OF THE TECHNICAL EXPERT COMMITTEE WITH RESPECT TO THE BUILDING OF THE 5TH RESPONDENT DATED NIL.**
EXHIBIT R1(e)	**THE TRUE COPY OF THE REPORT OF THE TECHNICAL EXPERT COMMITTEE DATED NIL.**
EXHIBIT R1(f)	**THE TRUE ENGLISH TRANSLATION OF THE EXHIBIT R1(e).**
EXHIBIT R3 A	**A TRUE COPY OF THE ADVOCATE COMMISSION REPORT FILED IN APPEAL NO. 124/2018 DATED 30.10.2018**

APPENDIX OF WP(C) 12045/2020

PETITIONERS EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF THE LAND TAX RECEIPT DATED 06.07.2019 ISSUED BY THE CHERANELLOOR VILLAGE TO THE 1ST PETITIONER**
EXHIBIT P2	**A TRUE COPY OF THE BUILDING PERMIT ISSUED BY CHERANELLOOR GRAMA PANCHAYATH DATED 14.12.2016**
EXHIBIT P3	**A TRUE COPY OF THE STOP MEMO DATED 09.02.2018 ISSUED BY THE CHERANELLOOR GRAMA PANCHAYATH**
EXHIBIT P4	**A TRUE COPY OF THE JUDGMENT IN W.P(C)NO.10422/2018 DATED 31.05.2018**
EXHIBIT P5	**A TRUE COPY OF THE JUDGMENT IN W.P(C)NO.14032/2018 DATED 11.07.2018**
EXHIBIT P6	**A TRUE COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER MR.CHANDRESEKHARAN NAIR DATED 30.10.2018**
EXHIBIT P7	**A TRUE COPY OF THE ORDER IN A.P.NO.124/2018 DATED 26.11.2018**
EXHIBIT P8	**A TRUE COPY OF THE JUDGMENT IN W.P(C)NO.39438/2018 DATED 10.01.2019**
EXHIBIT P9	**A TRUE COPY OF THE QUERY SUBMITTED UNDER THE RIGHT TO INFORMATION ACT BY THE 1ST PETITIONER DATED 14.09.2018**
EXHIBIT P10	**A TRUE COPY OF THE REPLY SUBMITTED BY THE PUBLIC INFORMATION OFFICER,MINING AND GEOLOGICAL DEPARTMENT DATED 06.10.2018.**

EXHIBIT P11	**A TRUE COPY OF THE QUERY SUBMITTED BY THE 1ST PETITIONER DATED 26-11-2019**
EXHIBIT P12	**A TRUE COPY OF THE REPLY RECEIVED FROM THE PANCHAYATH DATED 22.12.2019**
EXHIBIT P13	**A TRUE COPY OF THE LETTER FORWARDED BY THE SECRETARY TO THE PANCHAYATH TO THE UNDER SECRETARY LSGD DATZED 21.05.2019**
EXHIBIT P14	**A TRUE COPY OF THE ORDER GIVEN TO THE 5TH RESPONDENT DATED 18.09.2019**
EXHIBIT P15	**A TRUE COPY OF THE LAWYER NOTICE ISSUED TO THE BUILDER AND THE SECRETARY TO THE GRAMA PANCHAYATH DATED 12.08.2019**
EXHIBIT P16	**SIMILAR SUCH NOTICE IS ISSUED TO THE SECRETARY LSG DEPARTMENT,A TRUE COPY OF THE NOTICE DATED 12.08.2019**
EXHIBIT P17	**A TRUE COPY OF THE NOTICE ISSUED BY THE PETITIONERS TO SECRETARY OF THE GRAMA PANCHAYATH DATED 16.09.2019.**
EXHIBIT P18	**A TRUE COPY OF THE G.O.(RT)NO.551/2019 LSGD DATED 07.03.2019**
EXHIBIT P19	**A TRUE COPY OF THE INTERIM ORDER DATED 03.10.2019 IN W.P(c)NO.26366/2019**
EXHIBIT P20	**A TRUE COPY OF THE INTERIM ORDER DATED 11.10.2019 IN W.P(C)NO.26366/2019**
EXHIBIT P21	**A TRUE COPY OF THE COUNTER AFFIDAVIT OF GOVERNMENT DATED 23.10.2019.**