

James Antony vs Director

James Antony vs Director

SooperKanoon Citation : sooperkanoon.com/1286121

Court : Kerala

Decided On : Mar-19-2024

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : WP(C)/1584/2024

Appellant : James Antony

Respondent : Director

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
TUESDAY, THE 19TH DAY OF MARCH 2024 / 29TH PHALGUNA, 1945
WP(C) NO. 4191 OF 2024 PETITIONER: K.P ALIAS AGED 52 YEARS
S/O. K.M PAULOSE, KOTTANADAN HOUSE, KUMARAPURAM P.O,
WEST MORAKKALA, ERNAKULAM, PIN - 683565 BY ADV MANOJ
P.KUNJACHAN RESPONDENTS:

1 GEOLOGIST OFFICE OF THE GEOLOGIST, CIVIL STATION,
KAKKANAD, ERNAKULAM, PIN - 682030 2 VILLAGE OFFICER
VILLAGE OFFICE KUNNATHUNAD, KUMARAPURAM P O,
PALLIKKARA, PIN - 683565 3 SECRETARY KUNNATHUNAD GRAMA

PANCHAYATH, KUMARAPURAM P O, PALLIKKARA, PIN - 683565 4
BIJU THOMAS PARAYANKUDI HOUSE, MORAKKALA,
KUNNATHUNADU, ERANKULAM, PIN - 683565 5 ABI VARGHESE
W/O. BIJU THOMAS, PARAYANKUDI HOUSE, MORAKKALA,
KUNNATHUNADU, ERANKULAM, PIN - 686565 6 KUNNATHUNAD
GRAMA PANCHAYATH REPRESENTED BY ITS SECRETARY,
KUMARAPURAM P O, PALLIKKARA, PIN - 683565 BY ADVS.
ABRAHAM P.MEACHINKARA Shaji Thomas MOHAN
PULIKKAL(K/64A/1985) JEN JAISON(K/000208/2017) THOMASKUTTY
SEBASTIAN(K/623/1987) P.P.BIJU(K/668/2005)

W.P.(C).Nos.4191 & 1584 of 2024 2 OTHER PRESENT: SR.GP -
DEEPA NARAYANAN THIS WRIT PETITION (CIVIL) HAVING COME
UP FOR ADMISSION ON 19.03.2024, ALONG WITH WP(C).1584/2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
W.P.(C).Nos.4191 & 1584 of 2024 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
TUESDAY, THE 19TH DAY OF MARCH 2024 / 29TH PHALGUNA, 1945
WP(C) NO. 1584 OF 2024 PETITIONERS: 1 JAMES ANTONY AGED 35
YEARS S/O.M.A.ANTONY, MUTTAMTHOTTIL HOUSE,
KUMARAPURAM.P.O., WEST MORAKKALA, KUNNATHUNAD,
ERNAKULAM, PIN - 683565 2 MEBIN K BABY AGED 24 YEARS S/O.
KC BABY, KIZHAKKEKKUDY, WEST MORAKKALA, KUMARAPURAM
KUNNATHUNAD, ERNAKULAM, PIN - 683565 BY ADVS. RAJESH
VIJAYAN SIKHA S.NAIR RESPONDENTS:

1 DIRECTOR KERALA STATE MINING & GEOLOGY DEPARTMENT,
DIRECTORATE OF MINING & GEOLOGY DEPARTMENT,
KESAVADASAPURAM, PATTOM PALACE.P.O.,
THIRUVANANTHAPURAM, PIN - 695004 2 DISTRICT COLLECTOR
ERNAKULAM, COLLECTORATE, KAKKANAD, ERNAKULAM, PIN -

682030 3 GEOLOGIST COLLECTORATE, KAKKANAD, ERNAKULAM,
PIN - 682030 4 REVENUE DIVISIONAL OFFICER MUVATTUPUZHA,
REVENUE DIVISIONAL OFFICE, MUVATTUPUZHA, ERNAKULAM,
PIN - 686673 5 DIRECTOR VIGILANCE DEPARTMENT,
THIRUVANANTHAPURAM, VIKAS

W.P.(C).Nos.4191 & 1584 of 2024 4

BHAVAN, VIGILANCE DIRECTORATE, PMG,
THIRUVANANTHAPURAM, PIN - 695033 6 MATHAI.T.M THADIYAN
HOUSE, CHURAKKODE, PATTIMATTOM, ALUVA, ERNAKULAM, PIN -
683562 7 BIJU THOMAS PARAYANKUDI HOUSE, MORAKKALA,
KUNNATHUNADU, ERNAKULAM, PIN - 683565 8 ABI VARGHESE
W/O. BIJU THOMAS, PARAYANKUDI HOUSE, MORAKKALA,
KUNNATHUNADU, ERNAKULAM, PIN - 683565 9 ADDL.R9. K P ALIAS
AGED 52 YEARS, S/O. K.M PAULOSE, KOTTANADAN HOUSE,
KUMARAPURAM P.O, WEST MORAKKALA, ERNAKULAM 683 565 [IS
IMPLEADED AS PER ORDER DATED BY ADVS. Krishnkumar
[Cherthala] Shaji Thomas Biju P.P MANOJ P.KUNJACHAN SAFNA
P.S.(K/1429/2023) TINY THOMAS(K/535/2000) MOHAN
PULIKKAL(K/64A/1985) JEN JAISON(K/000208/2017) THOMASKUTTY
SEBASTIAN(K/623/1987) SR. GP - DEEPA NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19.03.2024, ALONG WITH WP(C).4191/2024, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING: VIJU ABRAHAM,J
----- W.P.(C).Nos.4191 & 1584 of 2024
----- Dated this the 19th day of March, 2024

JUDGMENT

WPC No 1584 of 2024 The above writ petition is filed seeking a

direction to the 3rd respondent not to issue any mining permit for excavation of
ordinary earth to respondents Nos.6 to 8. It is averred that sixth respondent

obtained Ext.P1 pass for the excavation and removal of 8152 metric tons of ordinary earth under the pretext of construction of a building. By using Ext.P1 pass, large-scale excavation was done by the 6th respondent. The petitioners who are nearby residents are aggrieved by such illegal excavation including that it will adversely affect

their lateral support. A perusal of Ext.P3 report would show that the sixth respondent has excavated more than what is permitted. Some property belonging to the 6th respondent was transferred in the name of respondents 7 and 8 and they again W.P.(C).Nos.4191 & 1584 of 2024 6 applied for pass for excavation of soil under the pretext of construction of a building. Even though there is a stipulation that building has to be constructed in a year, no construction has been started till date. The 1st petitioner preferred Ext.P4 petition before the Government and 2nd respondent preferred Ext.P5 complaint before the 3rd respondent. Petitioners contend that without considering these complaints, geologist is likely to issue mining pass.

2. A detailed counter affidavit has been filed by respondents 7 and 8. The petitioners are not nearby property owners and they have no property

abutting the land of the respondents.

were preferred including an allegation that the

petitioners have demanded Rs.5 Lakhs

authority and certain extent of quantity of earth was removed after obtaining Ext.R7 (e) demarcation

W.P.(C).Nos.4191 & 1584 of 2024 7 certificate and Ext.R7 (f) movement permit was granted by the geologist based on Ext.R7(c) and (d). Based on the same when the respondents attempted to remove earth, it was obstructed and the respondent was compelled to approach this court for seeking police protection and the same was granted as per Ext.R7(g). Likewise, the 8th

respondent also approached this court seeking police protection and the same was granted as per Ext.R7(h). It is submitted that the 8th respondent has also submitted an application for issuance of movement permit after paying the requisite royalty as evident from Ext.R7(i). It is further submitted

that construction of one of the resi

pondents are undertaking the activity strictly in accordance with the Rules, no relief can be granted in this writ petition. WPC No. 4191 of 2024

3. It is contended that respondents 4 and 5, (respondents 7 and 8 in WPC 1584 of 2024) were

W.P.(C).Nos.4191 & 1584 of 2024 8granted Exts.P2

respondent is dated 23.03.2023 and on the basis of the same it is contended that a demarcation certificate issued even prior to Ext.P2 building permit itself will show that the 2 nd respondent has acted in a mechanical manner without any application of mind. The 1st respondent has issued

Ext.P5 movement permit to respondents

that the cutting height of the proposed site is nearly 6 meters and based on Rule 10 (5) of the KPBR 2019, Ext.P6 complaint was preferred before the local authority.

4. A detailed counter affidavit has been filed by respondents 4 and 5 wherein it is contended that a demarcation certificate was produced and only after due verification by the Asst Engineer

W.P.(C).Nos.4191 & 1584 of 2024 9 LSGD Division that Exts. P2 and P3 building permits were granted and Ext.R4(b) is a copy of the demarcation certificate in respect of the property of respondents 4 and 5 comprised in Sy

No. 164/29-2, 164/30, 164/31 and

preferred by an owner of adjoining property.

5. After hearing both sides, it is discernible that the essential complaint raised is that misusing the permit granted, the party respondents have extracted minerals in excess of the permit

and Condition No.3 in Ext.P5 moveme

permitted quantity, failing which movement permit will be cancelled and also will be imposed with fine and penalty. A perusal of Ext.P3 would reveal that ordinary earth has been removed in excess of the permitted quantity. Yet another contention raised is that the demarcation of the property has W.P.(C).Nos.4191 & 1584 of 2024 10 not been done in a proper manner and permit has been granted without properly advertng to the demarcation certificate.

6. In view of the above factual situations

discernible from the pleadings, the above writ petitions are disposed of as follows: The 3rd respondent shall take up Ext.P5 complaint filed in WPC No. 1584/2024 and dispose of the same after affording an opportunity of being heard to the petitioner and respondents 6 to 9 in WPC No. 1584/2024. The 3 rd respondent while considering Ext.P5 complaint shall also consider

the contention raised by the petitioners that there is no proper demarcation done by the Village Officer and minerals have been extracted beyond the demarcated area. If the said allegation is found to be true, the geologist shall issue the necessary direction to demarcate the area where the mineral is to be extracted and only thereafter consider issuance of permit and passes for excavation. The geologist shall also take into consideration Ext.P3 mahazar produced in WPC No. W.P.(C).Nos.4191 & 1584 of 2024 11

in condition No.3 in Ext.R7(f) movement

limit of 3 weeks from the date of receipt of a copy of the judgment with notice to the petitioners and respondents 6 to 9 in WPC No. granted only after the finalization of the proceedings as directed above. There will also be a direction to the 3rd and 6th respondents to take up Ext.P6 complaint preferred by the petitioner in WPC No. 4191/2024 and consider the same in accordance with law

and pass appropriate orders thereon within an outer limit of 2 months from the date of receipt of a copy of the judgment with notice to respondents 4 and 5. sd/- VIJU ABRAHAM, JUDGE pm W.P.(C).Nos.4191 & 1584 of 2024 12 APPENDIX OF WP(C) 1584/2024 PETITIONERS' EXHIBITS Exhibit P1 TRUE COPY OF THE PASS ISSUED BY THE GEOLOGIST IN RE. SY. NO. 165/3 TO EXCAVATE AND REMOVE 8152 METRIC TONE OF ORDINARY SOIL FROM THE PROPERTY

Exhibit P2 TRUE COPY OF THE PHOTOGRAPHS SHOWING THE LARGE SCALE EXCAVATION Exhibit P3 TRUE COPY OF THE INSPECTION REPORT WHICH SHOWS THAT ACTION HAS TO BE TAKEN AGAINST THE 6TH RESPONDENT Exhibit P4 TRUE COPY OF PETITION DATED 20.12.2023 BEFORE THE OTHER RESPONDENTS Exhibit P5 A TRUE COPY OF THE COMPLAINT DATED 09.01.2024 RESPONDENTS' EXHIBITS Exhibit R7(a) True photocopy of complaint dated 13.12.2023 filed before the Kunnathunad Police Station Exhibit R7 (b) True photocopy of receipt dated 18.12.2023 issued from the Kunnathunad Police Station Exhibit R7(c) True photocopy of the site approval and

building permit No. A2-BA (121638) / 2023 dated 29.03.2023 issued by the Secretary, Kunnathunad Grama Panchayath Exhibit R7(d) True photocopy of the site approval and building permit No. A2- BA (121666) / 2023 dated 29.03.2023 issued by the Secretary, Kunnathunad Grama Panchayath

Exhibit R7(e) True photocopy of the demarcation

Officer, Kunnathunad Exhibit R7(f) True photocopy of the movement permit No. DOERN - DMG/721/2023 - MDO dated 05.01.2024 issued by the District Geologist Exhibit R7(g) true photocopy of the order dated 08.01.2024 in W.P.(C) No.44142/2023 Exhibit R7(h) True photocopy of the judgement dated 14.11.2023 in W.P.(C) No. 36516/2023 Exhibit R7(i) True photocopy of the pay in slip dated 17.05.2023 issued by the Treasurer, District Treasury, Ernakulam Exhibit R6[a] A true copy of the power of attorney executed by Anna Kunju and Riya Eldhose in favour of the 6th respondent dated 13-03-2020 Exhibit R4[b] A true copy of the order bearing no. 2022 issued by the 3rd respondent to the 6th respondent Exhibit R6[c] A true copy of the receipt issued by the 2nd petitioner to the 6th respondent dated 18-11-2019 Exhibit R6[d] A true copy of the pay in slip dated 06-10-2023

issued to the 6th respondent Exhibit R7(j) TRUE PHOTOCOPY OF THE BUILDING PLANS

SUBMITTED BY RESPONDENTS 7 & 8 FOR CONSTRUCTION OF RESIDENTIAL BUILDING IN SY. NO 164/31 OF KUNNATHUNADU VILLAGE Exhibit R7(k) TRUE PHOTOCOPY OF THE BUILDING PLANS SUBMITTED BY RESPONDENTS 7 & 8 FOR CONSTRUCTION OF RESIDENTIAL BUILDING IN SY. NO 164/12-2 OF KUNNATHUNADU VILLAGE

Exhibit R7(l) TRUE PHOTOCOPY OF INSPECTION AND VERIFICATION REPORT DATED 22.01.2024 ISSUED BY THE ASSISTANT ENGINEER, W.P.(C).Nos.4191 & 1584 of 2024 14 KUNNATHUNAD PANCHAYATH Exhibit R7(m) TRUE PHOTOCOPY OF THE REPORT DATED 17.01.2024 SUBMITTED BY THE VILLAGE OFFICER, KUNNATHUNAD W.P.(C).Nos.4191 & 1584 of 2024 15 APPENDIX OF WP(C) 4191/2024 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE MAHAZAR PREPARED BY 1ST RESPONDENT DATED 05/10/2023 Exhibit P2 TRUE COPY OF THE BUILDING PERMIT NO. A2-BA(121666)/2023 DATED 29/03/2023 Exhibit P3 TRUE COPY OF THE BUILDING PERMIT NO. A2-BA(121638)/2023 DATED 29/03/2023 Exhibit P4 TRUE COPY OF THE DEMARCATION CERTIFICATE NO. 304/23 DATED 10/03/2023 SIGNED BY THE 2ND RESPONDENT ON Exhibit P5 TRUE COPY OF FORM S BEARING NO. DOERN- DMG/721/2023-MDO DATED 05/01/2024 ISSUED BY THE 1ST RESPONDENT Exhibit P6 TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER DATED 11.01.2024 BEFORE THE 3RD RESPONDENT Exhibit P7 TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT NO. 400634/BAUV01/ GPO/2024/230 DATED RESPONDENTS' EXHIBITS Exhibit R4 (a) True photocopy of the report dated 17.01.2024 submitted by the 2nd respondent to the R.D.O Moovattupuzha Exhibit R4 (b) True photocopy of the demarcation certificate dated 10.03.2023 signed by the 2nd respondent on 23.03.2023

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