

Sajitha, vs the District Geologist,

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Court : Kerala

Decided On : Oct-01-2021

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/9034/2019

Appellant : Sajitha,

Respondent : The District Geologist,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH FRIDAY,
THE 1ST DAY OF OCTOBER 2021 / 9TH ASWINA, 1943 WP(C) NO.
9034 OF 2019 PETITIONER: SAJITHA, AGED 44 YEARS, W/O.CLIMIS,
MUNDAMPAL HOUSE, ALOOR P.O., THRISSUR DISTRICT. BY ADV
K.RAKESH RESPONDENTS:

1 THE DISTRICT GEOLOGIST, DEPARTMENT OF MINING AND
GEOLOGY, CHEMBUKAVU, THRISSUR DISTRICT, PIN-680020 2 THE
VILLAGE OFFICER, ALOOR VILLAGE, THRISSUR DISTRICT, PIN-
680602. ADDL.3 VIJAYAN, S/O.VELAYUDHAN, AGE NOT KNOWN,
KANIYATHU HOUSE, AALoor VILLAGE, AALoor P.O., THRISSUR

DISTRICT PIN -680683. (ADDL.R3 IS IMPEADED AS PER ORDER DATED 18.07.2019 IN IA NO. 3/2019). BY ADV SRI.VIPIN NARAYANAN SR. GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

01.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 1st day of October, 2021 The petitioner, who is a resident of Aloor Village of Kunnankulam Taluk in Thrissur District seeks to quash Ext.P4 Stop Memo issued by the Village Officer and to direct the 1st respondent to extend the validity of Ext.P3 by one month to enable the petitioner to complete the activity permitted therein.

2. The petitioner states that in the flood occurred during the year 2019-20, the land from the nearby hillock slid down to the property of the petitioner. And an open well of the petitioner was filled up, apart from the other areas, with the red earth. The source of drinking water of the petitioner was thereby contaminated. The petitioner made an application to the 1st respondent-District Geologist seeking permission to remove the earth deposited in the property and

in the well. The District Senior Geologist granted Ext.P3 permission to remove 1125 Cubic metres of red earth, which fell in the compound and the well of the petitioner. When the petitioner started to remove the red earth, the Village Officer issued Ext.P4 Stop Memo. In Ext.P4, it was stated that removal of red earth by the petitioner will adversely affect the local residents and the environment. The action of the petitioner was treated by the Village Officer as violation of Condition No.4 in Ext.P3. It is challenging Ext.P4 Stop Memo that the petitioner has approached this Court.

3. The learned counsel for the petitioner submitted

that the only source of drinking water available to the petitioner is the open well situated in the property. The said well was filled up with red earth admittedly.

Unless, the Stop Memo is cancelled and the petitioner is permitted to remove the red earth from open well, the petitioner and his family will be put to untold hardship.

4. The 2nd respondent filed a statement opposing the

writ petition. The 2nd respondent stated that the petitioner built her house after removing soil from her property that caused to form a deep valley between her property and the land of Ponmala Devaswam. In the recent floods, due to heavy rains the land from the steep valley slid down in the property of the petitioner. A portion of the property of the petitioner as well as the open well were filled with soil. When the petitioner was removing red earth from his property, complaints were received from Ponmala Devaswam Committee President alleging that removing and transporting soil from underneath Ponmala Devaswam would endanger the nature and it would create hazards to people in the nearby area. Therefore based on Annexure R2(a) complaint that a Stop Memo was issued. The learned Government Pleader asserted that removal of the red earth from the low lying land of the petitioner would damage the environment.

5. In the statement, the 1st respondent pointed out that

on site inspection the 1st respondent was convinced that the ordinary earth deposited in and around the open well has to be removed for making the well useful as a source of drinking water. For the said purpose of making the well useful as source of drinking water, 240 Cubic metres of ordinary earth has to be further removed. The petitioner has not conducted any mining activity.

6. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents.

7. From the pleadings and arguments raised in the case, it is evident that the petitioner was earlier granted Ext.P3 permission to remove 1125 Cubic Metres of red earth from the

open well as well as around the said well. However, the complaint was that if the red earth is removed from the land it will affect the environment and may cause

further land slide. But it is the case of the petitioner that his intention is only to make available drinking water by cleaning the well for which removal of red earth is necessary. Knowing this position, the 1st respondent has also favoured the petitioner and has stated that 240 Cubic Metres of ordinary earth has to be removed from the well.

8. In view of the stand taken by the 1st respondent,

who has initially permitted removal of 1125 Cubic Metres of earth and has now stated that removal of 240 Cubic Meters of ordinary earth is sufficient for cleaning the well, this Court is of the opinion that the petitioner should be permitted to remove 240 Cubic Metres of ordinary earth from within the open well of the petitioner.

9. In such circumstances, the writ petition is disposed of with the following directions:

10. The petitioner should file an undertaking before the 1st respondent as well as the 2nd respondent, undertaking that he will remove red earth only from within the open well, not exceeding 240 Cubic Metres. After submitting the

undertaking, the petitioner will be at liberty to remove the red earth from the open well alone. The quantity of the red earth to be removed from the open well shall not exceed more than 240 Cubic Metres. The respondents 1 and 2 will be at liberty to make necessary inspection of the activities of the petitioner. If the petitioner submits an application for extension of the period of transit passes or for issuance of fresh transit passes for the aforesaid purpose, the 1 st respondent shall issue the same in accordance with law. Sd/- N. NAGARESH JUDGE SR

APPENDIX OF WP(C) 9034/2019 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE ASSIGNMENT DEED DATED, EXHIBIT P2 TRUE COPY OF THE MAHAZAR DATED, BY THE 2ND RESPONDENT BEFORE THE FIRST RESPONDENT. EXHIBIT P3 TRUE COPY OF THE ORDER DATED 8/3/2019 ISSUED BY THE FIRST RESPONDENT AS NO. EXHIBIT P4 TRUE COPY OF THE STOP MEMO DATED,

EXHIBIT P5 TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTY, WHERE THE WORK HAS TO BE DONE RESPONDENTS' EXHIBITS: ANNEXURE R1(a) TRUE COPY OF THE PHOTOGRAPHS SHOWING THE LIE AND NATURE OF THE LAND. ANNEXURE R2(a) TRUE COPY OF THE PETITION RECEIVED ON 12.03.2019 FROM PONMALA DEVASWAM COMMITTEE PRESIDENT ANNEXURE R2(b) TRUE COPY OF THE MASS PETITION WITH ENDORSEMENT FROM TAHSILDAR, KUNNAMKULAM DATED 26.03.2019

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