

**Joobin Mathew Vs. State of Kerala**

**Joobin Mathew Vs. State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/62403](http://sooperkanoon.com/62403)

**Court :** Kerala

**Decided On :** Jul-27-2015

**Judge :** Honourable the Chief Justice Mr.Ashok Bhushan

**Appellant :** Joobin Mathew

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE MONDAY,THE27H DAY OF JULY2015/5TH SRAVANA, 1937 WP(C).No. 20801 of 2015 (A)

----- PETITIONER(S): ----- JOOBIN MATHEW, VATTAKEERIL HOUSE, MANNAR P.O., KOTTAYAM. BY ADVS.SRI.G.SREEKUMAR (CHELUR) SRI.NANDAGOPAL S.KURUP  
RESPONDENT(S): ----- 1. THE STATE OF KERALA, REPRESENTED BY SECRETARY TO THE GOVERNMENT, DEPARTMENT OF HOME AFFAIRS, SECRETARIAT, THIRUVANANTGHAPURAM, PIN-695 001.

2. THE NJEZHOOR GRAMA PANCHAYAT, REPRESENTED BY ITS SECRETARY, NJEEZHOOR GRAMA PANCHAYAT, NJEEZHOOR P.O., KOTTAYAM, PIN-688 029.

3. THE DISTRICT GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY, DISTRICT OFFICE, KOTTAYAM DISTRICT, PIN-682 039.

4. BALACHANDRAN, PUTHUSSERRY MANADIYEL HOUSE, THIRUVAMBADI P.O., MADATHIPARAMBU KARA, NJEEZHOO VILLAGE, VIKOM THALUK, KOTTAYAM - 688 029.

5. SIJO JOY, MANADIYEL HOUSE, ARUNOOTTIMANGALAM P.O., PAZHUTHURUTHUKARA, NJEEZHOO VILLAGE, VIKOM THALUK, KOTTAYAM - 688 029.

6. JUBISH, KAPPIL HOUSE, ARUNOOTTIMANGALAM P.O., PAZHUTHURUTHUKARA, NJEEZHOO VILLAGE, VIKOM THALUK KOTTAYAM - 688 029. msv/ -2- -2- WP(C).No. 20801 of 2015 (A)

----- 7. THE DISTRICT POLICE CHIEF, KOTTAYAM DISTRICT, PIN - 688 029.

8. THE CIRCLE INSPECTOR OF POLICE, KADUTHURUTHY POLICE POLICE STATION, KADUTHURUTHY, KOTTAYAM, PIN-688 029.

9. THE SUB INSPECTOR OF POLICE, KADUTGHURUTHY POLICE STATION, KADUTHURUTHY, KOTTAYAM, PIN-688 029. \* ADDITIONAL R10& R11 IMPEADED10 M/S.ENVIRONMENTAL PROTECTION, COUNCIL (EPC), NJEEZHOO P.O., REPRESENTED BY ITS SECRETARY, SHRI.V.P.JOSEPH, AGED48 S/O.V.P.PAUL, VARAPADAVIL, THIRUVAMBADY P.O., KOTTAYAM DISTRICT - 686 612.

11. ANNICE DAS, AGED49 W/O.DEVADAS, KUNNEL HOUSE, NJEEZHOO P.O., NJEEZHOO VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT, PRESIDENT, M/S.ENVIRONMENTAL PROTECTION COUNCIL (EPC), NJEEZHOO P.O. \* ADDITIONAL R10 & R11 IMPEADED AS PER

ORDER

DTD.17.7.2015 IN IA.10227/2015. R1, R3, R7 TO R9 BY SENIOR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR R2 BY ADVS. SRI.P.SANKARANKUTTY NAIR SRI.K.SANDESH RAJA SRI.VENU MENON M.P

R4 & R6 BY ADVS. SRI.P.G.SURESH SRI.G.SUDHEER (THURAVOOR) SRI.RAJAN VISHNURAJ SRI.V.HARISH R5 BY ADV. SRI.P.V.VARGHESE (KANJIRAMATTOM) R10 & R11 BY ADV. SRI.VARGHESE C.KURIAKOSE. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: msv/ WP(C).No. 20801 of 2015 (A) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P1. TRUE COPY OF THE BUILDING PLAN OF THE PROPOSED RESIDENTIAL BUILDING. EXT.P2. TRUE COPY OF THE BUILDING PERMIT DATED 14-1-2015 ISSUED BY THE NJEEZHUR GRAMA PANCHAYAT. EXT.P3. TRUE COPY OF THE RESOLUTION TAKEN BY THE 2D RESPONDENT PANCHAYAT IN THE MEETING HELD ON 23-6-2015 WITH ENGLISH TRANSLATION. EXT.P4. TRUE COPY OF THE DEVELOPMENT PERMIT DATED 24-6-2015 ISSUED BY THE SECRETARY OF THE 2D RESPONDENT GRAMA PANCHAYAT. EXT.P5. TRUE COPY OF THE

ORDER

OF THE 3D RESPONDENT DATED 17-7-2015. EXT.P5A. TRUE COPY OF THE ENGLISH TRANSLATION OF THE DOCUMENT MARKED AS EXHIBIT.P5. EXT.P6. TRUE COPY OF THE INTERNAL COMMUNICATION DATED 10-6-2015 BETWEEN THE ASSISTANT ENGINEER, LOCAL SELF GOVERNMENT DEPARTMENT SECTION, KUMARAKOM AND THE 3D RESPONDENT REGARDING THE UTILIZATION OF THE EARTH REMOVED FROM PETITIONERS PROPERTY. EXT.P6A. TRUE COPY OF THE ENGLISH TRANSLATION OF THE DOCUMENT MARKED AS EXHIBIT P6A. EXT.P7. TRUE COPY OF ONE OF THE TRANSIT PASSES ISSUED BY THE 3D RESPONDENT. EXT.P8. TRUE COPY OF THE REPRESENTATION DATED 4-6-2015 MADE BY THE PETITIONER BEFORE THE 8TH RESPONDENT. EXT.P8A. TRUE COPY OF THE ENGLISH TRANSLATION OF THE DOCUMENT MARKED AS EXHIBIT P8. EXT.P9. TRUE COPY OF THE RECEIPT SHOWING THE ACKNOWLEDGEMENT OF EXHIBIT P8. EXT.P10: TRUE COPY OF THE REPRESENTATION DTD.14.7.2015 PREPARED BY ME BEFORE THE 3D RESPONDENT. EXT.P11: TRUE COPY OF THE RECEIPT SHOWING THE ACKNOWLEDGEMENT OF EXT.P10 BY THE OFFICE OF THE 3D RESPONDENT. EXT.P11(a): TRUE COPY OF THE ENGLISH TRANSLATION

OF EXT.P11. Msv/ -2- -2- WP(C).No. 20801 of 2015 (A)  
----- EXT.P12: TRUE COPY OF THE LOCATION  
SKETCH OF THE PROPERTY OF THE PETITIONER PREPARED BY THE  
VILLAGE OFFICER, NEEZHOOOR VILLAGE. EXT.P12(a): TRUE COPY OF THE  
ENGLISH TRANSLATION OF THE DOCUMENT MARKED AS EXT.P12.  
RESPONDENT(S)' EXHIBITS: ----- EXT.R4(a): A TRUE  
PHOTOCOPY OF THE

ORDER

DTD.18.5.2012 ISSUED BY THE MINISTRY OF ENVIRONMENT, FOREST AND  
CLIMATE CHANGE. EXT.R4(b): A TRUE PHOTOCOPY OF THE

ORDER

DTD.15.11.2014 ALONG WITH ITS TRANSLATION. EXT.R4(c): A TRUE  
PHOTOCOPY OF THE INTERIM

ORDER

DTD.31.3.2015 PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL  
(SOUTHERN ZONE) IN APPLICATION NO.67 OF 2014 EXT.R4(d): A TRUE  
PHOTOCOPY OF THE MATHRUBHUMI EDITORIAL DTD.3.2.2015 AND ITS  
TRUE TRANSLATION. EXT.R4(e): A TRUE PHOTOCOPY OF THE GAZETTE  
NOTIFICATION NO.S.O.394 (E) DTD.16.4.1987 ISSUED BY THE MOEF.  
EXT.R4(f): A TRUE PHOTOCOPY OF THE RECEIPT ISSUED BY THE OFFICE  
OF DISTRICT COLLECTOR //TRUE COPY// P.S.TO JUDGE Msv/ ASHOK  
BHUSHAN, CJ & A.M.SHAFFIQUE, J.

\* \* \* \* \* W.P.C.No.20801 of 2015 ----- Dated  
this the 27th day of July 2015

## **JUDGMENT**

Shaffique, J Petitioner has approached this Court seeking police protection  
alleging that respondents 4 to 6 have obstructed removal of red earth from his  
property which has been permitted by the competent authorities. Petitioner  
submits that he intends to construct a building in 2.5 ares of land in Survey

No.227/1-1, 230/2-1 of Njeezhoor village in Vaikkom Taluk. Ext.P2 is the building permit dated 14/01/2015. Petitioner has also obtained a permit to develop the property in terms of Ext.P4 dated 24/06/2015. He applied before the Mining and Geology Department for permission to remove the red earth. By order dated 01/07/2015, permission was granted to remove 2475 metric tons of ordinary earth from his property on certain conditions as prescribed in the order Ext.P5. Learned counsel submits that the period covered by Ext.P5 has expired and an application has been filed to extend the period, as Ext.P10. The W.P.C.No.20801/2015 2 facts being so, it is stated that the respondents have obstructed the removal of red earth. Petitioner preferred a complaint before the police. Since no action was taken by the police in this regard, this writ petition has been filed.

2. Counter affidavit has been filed by the 4th respondent inter alia stating that the National Green Tribunal, by Ext.R4(c) order dated 31/03/2015, has issued certain interim orders by which the Government Order produced as Annexure R4(b) dated 15/11/2014 has been stayed until further orders. Further 4th respondent submits that the mining of the area requires environment clearance and that it will also affect the lateral strength of his property.

3. It is relevant to note that as per Rule 14(2) of the Kerala Minor Mineral Concession Rules, 2015, it is clearly indicated that no permit is required for removal of red earth if it is for construction of a residential building having a plinth area of 300 sq. meters. Having regard to the existence of the said rules for which there is no challenge, we are of the view that the petitioner, having obtained building permit and development permit for construction of the building having a plinth area of less than 300 sq. meters, is entitled to excavate and remove red earth W.P.C.No.20801/2015 3 from his property. As far as the permit granted by the Mining and Geology Department is concerned, petitioner has to obtain necessary extension of time for transportation of red earth from the said property, as per the terms and conditions stipulated therein.

4. The contention of the respondents that the removal of red earth requires environmental clearance cannot be accepted especially on account of existence of Rule 14(2) of the Kerala Minor Mineral Concession Rules, 2015. In these

circumstances, 4th respondent or any other person has no right to physically obstruct the excavation or removal of red earth from the property of the petitioner.

5. Learned counsel appearing for the 4th respondent submits that he had already given a complaint to the District Collector, which is pending consideration. If any competent authority like the District Collector is pleased to stop the excavation of red earth from the property of the petitioner, this judgment shall not preclude such authority from passing appropriate orders, after hearing the concerned persons.

6. As far as the claim of the 4th respondent that excavation of red earth from the property of the petitioner will W.P.C.No.20801/2015 4 loose the lateral support of his property, it being a disputed question of fact, we are of the view that the remedy of the 4th respondent is to approach the Civil Court and obtain appropriate orders preventing the petitioner from removing red earth from his property. Under such circumstances, we are of the view that the writ petition can be disposed of as follows: i) That in the event of any obstruction from respondents 4 to 6 or their men in the matter relating to excavation or removal of red earth from the property of the petitioner, 9th respondent shall ensure maintenance of law and order. ii) This order shall be subject to any further orders that might be passed by the District Collector or the Civil Court, as the case may be. lii) This order also will be subject to the petitioner obtaining necessary extension of time for transportation of red earth from the Mining and Geology Department. (sd/-) (ASHOK BHUSHAN, CHIEF JUSTICE) (sd/-) (A.M.SHAFIQUE, JUDGE) jsr W.P.C.No.20801/2015 5 W.P.C.No.20801/2015 6 W.P.C.No.20801/2015 7