

High Court of Kerala

Case No : WP(C).No. 23837 of 2012 (D)

Judges: THE HONOURABLE MR. JUSTICE K.M. JOSEPH & THE HONOURABLE MR. JUSTICE
K. RAMAKRISHNAN

Parties : Kunjumammed Versus The State of Kerala, rep. by The Secretary To The Government,
Revenue Department & Others

Appearing Advocates : For the Petitioner: G. Sreekumar (Chelur), K. Ravi (Pariyarath), Advocates.
For the Respondents: R1, P. Vijayaraghavan, State Attorney, R1 to R5, C.R. Syamkumar, Sr.
Government Pleader, R6 to R10, M. Sasindran, R11 to R14, R. Sreehari, R15 to R17, M.B. Prajith,
Advocates, P.B. Sahasranaman, Amicus Curiae.

Date of Judgment : 17-07-2013 REPORTED IN : 2013 (3) Kerala Law Times Page 472.

Judgment :-

Ramakrishnan, J.

1. This Writ Petition is filed by the petitioner, claiming the following reliefs, under Article 226 of the Constitution of India :

"i. To issue an appropriate writ, order or direction, commanding the third respondent to provide adequate, substantial and sufficient police protection to the life and property of the petitioner, against the illegal activities of the respondents 6 to 10 and their men, which is in detail described in Ext.P4 by removing the same, in the interest of justice."

2. The petitioner is aggrieved since respondents 6 to 10 are causing obstruction in the petitioner removing the red earth from his property on the basis of the permission granted by respondents 4 and 5 and in spite of the petitioner filing complaint to the police officials, seeking police protection, no effective steps have been taken in the matter. Respondents 6 to 10 are members of a local body manned by the Communist Party of India. The petitioner has got 6.5 acres of land in Survey Nos.75/1, 75/2 and 73/2 of Nellaya Village in Palakkad District. The western side of the property is

a sloppy area and therefore, the petitioner wanted to construct a retaining wall and for that purpose, the red earth from the eastern side has to be taken and the same has to be put on the western side. He applied for necessary permit in this regard. In fact, after levelling the land, the intention of the petitioner is to construct a house therein. Ext.P1 Government Order dated 5.4.2010 permitted this. The petitioner applied for permission for levelling the land, to the 4th respondent and the same was granted as per Ext.P2 order dated 27.08.2012. The said permission was in force for a period of 2 months. Ext.P2 permission was granted on the basis of Ext.P3 report of the 5th respondent. Respondents 6 to 10 raised objections, stating that such soil cannot be removed. They trespassed into the property and caused damage to the machines and the structures situated therein. The name board placed therein was destroyed by them. Many other illegal activities were also perpetrated by them. Though the petitioner filed Ext.P4 complaint before the third respondent on 14.09.2012, no steps were taken by the said respondent. Respondents 6 to 10 are making illegal demand in so far as they say that for removing red earth, amount has to be paid to them. They are using muscle power and they have destroyed the machines and demolished the structures in the property. The petitioner has obtained necessary permits for the purpose of construction of a residential building in the property. The permission so obtained, would expire on 27.10.2012. So, the petitioner prayed for adequate police protection for the life and property of the petitioner against the illegal activities of respondents 6 to 10 and their men. Hence the Writ Petition.

3. After the filing of the Writ Petition, additional respondents 11 to 14 were impleaded as per the order of this Court dated 16.11.2012 in IA No.15343/12 on their application and supplemental respondents 15 to 17 were impleaded as per order dated 4.3.2013 in IA No.16486/12 at the instance of the petitioner.

4. The 8th respondent has filed a counter affidavit on behalf of respondents 6, 7, 9 and 10 as well, contending as follows :

The petitioner is not entitled to get any of the reliefs claimed in the petition and the petition itself is filed to give police protection for carrying out the illegal activities in the property of the petitioner. Respondents 6 and 7 are social workers. The allegation in paragraph 2 of the Writ Petition that the petitioner applied for permission for construction of a retaining wall and for removing the red earth from the eastern side, to be put on the western side, before the 4th respondent and that Ext.P2 permission has been granted by the 4th respondent, is not correct. In fact, Ext.P2 permission was given for levelling the land to the extent of about 70 cents and it has been clearly stipulated in the

said order that such removal of sand should not create any problem to the neighbours and the public. Apart from that, no permission has been granted for taking the sand out of the area. The petitioner, in total violation of the conditions imposed in Ext.P2 order, levelled almost 2.5 acres of land and granite stones were extracted by using JCB. The sand so removed after levelling the land has been taken out to other Districts. He has taken more than thousands of lorry loads of sand from the property to Malappuram District. He had almost levelled more than 2 acres of land, which is contrary to the conditions stated in Ext.P2 order. The Village Officer, Nellaya had submitted a report before the Tahsildar, Ottappalam, stating that upon inspection, it is found that about 2 acres of land has been levelled by the petitioner. The said report is produced as Ext.R8(a) along with the counter affidavit. There are a large number of people, residing in the area, down the property, where the petitioner sought for levelling the land. If a large amount of earth is removed, it will adversely affect the ecological conditions and land slide will occur due to the removal of earth. Under the pretext of Ext.P2 order, the petitioner has levelled more than 2 acres of land. He has also removed granite stones from the property using JCB. All these activities will lead to ecological imbalance and it will affect a large number of people residing in the locality. Laksham Veedu Colony is situated near the property and the people residing in the colony will also be severely affected by the activities carried out by the petitioner. There is a Panchayat play ground, a PWD Road and a mosque nearby, which are being seriously affected by the illegal activities of the petitioner and there is no mechanism to check such illegal activities. The local people including respondents 6 to 10, who are social workers, made hue and cry and they protested peacefully against the illegal activities of the petitioner. The allegation that respondents 6 to 10 have trespassed into the property and caused damage to the machines and the structures situated therein, is not correct. They also denied the allegation that they are making illegal demand for money for removing the red earth and they are using muscle power. According to these respondents, the petitioner has no authority to remove sand from the property under the guise of Ext.P2 order. Ext.R8(b) stop memo has been issued by the Secretary, Nellaya Grama Panchayat, under the provisions of the Kerala Panchayat Building Rules 2011 (Rules 5 and 12). The attempt of the petitioner is to do illegal activities in the property under the guise of police protection, which he is not entitled to. On the above grounds, they prayed for dismissal of the petition.

5. The petitioner has filed a reply affidavit, contending as follows :

It is worthwhile to note that the 8th respondent is a panchayat member and this fact has been very consciously concealed which will assume importance on the facts which are stated in the reply affidavit. The allegations that he is doing illegal activities in his property and that respondents 6

and 7 are social workers, are not correct. They are not residing anywhere near the property in question and they are political workers, residing at distant places and not connected or affected by the activities carried out by the petitioner in his property. Ext.P5 application dated 17.04.2012 was filed in respect of the entire property, stating that for effecting agricultural operations or for putting up constructions, levelling of the land was required and side retaining walls are to be constructed. Since the validity of Ext.P2 permission expired, the petitioner filed Ext.P6 application for extension on 25.10.2012, for extending the period mentioned in Ext.P2. The Village Officer as per Ext.P7, reported that the entire property requires to be levelled. It is also mentioned in Ext.P7 report that the property lies in a sloppy area and a retaining wall has to be constructed. The inspection report submitted by the Village Officer is Ext.P8. Even prior to this, in the communication of the Tahsildar, Ottappalam, to the District Collector, Palakkad, it is stated that no complaints have been received from the local people, regarding the leveling of the land and that consent has been granted by the neighbouring property owners. The report so given by the Tahsildar, Ottappalam is produced as Ext.P9. Even in the report submitted by the Village Officer to the Panchayat Secretary, it is stated that no illegality is stated to have been taken place. The said report is produced as Ext.P10. The issue sought to be projected as ecological problem is nothing but a tainted cheap politics, projected by the party respondents, who are members of a political party. They submitted Ext.P11 complaint to the Panchayat, which is ruled by the left front and a stop memo has been issued. The District Collector addressed the Geologist to give a precise report and it is on the basis of the said report that Ext.P2 permission was granted. The order so passed by the District Collector is produced as Ext.P13. Ext.P14 report has been given by the Geologist, Palakkad. He has also explained that as per the relevant Government Order, it was specified that no permission was required and later, as per the orders of this Court, the order was withdrawn and accordingly, permission was sought. The explanation offered by the petitioner is marked as Ext.P15. It is after conducting enquiry that Ext.P2 order has been issued. The allegation that he has removed not less than 1000 lorry loads of mud from the property in question to Malappuram District etc., is not correct. There is no ecological imbalance caused in the area, on account of the activities carried out by the petitioner in his property. The Panchayat Secretary has no right to issue Ext.R8(b) order since no permission for construction of building was sought. The Rules do not apply in the instant case. At any rate, the Panchayat cannot sit in appeal over Ext.P2. No valid grounds are made out by the respondents to deny reliefs to the petitioner. On the basis of the above contentions, the petitioner prayed for allowing the Writ Petition.

6. Additional respondents 11 to 14 have filed a counter affidavit through the 11th respondent, on behalf of the other respondents as well. They more or less supported the case of the petitioner.

They submitted that respondents 6 to 10 have no right in the property and they are only causing hardship to the petitioner and these respondents are the neighbours of the petitioner and they have given no objection for the levelling of the property, as evidenced by Ext.R11(a). The 10th respondent, in his capacity as Secretary of the Communist Party of India (Marxist), Nellaya local committee, filed Ext.R11(b) complaint and that will go to show that it is nothing but a political outcry of respondents 6 to 10 and nothing more. They are residing 5 kms away from the petitioner's property and no difficulty will be caused to the nearby properties, on account of activities carried out by the petitioner in his property. So, they prayed for allowing the Writ Petition.

7. As directed by this Court, the 5th respondent Geologist has filed a report, wherein, it is stated as follows :

"On 21.12.2012, I inspected the area of 6.58 acres of land comprised in Sy. No.75/1, 75/2, 75/3 Nellaya Village, Ottappalam Taluk, Palakkad District which was already inspected on 07.08.2012 and a report has been submitted before the District Collector, Palakkad. On the basis of the report, the District Collector issued proceeding Order NO.LRG 10/2012/42141/9 dated 27.08.2012 permitting the petitioner to extract and levelling ordinary earth in the said area. During the inspection conducted on 21.12.2012, it is found that 30 loads (approximately 90 MT) of ordinary earth has already been heaped therein and extraction of more red earth from the same area is needed for levelling the above said area."

8. The petitioner has produced Ext.P16 along with IA No.2928/13, whereby he had obtained development permit from the Panchayat as required under Rule 4 of the Kerala Panchayat Building Rules, 2011 and that application was allowed and the documents were received.

9. Adv.P.B.Sahasranaman was appointed as Amicus Curiae, to help the Court regarding the matter as to whether the act claimed by the petitioner to be carried out in his property will amount to mining operation and it will amount to a development, so as to entitle him to get permit under Rule 4 of the Kerala Panchayat Building Rules, 2011 and the learned counsel has submitted his argument, in this regard, which was of great help to this Court in deciding the issue.

10. The petitioner has filed IA No.16699/12, requesting to grant the reliefs sought for in the Writ Petition, without insisting for extension of time limit as mentioned in Ext.P2 and objection was filed to the same, by the party respondents, stating that the court cannot usurp the powers of the statutory authorities while deciding police protection cases and only if the petitioner is having all

the necessary permits to carry out the work, the court can come to the aid of the petitioner in enforcing his legal rights. The said interlocutory application is also being considered along with this Writ Petition.

11. The learned counsel for the petitioner submitted that the contesting party respondents have no locus standi to question the acts of the petitioner carried out by him in his property as they have no right in the property and as they are not residing near the property as well. They are not, in any way, affected by any act of the petitioner in his property. Further, the act of the petitioner, violating the provisions, has been regularised by imposing penalty and collection of royalty amount while passing Ext.P2 order. So, that cannot, now be taken as a ground to deny police protection to the petitioner. Though the petitioner had earlier contended that his act of levelling the property by using the earth collected from the sloppy area on the eastern side of the property will not amount to a development as defined under Rule 4 of the Kerala Panchayat Building Rules 2011, later on, he had obtained Ext.P16 development permit from the Panchayat. So, according to him, he had obtained all the necessary permits and he had no intention to remove any further earth or mine earth from the property and he is only going to level the property covered by Ext.P16 and wanted to remove the earth stacked as a heap to the place from where it was taken and nothing more and as such, he prayed for allowing the application.

12. On the other hand, the learned counsel appearing for the party respondents argued that since the petitioner is claiming police protection, he has to prove that he has complied with all the legal formalities before doing any act in his property and if he is doing any illegal activity, he is not entitled to get police protection from this Court so as to carry out his illegal activities in his property. Further, the report of the Tahsildar will go to show that though he was permitted to take mud from 70 cents of land for levelling, he had in fact, levelled more than 2 acres of land and he had not obtained any permit from the authorities for removing the earth, which he is bound to take, under the provisions of the Kerala Minor Mineral Concession Rules, 1967. Further, being social workers, the party respondents are entitled to question the illegal activities undertaken by the petitioner, affecting the ecology and therefore, the submission made by the learned counsel for the petitioner that these respondents have no right to oppose the Writ Petition, is unsustainable. According to them, the attempt of the petitioner is only to legalise his illegal activities, under the guise of police protection, which cannot be granted.

13. Sri.P.B.Sahasranaman, Amicus Curiae submitted that since earth is being taken from one place to another, there is mining and permission is required for that purpose and Ext.P2 is

sufficient for that purpose, as the District Collector is the competent authority under the Rules, to issue the permit. The act of levelling will amount to development as defined under the Kerala Panchayat Building Rules, 2011 and a permit is to be obtained for that purpose from the Panchayat.

14. The learned Government Pleader submitted that there is no law and order situation in the area and if there is any law and order situation, they will interfere and give necessary protection. Further, the petitioner is bound to obtain necessary permits and licence required under the various enactments for this purpose and without that, he is not entitled to claim the relief of police protection.

15. The case of the petitioner in the petition was that he obtained Ext.P2 permit from the District Collector, which was granted after getting Ext.P3 report from the Geologist in this regard. Since the contesting respondents have no right in the property and they have not questioned the permission granted by the authorities, they are not entitled to interfere with the right of the petitioner to do the work in the property as per Ext.P2.

16. In the decision reported in *Anand Arya v. Union of India* (AIR 2011 SCW 1029), it has been held that a township project is the development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project. In the same decision, it has been observed that absence of statute will not preclude this court from examining the effects on the environment with particular reference to the Okhla Bird Sanctuary, for, in the jurisprudence developed by this court, environment is not merely a statutory issue, but it is one of the facets of the right to life, guaranteed under Article 21 of the Constitution of India. Environment is therefore, a matter directly under the Constitution of India and if the Court perceives any project or activities as harmful or injurious to the environment, it will feel obliged to step in. This observation has been made by the Honourable Apex Court on the basis of the dictum laid down in the decisions in *M.C.Mehta v. Union of India* (AIR 1987 SC 985), *Chhetriya Pardushan Mukti Sangarsh Samiti v. State of U.P.* (AIR 1990 SC 2060), *Subhash Kumar v. State of Bihar* (AIR 1991 SC 420), *Virender Gaur v. State of Haryana* (1995) 2 SCC 577, *B.L.Wdehra v. Union of India* (1996) 2 SCC 594, *Vellore Citizens Welfare Forum v. Union of India* (IAR 1996 SC 2715), *Andhra Pradesh Pollution Control Board v. M.V.Nayudu* (1999) 2 SCC 718, *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664, *T.N.Godavarman Thirumulkpad v. Union of India* (2002) 10 SCC 606, *Ramji Patel v. Nagrik Upbhokta Marg Darshak Manch* (2000) 3 SCC 29, *State of MP v. Kedia Leather & Liquor Limited*

(2003) 7 SCC 389). So, if any act done by the private person affects the environment, a person interested in protecting the environment, though he is not personally affected by the same, is entitled to question the act of that person and as such, it cannot be said that he has no right to object the act of the petitioner if it is illegal and affects the environment as such, though he had obtained permits regarding the same as well and permits were granted ignoring the impact of the act of the petitioner on the environment. Further, the scope of locus standi has been expanded by this Court and the Honourable Apex Court and though a person, who is not affected by any act, but he has projected that claim as a public interest, protecting the interest of environment and other public interest, then, he has got the locus standi to seek relief. The respondents, certainly, would have the right to object to the grant of relief under Article 226 of the Constitution, which is an extra-ordinary and more importantly, a discretionary relief. The writ petitioner must satisfy the court not only of his right in the matter, but also that the discretion is to be exercised in his favour. So, the submission made by the learned counsel for the petitioner that the contesting respondents have no right to question the right exercised by the petitioner in the property is not sustainable. But, at the same time, the party respondents are not entitled to take the law into their hands and do hooliganism in the property. They can agitate only in a lawful manner and not otherwise. If the court is satisfied that the petitioner is doing things in accordance with law and the respondents agitate at the instance of an organisation, then the court will interfere and grant protection to the life and enjoyment of the property by the petitioner, if it is satisfied that driving the petitioner to civil court will not provide an efficacious remedy. In this case, since the objection is raised by party respondents representing a political party, no purpose will be served by driving the petitioner to civil court for redressal of his grievance.

17. It is an admitted fact that the petitioner is the owner of 6.5 acres of land in Survey Nos.75/1, 75/2 and 73/2 of Nellaya Village in Palakkad District. It is also, in a way, admitted that the property of the petitioner is not lying as a level ground, but having different terrain and in order to level the property for construction of a building, and also to construct a retaining wall, he wanted to remove some earth from the slope area on the eastern side and level the lower area on the western side and for that purpose, he had filed an application before the District Collector, when he came to know that permission has to be obtained for that purpose and the District Collector, after getting Ext.P3 report from the Geologist, granted Ext.P2 permission to the petitioner for levelling 70 cents of land out of 6.58 acres situated on the southern side of the road i.e, on the northern side of the property of the petitioner, within a period of two months from the date of order namely, 27.08.2012. It is also seen from Ext.P2 that as directed in Ext.P3, he has remitted an amount of Rs.7,800/- towards royalty and other amount required for that purpose. It is specifically mentioned in the

permission that this would be used only for levelling 70 cents of land touching the road on the northern side alone.

18. Ext.R8(a) is the report of the Village Officer along with a sketch produced by the contesting party respondents to show that the petitioner has levelled more than the area mentioned in Ext.P2 and Ext.R8(b) is the direction given by the Panchayat to the petitioner, asking him to stop the work carried on in the property. Ext.P6 is the application filed by the petitioner before the District Collector, Palakkad for extending the time limit for carrying out the work as mentioned in Ext.P2. Exts.P7 and P8 are the reports submitted by the Village Officers, on the basis of the application filed by the petitioner for permission to remove earth for levelling the property. Ext.P12 is the topo-sketch prepared by the Village Officer, showing the area to which permission can be granted for levelling the property by using the mud taken from the eastern side of the property. On the basis of Ext.P13 letter issued by the District Collector, the Geologist had given Ext.P14 report, stating that by granting the permission, no environmental imbalance will be caused in that place and it is on that basis that Ext.P2 permission has been granted to level the portion mentioned in Ext.P12 topo-sketch given by the Village Officer along with his reports mentioned earlier.

19. The petitioner had earlier relied on the decision reported in *Judish V. St.Jude's Shrine*(2012(4) KLT 995) for the proposition that no development permit under Rule 4 of the Kerala Panchayat Building Rules, 2011 is required for removing earth from the property and for that purpose, only the permission required under the Kerala Minor Mineral Concession Rules alone is required. However, since the petitioner has now obtained Ext.P16 development permit from the Panchayat as required under Rule 4 of the above said Rules, we are not considering the legality of the proposition of law laid down in the decision in *Judish's case*(supra) in this case, as it is not necessary.

20. When the case came for hearing at the earlier stage as also at the time when it was posted for spoken to, the learned counsel for the petitioner submitted that he is not pressing IA No.16699/12 as he is not going to do any mining work and he will apply to the authorities for any permission required to remove the earth stacked and put it in the place from where it is taken or in appropriate places, as directed by the authorities. So, the said application is dismissed as not pressed recording the above submission.

21. It is an admitted fact that the permission given as per Ext.P2 expired on 27.10.2012, during the pendency of this proceedings and the proceedings lasted for more than one year and so, the

petitioner cannot be blamed for not applying for extension of time and keep the order alive, till the disposal of the application as one may not be able to say, when exactly the application can be disposed of. A submission was made by the learned counsel for the petitioner that since the petitioner did not intend to do any mining activity in the property, he does not require any further extension of Ext.P2 order. We are not able to agree with this contention as removal of earth from one place to another, even within the same property, may amount to mining, for the purpose of the Kerala Minor Mineral Concession Rules and permission is required for that purpose.

22. It is true, normally, a writ of mandamus can be granted only in a case where the petitioner is having all lawful permits and licences to do certain legal act, which, when obstructed, was complained of to the authorities, but the authorities did not take action on the same. But, in this case, at the time when the application was filed, the petitioner was having Ext.P2 permit for extracting earth for levelling the property and that permit expired during the pendency of the petition and the petitioner himself was in doubt as to whether development permit was required and he was supported by the decision in *Judish V. St.Jude's Shrine* (supra) and after he was convinced by this court that development permit is required, he obtained Ext.P16 development permit from the Panchayat, as required under Rule 4 of the Kerala Panchayat Building Rules, 2011. So, we feel that an opportunity can be afforded to the petitioner to apply to the appropriate authority for necessary permission to remove the earth stacked in a heap to the place from where it was taken or to an appropriate place in the same property as directed by the authorities and on getting such permission, he can be permitted to do the work in the property. If any obstruction is caused by the respondents 6 to 10 and 15 to 17, for doing the removal as mentioned above or doing development activity as per Ext.P16 development permit, then, the third respondent can be directed to give necessary protection to the petitioner for carrying out the work of removal of earth on the basis of the permission to be obtained for the purpose of removing the earth as requested by the petitioner and Ext.P16 development permit in accordance with law.

In the result, the Writ Petition is disposed of, subject to the following directions :

If the petitioner obtains necessary permission for removing the earth from the place where it is stacked to the place from where it was taken, from the appropriate authority and if such a permission is obtained and while he is removing the same on the basis of the permission granted within the time if any mentioned therein, if any objection is caused by respondents 6 to 10 and 15 to 17 for doing such work or carrying out the development work in the property as per Ext.P16, if the petitioner applies to the third respondent for protection for doing the above work and if the third

respondent is satisfied that the petitioner has obtained necessary permission as stated above and doing the work in accordance with the same, then, necessary protection to the petitioner will be provided against respondents 6 to 10 and 15 to 17 for doing the work covered by the permission obtained by the petitioner either by the petitioner himself or through his men authorised for this purpose.

It is made clear that under the guise of this order, the petitioner is not entitled to level or develop any other portion of the property other than those covered by Ext.P16, which includes the 70 cents mentioned in Ext.P2 order and explained in Ext.P12 topo sketch prepared by the Village Officer.

We place on record, our appreciation for the interest and enthusiasm shown by Sri.P.B.Sahasranamam, the Amicus Curiae, appointed to argue this case. His submissions were helpful for us in deciding the case.