
(2021) 06 KL CK 0348
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2202 Of 2021

Janakiamma

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 23-06-2021

Acts Referred:

Citation : (2021) 06 KL CK 0348

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : P.Haridas, Biju Hariharan, P.C.Shijin, Rishikesh Haridas, G.Ranjita, M.P.Sreekrishnan, V.Sethunath, M.Kiranlal, Manu Ramachandran, T.S.Sarath, R.Rajesh, Sameer M Nair

Final Decision : Disposed Of

Judgement

N. Nagaresh, J

1. The petitioner, a Senior Citizen and resident of Kulanada Village, is seeking to direct the 4th respondent to take immediate action to see that the 9th

respondent shall not conduct any mining or excavation in his property without obtaining Environmental Clearance and mining permit.

2. The petitioner's property is on a hillock on the western side of Polachira-Paanil PWD Road. The 9th respondent holds 25 cents of land on the

northern side of the petitioner's property. According to the petitioner, on the road margin, these properties are at a height of 12 feet and is inclined

toward east up to 50 feet. The 9th respondent is now razing the entire hillock to the level of the road and is selling earth lying higher than the road

level.

3. The 9th respondent is allegedly exploiting red earth without following the procedure prescribed under the Mines and Minerals (Development and

Regulation) Act, 1957. The excavation is dangerous as it will take away lateral support of the petitioner's property resulting in danger to the life

and property. Though the petitioner filed complaints to the competent authorities, no preventive or punitive action is taken against the 9th respondent, contends the petitioner.

4. The learned counsel for the 9th respondent, on the other hand, submits that the 9th respondent has obtained development permit and developing the

property following all statutory rules. The 9th respondent has applied for Ext.R9(f) application for mineral transit pass and he intends to construct a

house in his property before the onset of monsoon.

5. I have heard the learned counsel for the petitioner, the learned Government Pleader representing respondents 1 and 3 to 7, the learned Standing

Counsel for the 2nd respondent, learned Standing Counsel for the 8th respondent-Panchayat and the learned counsel for the 9th respondent.

6. As the allegations levelled by the petitioner involve disputed questions of facts, this Court is of the considered opinion that competent statutory

authorities shall consider the grievances raised by the petitioner, at least at the first instance. The petitioner has filed Exts.P2 and P5 representations

before the 5th respondent-Geologist, before whom the application of the 9th respondent for mineral transit pass is also pending.

In the facts of the case, the writ petition is disposed of directing the 5th respondent to consider Exts.P3 and P5 representations filed by the petitioner

and pass appropriate orders thereon, in accordance with law, within a period of six weeks positively, after giving an opportunity of hearing to the

petitioner and the 9th respondent. The 5th respondent may resort to virtual hearing / video conferencing for hearing, if the situation so warrants.