

Kunjalavi Chellamma vs The District Geologist on 7 April, 2015

Author: Anil K. Narendran

Bench: Anil K.Narendran

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 17TH DAY OF AUGUST 2016/26TH SRAVANA, 1938

WP(C).No. 17078 of 2016 (H)

PETITIONER:

KUNJALAVI CHELLAMMA
W/O. CHELLAPPAN, AGED 72 YEARS,
AYANIMOOTTIL VEEDU, KAITHAKKODU,
PAVITHRESWARAM, KOTTARAKARA TALUK.

BY ADV. SRI.ALEXANDER GEORGE

RESPONDENT(S):

1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING & GEOLOGY,
KOLLAM DISTRICT, KOLLAM-691001.
2. THE DISTRICT COLLECTOR
KOLLAM, PIN-691501.
3. THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.

ADDL.R4 TO R6 SUO MOTU IMPEADED:

ADDL. 4. THE DIRECTOR OF MINING AND GEOLOGY,
DIRECTORATE OF MINING AND GEOLOGY, KESAVADASAPURAM,
PATTOM PALACE P.O., THIRUVANANTHAPURAM-695004.

ADDL. 5. THE DIRECTOR OF PANCHAYAT,

DIRECTORATE OF PANCHAYAT, PUBLIC OFFICE BUILDING,
MUSEUM P.O., THIRUVANANTHAPURAM-695033.

ADDL. 6. THE SECRETARY,
PAVITHRESHWARAM GRAMA PANCHAYAT, KARIMPINPUZHA P.O.,
KOLLAM DISTRICT-691518.

(ADDL.R4 TO R6 SUO MOTU IMPEADED AS PER ORDER DT.11.5.2016)

R1-R5 BY GOVERNMENT PLEADER SRI MOHAMMAD SAVAD
ADDL. R6 BY ADV. SRI.S.SUDHEESHKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-08-2016,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 17078 of 2016 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 TRUE COPY OF BUILDING PERMIT DATED 7-4-2015.
- P2 TRUE COPY OF THE JUDGMENT IN WPC NO. 10347/2016.
- P3 BUILDING PERMIT ISSUED BY THE ADDITIONAL 6TH RESPONDENT IN THE
NAME OF THE PETITIONER ON 7.4.2015.
- P4 THE POSSESSION AND LOCATION CERTIFICATE No.1081/2016 DT.2.5.2016
ISSUED BY THE VILLAGE OFFICER, PAVITHRESHWARAM.
- P5 COPY OF BUILDING PLAN PRODUCED BY THE PETITIONER BEFORE THE 6TH
RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXT.R. (A) COPY OF ORDER No.45/15-16/DOQ/S2/904/15 DT.29.4.2015.
- EXT.R. (B): COPY OF ORDER NO.212/15-16/DOQ/S2/904/15 DT.11.6.15.

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K. NARENDRA, J.

W.P.(C).No.17078 of 2016

DATED THIS THE 17th DAY OF AUGUST, 2016

JUDGMENT

The petitioner, who is stated to be the owner in possession of 15.20 Ares of property in Sy.No.366/28 of Pavithreshwaram Village in Kottarakkara Taluk has filed this Writ Petition mainly seeking for a writ of mandamus commanding the District Geologist, Kollam, the 1st respondent herein, to issue Mineral Transit Pass in Form O(A) under Rule 25 read with Rule 26 of the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015, for transportation of ordinary earth from the said property in connection with the construction of a residential building for which she has obtained Ext.P1 building permit dated 7.4.2015 from Pavithreshwaram Grama Panchayat.

2. Going by the averments in the Writ Petition, the petitioner wants to develop 10.20 Ares out of 15.20 Ares in Sy.No.366/28 of Pavithreshwaram Village as a plot fit for construction of residential building, after extracting ordinary earth from the said property, which lies at an elevation of few meters above the road level. In order to construct a residential building, the petitioner has obtained Ext.P1 building permit bearing No.A3-2304/15 dated 7.4.2015 from Pavithreshwaram Grama Panchayat. Thereafter, she submitted an application before the Revenue Divisional Officer, Kollam along with Ext.P1 building permit and connected records. The RDO forwarded the said application to the 1st respondent, for consideration as per rules. However, the said application was neither considered nor rejected by the 1st respondent. Therefore, the petitioner has approached this Court in this Writ Petition seeking various reliefs. The petitioner has also relied on Ext.P2 judgment of this Court dated 17.3.2016 in W.P.(C).No.10347 of 2016, a decision rendered by a learned Judge of this Court on similar set of facts.

3. On 10.5.2016, when this Writ Petition came up for admission, the learned Counsel for the petitioner sought for disposal of the same in terms of Ext.P2 judgment. Therefore, after hearing the learned Government Pleader, the Writ Petition was disposed of, by directing the 1st respondent to issue sufficient Mineral Transit Pass in Form O(A) to the petitioner without restricting the number of vehicles to be deployed by her and subject to the other conditions as contained in Ext.P2 judgment.

4. While reading the draft judgment of the writ Petitions disposed of on 10.5.2016, it was noticed that the building permit produced as Ext.P1 in W.P.(C)No.17078 of 2016 and that produced as Ext.P1 in W.P.(C)No.17080 of 2016 (filed by another resident of Pavithreshwaram Grama Panchayat seeking identical reliefs in respect of 03.03 Ares of property in Sy.No.362/17-4-2 of Pavithreshwaram Village) bear the same number and date, i.e., 'No.A3-2034/15 dated 7.4.2015'. In both the building permits, the total plinth area of the proposed building is shown as 217.11 sq.meters (Ground Floor - 126.16 sq.meter + First Floor - 90.95 sq.meter).

5. Prima facie, it appeared that Ext.P1 building permit produced along with both the Writ Petitions are photocopy of the very same document, except the changes in the name of the permit holder and survey number of the property. In both the Writ Petitions, the petitioners have not chosen to produce the building plan/site plan, which forms an integral part of the building permit. In view of serious doubts as to the genuineness of Ext.P1 building permits, the Registry was directed to list the Writ Petitions as 'to be spoken to' on 11.5.2016, with notice to Shri.Alexander George, the learned counsel for the petitioner in both the Writ Petitions and also the learned Government Pleader for the respondents.

6. After hearing learned counsel for the petitioner and also the learned Government Pleader, this Court by order dated 11.5.2016 directed the petitioners in both the Writ Petitions to produce, along with an interlocutory application for accepting additional documents, the original of Ext.P1 building permit along the building plan and site plan. The Director of Mining and Geology, who was suo motu impleaded as Addl. 4th respondent was directed to conduct an inspection of the properties referred to in Ext.P1 building permit in both the Writ Petitions, through the 1st respondent or any other competent officer, and to submit a detailed report as to the nature of the land, and state as to whether there are instances of the permit holders not constructing the building after extracting and removing ordinary earth from their property on the strength of Mineral Transit Passes issued in Form O(A). The Secretary of Pavithreshwaram Grama Panchayat, who was suo motu impleaded as Addl. 6th respondent was directed to produce before the Registrar General of this Court, the original files relating to building permits bearing No.A3-2034/15 dated 7.4.2015 produced as Ext.P1 along with both the Writ Petitions.

7. Pursuant to the order dated 11.5.2016, the additional 6th respondent has produced before the Registrar (General) of this Court the original files relating to building permit bearing No.A3-2034/15 dated 7.4.2015 and also the original Building Permit Application Register maintained by Pavithreshwaram Grama Panchayat for the relevant period. As evident from the said documents, on 27.3.2015 the petitioner in W.P.(C)No.17078 of 2016 submitted an application before the Panchayat, based on which the Panchayat issued a building permit bearing No.A3-2304/15 dated 7.4.2015. The Building Permit Application Register would also show that, the petitioner in the other Writ Petition, i.e., W.P.(C)No.17080 of 2016 has not even submitted an application for building permit. The learned Standing Counsel for the Panchayat has submitted that, the Panchayat has not issued any building permit to the petitioner in W.P.(C)No.17080 of 2016.

8. The Addl. 4th respondent has filed a report dated 21.5.2016, pointing out that, on the strength of Ext.P1 building permit the petitioner had earlier obtained permission from the 1st respondent for extracting and removing 750 metric tonnes of ordinary earth from the property in question, vide proceedings No.45/15-16/DOQ/S2/904/15 dated 29.4.2015, which was followed by proceedings No.212/15-16/DOQ/S2/ 904/15 dated 11.6.2015 for extracting and removing 400 metric tonnes of ordinary earth and that, the property in question is partially developed. The photographs of the property has also been produced along with the said report. The Addl. 4th respondent has also stated that, in view of the provisions under Rule 17 of the Kerala Panchayat Buildings Rules, 2011, which deal with validity, extension and renewal of the period of building permits, there exist some ambiguity in exercising the penal provisions under the Kerala Minor Mineral Concession Rules,

2015 against those who have not constructed building after extracting and removing ordinary earth from their property under sub-rule (2) of Rule 14 and sub-rule (1) of Rule 106 of the KMMC Rules, 2015 and that, the matter has already been presented before the Government for consideration. Besides, the 4th respondent has already informed the subordinate officers to take the matter with utmost vigil and care and to initiate stringent action if any violation of the conditions in the permissions granted is detected.

9. In purported compliance of the order of this Court dated 11.5.2016, the building permit, the building plan and also the possession and location sketch issued to the petitioner were produced as Exts.P3 to P5 along with I.A.No.6067 of 2016, a verified petition filed by the learned counsel for the petitioner. Instead of producing the original building permit, a colour photocopy of the same has been produced as Ext.P3. Further, I.A.No.6067 of 2016 was not supported by an affidavit sworn to by the petitioner, as mandated by Rule of 154 of the Rules of the High Court of Kerala, 1971.

10. On 25.5.2016, it was submitted on behalf of the petitioner that, the original of Ext.P1 building permit and the building plan/site plan attached thereto are in the office of the 1st respondent. By the order dated 25.5.2016, the petitioner was directed to produce before this Court the original of the said documents along with an interlocutory application for accepting additional documents, under Rule 154 of the Rules of the High Court of Kerala, supported by her affidavit. If the said documents are in the office of the 1st respondent, the said fact shall also be stated in the said affidavit. It was also ordered that, if the original of Ext.P1 building permit is with the 1st respondent, the said respondent shall keep the said document under safe custody.

11. Pursuant to the order dated 25.5.2016, the learned counsel for the petitioner filed an affidavit sworn to by the petitioner dated 28.5.2016 in which she has stated that, in the year 2015, in order to construct a residential building in the property in question, she has engaged M/s. Premlal and Saji Varghese for obtaining a building permit from the Panchayat. Accordingly, they handed over the building permit and connected documents to the petitioner. Since the property lies above road level, she has entered into a contract with the abovesaid Saji Varghese for removal of ordinary earth from the said property. Then, she submitted application before the 1st respondent for permit, along with necessary documents, including the original building permit and plan. Thereafter, she has entrusted the matter to Shri.Alexander George, her counsel before this Court, for getting necessary orders from this Court. According to the petitioner, she produced colour photocopy of Ext.P1 building permit before this Court, since the original building permit has already been produced before the 1st respondent.

12. By the order dated 2.6.2016, the learned Government Pleader was directed to ascertain whether the original of Ext.P1 building permit and the building plan/site plan are available in the office of the 1st respondent and obtain photocopy of the said documents and also the application submitted by the petitioner and produce it before this Court along with a memo. Pursuant to the said order, the 1st respondent has filed an affidavit dated 8.6.2016, producing therewith a photocopy of the application submitted by the petitioner dated 13.4.2015 seeking permission to extract and remove ordinary earth from the property in question, and also the building permit and the building plan enclosed therewith. A copy of proceedings No.45/15-16/DOQ/S2/904/15 dated 29.4.2015 of the 1st

respondent, by which the petitioner was granted permission for extracting and removing 750 metric tonnes of ordinary earth from the property in question, has also been produced along with the said affidavit.

13. Since it is not discernible from the affidavit dated 8.6.2016 filed by the 1st respondent, whether the original of Ext.P1 building permit is available in the office of the said respondent, the learned Government Pleader sought for time to file a proper affidavit in terms of the order dated 2.6.2016. Accordingly, the case was adjourned to 17.6.2016 for the 1st respondent to file a proper affidavit and the said respondent was also directed to produce along with the said affidavit copy of the proceedings by which the petitioner was permitted to extract and remove ordinary earth from the property in question.

14. In purported compliance of the abovesaid order, the 1st respondent has filed a counter affidavit dated 23.6.2016, stating that on the strength of Ext.P1 building permit the petitioner submitted an application dated 13.4.2015 before the 1st respondent, pursuant to which the Geologist inspected the property on 29.4.2015. Based on the said inspection, the 1st respondent vide Ext.R1(a) proceedings dated 29.4.2015 permitted her to remove 750 metric tonnes of ordinary earth from the property in question. Thereafter, the petitioner made another application before the 1st respondent, stating that, she could not remove the entire earth due to adverse climate conditions and therefore, she sought for permission to remove balance quantity of earth. In support of the said application, she produced a certificate bearing No.2147/15 dated 23.5.2015 of the Village Officer, Pavithreswaram certifying that during the validity of Ext.R1(a) permit she could remove only 175 cubic meter of earth (equivalent to 350 metric tonnes). The Geologist recommended for removal of 65 loads of ordinary earth (equivalent to 350 metric tonnes) and thereafter, the 1st respondent vide Ext.R1(b) proceedings dated 11.6.2015 permitted the petitioner to remove 400 metric tonnes of ordinary earth from the property in question, for the period from 15.6.2015 to 18.6.2015. Accordingly, the petitioner removed ordinary earth on the strength of Ext.R1(b) as well. Thereafter, she has not filed any application before the 1st respondent for removal of ordinary earth from her property. In Para.5 of the counter affidavit, the 1st respondent has stated that, no application filed by the petitioner is pending consideration before the said respondent, as claimed by the petitioner in Para.3 of the Writ Petition.

15. On the specific query from this Court as to whether the original of Ext.P1 building permit is available in the office of the 1st respondent, the said respondent has stated in Para.4 of his counter affidavit dated 23.6.2016 as follows; "The building permit produced by the petitioner contains the seal and signature of the Secretary of Pavithreswaram Grama Panchayat in original."

16. I heard the arguments of the learned counsel for the petitioner, the learned Government Pleader for respondents 1 to 3 and also for addl. respondents 4 and 5 and the learned Standing Counsel for Pavithreswaram Grama Panchayat, representing the addl. 6th respondent.

17. In exercise of the powers conferred by sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 the State has enacted Kerala Minor Mineral Concession Rules, 2015 in supersession of the Kerala Minor Mineral Concession Rules, 1967. Clause (xi) of Rule

2 of the KMMC Rules, 2015 defines 'ordinary earth' to mean ordinary earth used for filling or levelling purposes in construction of embankments, roads, railways and buildings.

18. Rule 14 of the said rules deals with quarrying permit for ordinary earth, which reads thus;

"14. Quarrying Permit for Ordinary earth.- (1) A quarrying permit under these rules shall be obtained for extraction of ordinary earth used for filling or levelling purposes in construction of embankments, roads, railways or buildings in Form N. (2) Notwithstanding anything contained in sub-rule (1), no quarrying permit is required under these rules for extraction of ordinary earth in connection with the construction of residential buildings including flats or commercial buildings having a plinth area of 300 square metres if the owner of the land obtained a prior valid permit for construction of such building from the Local Self Government authorities concerned.

Provided that in cases where transportation of ordinary earth is required, the owner shall pay royalty for the quantity to be transported and shall obtain mineral transit passes under the Kerala Minerals (Prevention of illegal mining, storage and transportation) Rules, 2015 from the competent authority.

Provided further that the competent authority shall not issue mineral transit passes for removal of ordinary earth exceeding the quantity needed to be extracted, as ascertained by it through a site inspection."

19. As per sub-rule (1) of Rule 14 of the KMMC Rules, 2015 a quarrying permit in Form N is mandatory for extraction of ordinary earth used for filling or levelling purposes in construction of embankments, roads, railways or buildings. However, an exception is carved out in sub-rule (2) of Rule 14, which provides that, no quarrying permit in Form N is required for extraction of ordinary earth in connection with the construction of residential buildings including flats or commercial buildings having a plinth area of 300 square metres, if the owner of the land obtained a prior valid permit for construction of such building from the Local Self Government authorities concerned.

20. From a plain reading of Rule 14 of the KMMC Rules, 2015 it is evident that, the provisions under sub-rule (2) of Rule 14 have application only if the extraction of ordinary earth from the land is in connection with the construction of residential buildings including flats or commercial buildings having a plinth area of 300 square metres, for which the owner of the land has already obtained a valid permit from the Local Self Government authority concerned. Therefore, construction of the building in terms of the building permit obtained from such Local Self Government authority concerned, immediately following such extraction and removal of earth from the property in question, is a mandatory requirement of sub-rule (2) of Rule 14. If no construction is commenced immediately following such extraction and removal of earth, an inference can be drawn that it was an attempt made by the land owner to extract ordinary earth from the property in question, without obtaining a quarrying permit in terms of sub-rule (1) of Rule 14 of the KMMC Rules, 2015; in which event such extraction and removal of ordinary earth from the property can be treated as one in contravention of sub-rule (1) of Rule 14 of the KMMC Rules, 2015 and such land owner can be

proceeded against under the penal provisions of Rule 108 of the said Rules and also that under the Mines and Minerals (Development and Regulation) Act, 1957 and the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015. In that view of the matter, the provisions under Rule 17 of the Kerala Panchayat Buildings Rules, 2011 or that under Rule 15A of the Kerala Municipality Building Rules, 1999, which provide for validity, extension and renewal of the periods of building permits, would not stand in the way of the authorised officers invoking the penal provisions under the KMMC Rules, 2015 against such land owners.

21. In the instant case, going by the averments in the Writ Petition, in order to construct a residential building in the property in question based on Ext.P1 building permit, the petitioner approached the 1st respondent and thereafter she approached this Court seeking interference on the ground of inaction on the part of the said respondent. The averments to that effect in Para.3 of the Writ Petition reads thus;

"3. The petitioner approached and submitted an application along with Exhibit P1 and connected records with the RDO, Kollam who forwarded the application to District Geologist, the 1st respondent to consider the application as per rules. But the said application was not considered by the 1st respondent or assigned any reason and so far no order or communication has been received from the 1st respondent."

22. However, the counter affidavit filed by the 1st respondent dated 23.6.2016 and the documents produced along with the memo dated 23.5.2016 filed by the learned Government Pleader would show that, on the strength of Ext.P1 building permit the petitioner submitted an application dated 13.4.2015, pursuant to which the 1st respondent permitted her to remove 750 metric tonnes of ordinary earth from the property in question, vide Ext.R1(a) proceedings dated 29.4.2015. Thereafter, she made another application before the 1st respondent stating that she could not remove the entire earth due to adverse climate condition. In support of the said application she produced a certificate dated 23.5.2015 of the Village Officer, Pavithreswaram certifying that during the validity of Ext.R1(a) permit she could remove only 350 metric tonnes of earth. Based on the said application, the 1st respondent permitted her to remove 400 metric tonnes of earth from the property, vide Ext.R1(b) proceedings dated 11.6.2015. Accordingly, she removed earth from the property on the strength of Ext.R1(b) proceedings as well.

23. Going by the 1st proviso to sub-rule (2) of Rule 14 of the KMMC Rules, 2015 in cases where transportation of ordinary earth is required, the owner shall pay royalty for the quantity to be transported and shall obtain mineral transit passes under the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 from the competent authority. The 2nd proviso to sub-rule (2) of Rule 14 mandates that, the competent authority shall not issue mineral transit passes for removal of ordinary earth exceeding the quantity needed to be extracted, as ascertained by it through a site inspection. Therefore, the conduct of the petitioner in not disclosing in the Writ Petition the issuance of Ext.R1(a) permit and Ext.R1(b) proceedings of the 1st respondent and also the extraction and removal of 750 metric tonnes of ordinary earth from the property in question, is nothing but a wilful suppression of material facts from the notice of this Court. Further, going by the specific stand taken by the 1st respondent in Para.5 of the counter affidavit, no application filed by

the petitioner is pending consideration before the said respondent. Therefore, the statement to the contra made in Para.3 of the Writ Petition is nothing but a false statement to mislead this Court.

24. By the order of this Court dated 11.5.2016, the petitioner was directed to produce, along with an application for accepting additional documents, the original of Ext.P1 building permit and the building plan/site plan. In purported compliance of the said order, I.A.No.6067/2016 was filed by the learned counsel for the petitioner producing certain documents as Exts.P3 to P5. As I have already noticed, the document produced as Ext.P3 along with I.A.No.6067/2016 is only a colour photocopy of Ext.P1 building permit. Moreover, the said interlocutory application filed under Rule 154 of the Rules of the High Court of Kerala, in the form of a verified petition filed by the learned counsel for the petitioner, is not supported by any affidavit of the petitioner. As evident from the docket, the said interlocutory application was numbered after the learned counsel for the petitioner making an endorsement to the effect that the same has been filed "as directed by this Court in its order dated 10.5.2016".

25. Going by Rule 154 of the Rules of the High Court of Kerala, proof of facts and documents shall be tendered by affidavit. Therefore, if the petitioner wants to rely on certain additional facts or additional documents, he has to file an interlocutory application under Rule 154, which should be supported by an affidavit sworn to by the petitioner. In that view of the matter, the Registry should not have numbered the interlocutory application filed by the learned counsel for the petitioner in the form of a verified petition, merely for the reason that it contained an endorsement to the effect that, it has been filed "as directed by this Court in its order dated 10.5.2016".

26. When remedy available under Article 226 of the Constitution of India is a discretionary remedy, a person who seeks interference of this Court invoking the said jurisdiction has to approach this Court with clean hands and without suppressing any material facts from the notice of this Court. In the instant case, the petitioner has not only suppressed material facts from the notice of the Court, but also caused production of a colour photocopy of Ext.P1 building permit, along with I.A.No.6067/2016, a verified petition filed by her counsel. She has also made a false statement in the Writ Petition that her application is pending consideration before the 1st respondent. The conduct of the petitioner in this regard has to be deprecated in strongest terms and I do so.

27. In the affidavit sworn to on 28.5.2016, the petitioner has stated that, she produced a colour photocopy of Ext.P1 building permit since the original building permit has already been produced before the 1st respondent. On a specific query from this Court as to whether the original of Ext.P1 building permit is available in the office of the 1st respondent, the said respondent has stated in Para.4 of his counter affidavit dated 23.6.2016 as follows; "The building permit produced by the petitioner contains the seal and signature of the Secretary of Pavithreswaram Grama Panchayat in original." In Para.5 of the said counter affidavit, the 1st respondent has stated that, no application filed by the petitioner is pending consideration before the said respondent, as claimed by her in Para.3 of the Writ Petition. Therefore, it is evident that the document now available in the office of the 1st respondent, as stated in Para.5 of the counter affidavit filed by the said respondent is only a colour photocopy of Ext.P1 building permit. The conduct of the 1st respondent in making such an evasive statement to the specific query made by this Court as to availability of the original of Ext.P1

in the Office of the said respondent, has also to be deprecated in strongest terms and I do so.

28. In *Dhananjay Sharma v. State of Haryana* (1995 (3) SCC 757), the Apex Court held that filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the Rule of Law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by any one resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a Court of law. The relevant portion of paragraph 38 of the said verdict reads as follows :

"38. Section 2(c) of the Contempt of Courts Act 1971 (for short the Act) defines criminal contempt as the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any Court : (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings or (3) Interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceeding amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceeding not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any Court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the Rule of Law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by any one resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a Court of law. The stream of justice has to be kept clean and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the Court and interfere with the due course of judicial proceedings or the administration of justice. In *Chandra Shashi v. Anil Kumar Verma* (1995 (1) SCC 421 : 1994 AIR SCW 4994) the respondents produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Hansaria, J. speaking for the Bench observed: (at p.4995, of AIR) "the stream of

administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of Court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. Anyone who takes recourse to fraud deflects the course of judicial proceeding; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."

29. In *Muthu Karuppan V. Parithi Ilamvazhuthi* (2011 (6) SCC 496) the Apex Court expressed the view that filing of a false affidavit should be effectively curbed with a strong hand. In *Sciemed Overseas Inc. Vs. BOC India Ltd.* (2016 (1) SCALE 264), the Apex Court observed that though the observation in *Muthu Karuppan's* case (supra) was made in the context of contempt of court proceedings, the view expressed must be generally endorsed to preserve purity of judicial proceedings.

30. Though this is a fit case for initiating criminal contempt against the petitioner, considering the facts and circumstances of the case as borne out from the pleadings and materials on record and also the fact that the petitioner is a lady aged 72 years, instead of initiating such proceedings, I deem it appropriate to dismiss this Writ Petition imposing cost on the petitioner.

31. In the result, Writ Petition is dismissed imposing a cost of 50,000/- (Rupees Fifty Thousand only) on the petitioner, which shall be paid to the Kerala Legal Services Authority, an authority constituted under the Legal Services Authorities Act, 1987 to provide free legal service to the weaker sections of the society. Such payment shall be made within a period of one month from the date of receipt of a certified copy of this judgment. In case the petitioner fails to pay the said amount within the time limit specified as above, it would be open to the Kerala State Legal Services Authority to recover the said amount by initiating revenue recovery proceedings against the petitioner and her assets, in terms of G.O.(Ms) No.107/2011/RD dated 26.2.2011, by which the provisions under the Revenue Recovery Act, 1968 were made applicable to the recovery of amounts due from any person or class of persons to the said Authority.

32. Registry shall communicate a copy of this order to the Member Secretary, Kerala State Legal Services Authority, Kochi.

33. In the report filed by the addl. 4th respondent dated 21.5.2016, it is stated that the property of the petitioner is partially developed after extracting and removing ordinary earth in terms of the permissions already granted. Therefore, if the petitioner intends to construct a residential building in terms of Ext.P1 building permit and such construction requires further extraction and removal of ordinary earth, the dismissal of this Writ Petition will not stand in the way of the petitioner making a proper application before the 1st respondent and the said respondent considering the same and passing appropriate orders thereon, strictly in accordance with law, keeping in mind the

observations contained in this judgment.

The Registry to incorporate a copy of this judgment in the Judges papers in W.P.(C)No.17080/2016. The original files relating to building permit bearing No.A3-2034/15 dated 7.4.2015 of Pavithreshwaram Grama Panchayat and also the original Building Permit Register now under the safe custody of Registrar (General) pursuant to the order dated 11.5.2016 shall be retained as such, in view of the pendency of W.P.(C) No.17080/2016.

Sd/-

ANIL K.NARENDRAN JUDGE dsn True copy P.S.to Judge