

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Con.Case(C).No. 765 of 2009 (S)

AGAINST THE JUDGMENT IN WP(C) 10730/2005 DATED 16-11-2005
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PETITIONER :

M.K.CHELLAPPAN NAIR,
S/O.KRISHNAN NAIR, AGED 57 YEARS,
MURUKA SADANAM, MOOLAMATTAM POST,
IDUKKI DISTRICT.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.AJEESH K.SASI

RESPONDENTS :

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1. SUNNY.J., MEKKUNNAL, AGE AND FATHER'S
NAME NOT KNOWN TO THE PETITIONER,
EXECUTIVE ENGINEER, K.S.E.B.,
CIVIL MAINTENANCE SUB DIVISION,
MOOLAMATTAM-685 589.
 2. ASHA BALAKRISHNAN, ASST. EXECUTIVE ENGINEER,
AGE AND FATHER'S NAME NOT KNOWN TO
THE PETITIONER, DO. DO.
 3. ANSARI, ASST. ENGINEER, AGE AND
FATHER'S NAME NOT KNOWN TO THE
PETITIONER, DO. DO.

R1 TO R3 BY ADV. SRI.RAJU JOSEPH (SR.)
SRI.K.T.PAULOSE, SC, KSEB
BY SMT.R.PADMAKUMARI, ADV.COMMISSIONER

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

ANNEXURE A : TRUE COPY OF THE ORDER IN I.A. No.54 OF 2005 IN O.S. NO.147 OF 1988 DATED 27.06.2008 SUB COURT, THODUPUZHA.

ANNEXURE B : TRUE COPY OF THE NOTICE DATED 21.03.2005.

ANNEXURE C : TRUE COPY OF THE JUDGMENT DATED 16.11.2005 IN W.P.(C) No. 10730 OF 2005.

ANNEXURE D : SERIES OF PHOTOGRAPHS.

RESPONDENTS' EXHIBITS:

ANNEXURE R1(a) : TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, ARAKKULAM, DATED 28.02.2008.

ANNEXURE C1 TO C4 : SERIES OF PHOTOGRAPHS.

ANNEXURE R1 (A) : PHOTOGRAPH SHOWING THE TELEPHONE POST AS WELL AS THE RELICS OF THE ORIGINAL NORTH BOUNDARY HALF-WALL OF THE PROPERTY UNDER THE POSSESSION OF THE PETITIONER.

ANNEXURE R1(B) : PHOTOGRAPH SHOWING THE EASTERN BOUNDARY OF THE PROPERTY UNDER THE POSSESSION OF THE PETITIONER WITH FRONT DOOR OF THE BUILDING

ANNEXURE R1(C) : PHOTOGRAPH SHOWING THE LAY OF THE LADSCAPE VIEWED FROM WEST TO EAST THROUGH THE NORTHERN SIDE OF THE PROPERTY UNDER THE POSSESSION OF THE PETITIONER.

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

Contempt Case (Civil) No. 765 OF 2009

Dated this the 7th day of October, 2015

JUDGMENT

Shaffique, J.

The petitioner has approached this Court alleging willful contempt of the directions given in judgment dated 16.11.2005 passed in W.P.(C) No.10730 of 2005. The operative portion of the judgment reads as under:

“The respondents have not filed any counter affidavit or statement in the Writ Petition. The respondents shall, if they propose to evict the petitioner, do the same only in accordance with the procedure established by law.”

2. The allegation raised by the petitioner is that after the judgment dated 03.07.2009 the respondents along with the subordinates trespassed into the property of the petitioner with machines like JCB and forcibly demolished the valuable constructions therein and uprooted the fully grown coconut trees having an age of more than 20 years. The matter was brought to the notice of this Court. Though the matter was brought to the notice of the respondent Board regarding the Judgment, they

continued with their illegal action and therefore this contempt case has been filed.

3. Counter affidavit has been filed on behalf of the respondents *inter alia* stating that the Kerala State Electricity Board owns and possesses 5.00.80 Hectares of land which was acquired in the year 1964 for the purpose of Idukki Hydro Electric Project. The petitioner is an encroacher who has converted a shed used by the contractors of the KSEB as a residential house. He has encroached into a large extent of land and constructed a Kayyala. There was a cartable Kacha Road leading to the "Tail Race Channel" from Idukki Power House. It is stated that the said road was the only passage to reach the Tail Race Channel for periodic inspection. Periodic inspection has to be done for the efficient functioning of the power house and the staff of KSEB has to travel through the said pathway which is having a length of 1.50 Kms. It is further stated that when the KSEB staff went to the Tail Race Channel during the last week of June, 2009, it is found that the petitioner has further encroached into the

pathway constructing a new Kayyala preventing the passage, therefore they could not reach the inspection area. As it was essential for the KSEB to clear the pathway to have access to the Tail Race Channel, there was no option to the Board except to remove the same immediately, which was done on 03.07.2009. Further the Board has also indicated that they have already filed a Suit, O.S. No.147 of 1988 before the Munsiff's Court and that the petitioner will be evicted only in accordance with law. It is also stated that the Board has only cleared the pathway leading to the Tail Race Channel for doing the periodical inspection.

4. Learned counsel for the petitioner however relied upon the Commission Report and submits that large scale destruction has been committed which has been taken note of by the Advocate Commissioner and petitioner has suffered huge loss on account of that. The question in this contempt case is whether there is any willful contempt committed by the respondents against the directions issued by learned Single Judge ?

5. As already indicated, the direction issued by this Court was only to the effect that if the respondent Board propose to evict the petitioner, the same shall be done only in accordance with law. In the counter affidavit it was averred that they have not evicted the petitioner from the property. The petitioner has further encroached into certain area of Board's property which is leading to the Tail Race Channel from Idukki Power House. It was on account of such necessity and when it was found that the structures constructed by the petitioner had obstructed the pathway, the Board had taken steps for demolishing the same. They have further indicated that as far as the possession of the petitioner is concerned, they are not disputing the same and that they will evict the petitioner only in accordance with law.

6. We do not think that the aforesaid action initiated on behalf of the Board amounts to willful contempt to proceed further. The Advocate Commissioner has also noticed that no damage has been caused to the residential building in which the petitioner and his family members are residing.

Contempt Case No. 765 of 2009

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7. Since no willful contempt is committed by the respondents, the Contempt Case is closed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

ttb/08/10