

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Con.Case(C).No. 661 of 2015 (S) IN WP(C).29558/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 29558/2013 of HIGH COURT OF
KERALA DATED 26.03.2015.

PETITIONER/PETITIONER IN WRIT PETITION:

T.K.PRAKASAN AGED 61 YEARS,
S/O.KUMARAN, SMITHA BHAVANAM, KODAMTHURUTH,
KUTHIYATHODU P O, ALAPPUZHA 688 533

BY ADVS.SRI.JAGADEESH LAKSHMAN
SRI.C.RAMAN
SRI.N.S.DAYA SINDHU SHREE HARI
SRI.BALAGODA VARMA

RESPONDENT/RESPONDENT NO.2 IN THE WRIT PETITION:

T.R. RATNAKUMARY,
SECRETARY, KODAMTHURUTH GRAMA PANCHAYATH,
KUTHIYATHODE P O, ALAPPUZHA 688 533.

R1 BY ADV. SRI.P.C.SASIDHARAN

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR
ADMISSION ON 25-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A1 : TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C) NO.29558 OF 2013.
- ANNEXURE A2 : TRUE COPY OF THE REPRESENTATION OF THE PETITIONER BEFORE THE RESPONDENT.
- ANNEXURE A2A : TRANSLATION OF ANNEXURE A2.
- ANNEXURE A3 : COPY OF THE PHOTOGRAPHS SHOWING WATER LOGGING ON THE ROAD AND IN THE RESIDENCE OF THE PETITIONER.

RESPONDENTS' ANNEXURES:

- ANNEXURE R1(a) : TRUE COPY OF THE CERTIFICATE DATED 29.05.2015.
- ANNEXURE R1(b) : TRUE COPY OF COMMENDATION LETTER OF THE RESIDENTS OF THE LOCALITY DATED 08.06.2015.
- ANNEXURE R1(c) : PHOTOGRAPHS OF THE TARRED ROAD.

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

Contempt Case © No. 661 of 2015
in
W.P. (C) No. 29558 of 2013

Dated this the 25th day of September, 2015.

JUDGMENT

The petitioner, initially, approached this Court seeking implementation of the directions given by the learned Ombudsman in O.P. No. 482 of 2009. This Court, in the course of time, having appreciated the rival contentions disposed of the writ petition through Annexure A1 judgment.

2. Since the gravamen of the entire allegation on the part of the petitioner is that the proposed road work undertaken by the respondent Grama Panchayath is leading to flooding of the area, thereby causing hardship to the petitioner, it is appropriate to examine the direction of this Court in Annexure A1 judgment, a part of which reads as follows:

“13. Though there is every justification on the part of the respondent Grama Panchayat in proceeding with tarring of the road for the benefit of the public without any delay by ensuring that the funds would not lapse; it is, at the same time, essential to observe that given the narrow width of the road, if providing any drainage by digging the canal on either side is not possible, the respondent Grama Panchayat is required to come up with certain suitable remedial measures to ensure that no water logging is caused. At any rate, the learned counsel for the respondent Grama Panchayat has submitted that the road, which is being tarred now, also leads to a Public Health Centre and that the respondent Grama Panchayat wishes to maintain the road cleanly without any water logging. He has submitted that, as has

already been decided, the respondent Grama Panchayat will be taking every step to ensure that the road does not suffer from any water logging.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayat, this Court disposes of the writ petition leaving it open for the respondent Grama Panchayat to proceed with laying of the road, including its tarring. At any rate, it is to be observed that the respondent Grama Panchayat shall take expeditious steps to ensure that the road does not suffer from any water logging. Accordingly, the interim stay granted shall stand vacated. No order as to costs."

3. Complaining that Annexure A1 judgment has been violated, the petitioner has filed the present contempt case.

4. The learned counsel for the petitioner has initially drawn my attention to Annexure A3 photographs to illustrate the position of the area prior to the tarring of the road. He has further drawn my attention to some of the observations in Annexure A1 judgment, which are, in fact, the concessions made by the learned counsel for the Grama Panchayath during the course of his submissions in the writ petition. A perusal of Annexure A1 makes it very clear that all through the Grama Panchayath has assured the Court that it will take every step to ensure that the road does not suffer from any water logging.

5. The learned counsel for the petitioner has eventually

contended that despite such an assurance before this Court, as has been made through its counsel, the respondent Grama Panchayath has not ensured any underground drainage so that there may not be any water logging. Summing up his submissions, the learned counsel has submitted that the petitioner has been put to extreme hardship in view of frequent water logging owing to what is said to be the road tarring by the Grama Panchayath without providing for proper drainage.

6. Per contra, the learned counsel for the respondent Grama Panchayath has drawn my attention to Annexure R1(c) photographs showing the position of the area after the tarring of the road. At the same time, he has further drawn my attention to Annexure R1(b) representation of the residents of the locality. The learned counsel would contend that the people of the entire area, as could be seen from Ext.R1(b), have appreciated the work undertaken by the respondent Grama Panchayath.

7. The learned counsel has also elaborated on the geographical phenomenon of the area. According to him, as the very area is low during rainy season momentary flooding is inevitable. He has, nevertheless, stressed the fact that once the flood recedes, there is no

occasion for any water logging since the Grama Panchayath has taken effective steps in that regard. According to him, the Contempt case is misconceived and deserves to be dismissed.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayath, apart from perusing the record.

9. Indeed, initially the learned Ombudsman directed the Grama Panchayath to take necessary steps to ensure that there was no water logging once the road work is completed. This Court, taking note of the directions of the learned Ombudsman and also the submissions made by the very Grama Panchayath, has disposed of the writ petition with a direction as extracted above.

10. The singular contention of the learned counsel for the petitioner is that though the tarring has been completed, the problem of water logging still persists. On the converse, the learned counsel for the respondent Grama Panchayath has strenuously contended that there is no water logging, and if at all there is any water logging, it is only during rainy season for a temporary period. According to him, given the geographical location of the area, the rain water will take some time to drain off and the petitioner cannot complain of the

inconvenience with which the Grama Panchayath has nothing to do.

11. Firstly it is to be observed that the Court begins the adjudication with a presumption that the officials act in the best interest of the public. Further, there is not much material to conclude that the officials of the Grama Panchayath in any way acted vindictively or in violation of the judicial directive of this Court.

12. Even in the alternative, if the Court were to assume that there was any water logging, especially in the face of specific denial on the part of the Grama Panchayath, the issue, in my considered view, is a disputed question of fact. Annexure R1(b) is said be the commendation letter of the residents of the locality. Thus, there are contradictory pleas on either side.

13. This Court, while exercising its power of adjudication in the nature of issuing mandamus to the officials, cannot oversee the day-to-day administration of any public authority or even the Local Self Government. Further, if there is any grievance still persisting on the part of the petitioner, it can only be resolved through appreciation of the entire issue after having necessary evidence on record. The summary procedure under Article 226 of the Constitution of India, I believe, is hardly the remedy for that purpose. It is, to repeat, the

specific assertion of the respondent Grama Panchayath that laying up the road has nothing to do with water logging, and that only due to unseasonal or heavy rains, the water logging, if any, could only be a temporary phenomenon. I make it clear that, if he is still not satisfied, it is for the petitioner to ventilate his grievance in a properly constituted civil proceedings to have the adjudication of the disputed questions of fact with regard to the flooding.

As far as the direction in Annexure A1 judgment is concerned, this Court is of the opinion that there is no material placed before this Court by the petitioner to conclude that there is any violation thereof. Accordingly, the Contempt Case is closed.

sd/- DAMA SESHADRI NAIDU, JUDGE.

