

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

Crl.MC.No. 4660 of 2015 ()

MC. NO.18/2015 OF SUB DIVISIONAL MAGISTRATE COURT, THRISSUR.

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PETITIONER/COUNTER PETITIONER IN MC NO.18/2015:-:

**P.S. BALAMANI, AGED 41 YEARS,
W/O. RAJUNARAYANAN,
RESIDING AT NADUKKADUPARAMBIL HOUSE,
PARAMELPADITHERUVU, KONDAZHI, THRISSUR.**

BY ADV. SRI.T.RAJASEKHARAN NAIR.

RESPONDENTS/COMPLAINANTS:-

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- 1. THE SUB DIVISIONAL MAGISTRATE,
CIVIL STATION, THRISSUR - 680 001.**
 - 2. THE ADDITIONAL TAHSILDAR,
TALUK OFFICE, THALAPPILLY TALUK,
WADAKKANCHERY, THRISSUR - 680 001.**
 - 3. THE TALUK SURVEYOR,
THALAPPILLY TALUK, WADAKKANCHERY,
THRISSUR - 680 001.**
 - 4. KRISHNAVENI, PARAMELPADITHERUVU,
KONDAZHI VILLAGE, THRISSUR - 680 001.**
 - 5. SUNDARAN P.S., PARAMELPADITHERUVU,
KONDAZHI, THRISSUR - 680 001.**
 - 6. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**

**R1 TO R3 & R6 BY SRI.P. VIJAYARAGHAVAN, STATE ATTORNEY.
R4 & R5 BY ADVS. SRI.SANTHOSH P.PODUVAL,
SMT.R.RAJITHA.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 16-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A.** THE TRUE PHOTOCOPY OF THE JUDGMENT PASSED BY THE MUNSIFF COURT, WADAKKANCHERY IN O.S.NO.261/2000.
- ANNEXURE B.** THE TRUE PHOTOCOPY OF THE FIR NO.1213/2014, REGISTERED BY THE PAZHAYANNOOR.
- ANNEXURE C.** A TRUE PHOTOCOPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE THRISSUR DYSP.
- ANNEXURE D.** A TRUE PHOTOCOPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE HUMAN RIGHTS COMMISSION, THIRUVANANTHAPURAM.
- ANNEXURE E.** A TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT.
- ANNEXURE F.** A TRUE PHOTOCOPY OF THE LETTER BY THE 2ND RESPONDENT TO THE PETITIONER.
- ANNEXURE G.** A TRUE PHOTOCOPY OF THE ORDER PASSED BY THE 1ST RESPONDENT TO THE PETITIONER.
- ANNEXURE H.** A TRUE PHOTOCOPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
CRL.M.C. No. 4660 of 2015
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Dated this the 16th day of December, 2015

ORDER

Alleging that a public pathway was obstructed, the 4th and 5th respondents as petitioners approached the learned Sub Divisional Magistrate, Thrissur, through M.C.No.18/2015. The learned Sub Divisional Magistrate has passed Annexure G order, in the form of a conditional order, directing the removal of obstructions and for the reconstruction of the pathway.

2. It is the case of the petitioner that under the guise of Annexure G order a pathway was constructed as a motorable road through the property of the petitioner.

3. The learned State Attorney has filed a statement

of the Additional Tahsildar, Thalappilly, Vadakkanhery, which specifically shows that there is no such road as per the survey records. At the same time, during the site inspection there was a road having a length of 60 meters approximately and a width of 3.2 meters at the western end and 2.6 meters at the eastern end. The report is dated 7.8.2015.

4. It seems that, essentially, it is a dispute of a private nature, which is purely of civil nature. The learned Sub Divisional Magistrate cannot interfere in a private dispute with regard to a pathway. Even if such a pathway exists or not, from the statement filed by the Additional Tahsildar, it has come out that it is not a public pathway and such a pathway does not find a place in the survey records. Matters being so, if at all there is any grievance for the respondent with regard to such a pathway, he can approach the competent civil court for the redressal of such grievance. Matters being so, by leaving the matter as a civil dispute

between parties, purely with regard to the existence or otherwise of private pathway, all the proceedings in Annexure G order in M.C.18/2015 of the Sub Divisional Magistrate's Court, Thrissur, are liable to be quashed.

In the result, this CrI.M.C. is allowed and all the proceedings in Annexure G order in M.C.18/2015 of the Sub Divisional Magistrate's Court, Thrissur, as against the petitioner, are hereby quashed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge