

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

OP(C).NO. 1819 OF 2014 (O)

EP. NO.10/2014 OF MUNSIFF COURT, NEDUMANGAD.

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PETITIONER:

SAINUDEEN, AGED 62 YEARS,
S/O. IBRAHIM KUNJU, HOUSE NO. V/2286,
SUMI MANZIL, VALIYAVILA, VENKODE P.O,
VATTAPPARA, THIRUVANANTHAPURAM.

BY ADV. SRI.A.S.SHAMMY RAJ.

RESPONDENT:

1. CHERIYATH JYOTHI,
THE CLOISTER, NR. ROCK PARK, VENKODE P.O.,
VATTAPPARA, THIRUVANANTHAPURAM- 695 028.

* ADDL. R2 IMPEADED

2. KARAKULAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
KARAKULAM P.O., THIRUVANANTHAPURAM-695 564.

* ADDL. R2 IS IMPEADED AS PER ORDER DATED 04/03/2015
IN I.A. NO.13761/2014.

R1 BY SRI.CHERIYATH JYOTHI (PARTY-IN-PERSON).
ADDL. R2 BY ADV. SRI.THIRUMALA P.K.MANI.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE COMPLAINT DATED 06-05-2013 FILED BY THE RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE NOTICE DATED 17-08-2013 ISSUED BY THE PANCHAYATH.
- EXHIBIT P3 TRUE COPY OF THE AWARD DATED 23-08-2013 IN P.L NO. 2746/2013 OF THE LOK ADALATH.
- EXHIBIT P4 TRUE COPY OF THE PHOTOGRAPH BEFORE DEMOLITION.
- EXHIBIT P5 TRUE COPY OF THE PHOTOGRAPH AFTER DEMOLITION.
- EXHIBIT P6 TRUE COPY OF THE APPROVED PLAN.
- EXHIBIT P7 TRUE COPY OF THE BUILDING PERMIT.
- EXHIBIT P8 TRUE COPY OF THE EXECUTION PETITION FILED BY THE RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER .
- EXHIBIT P10 TRUE COPY OF THE ORDER IN E.P NO.10/2014 ON THE FILE OF MUNSIF COURT, NEDUMANGADU.

RESPONDENT'S EXHIBITS & ANNEXURE:-

- ANNEXURE R1A APPROVED PLAN SHOWING MEASUREMENTS.
- EXT.R1A COPY OF THE SKETCH MAP OF LOCALITY.
- EXT.R1B COPY OF THE COMPLAINT DATED MAY 06, 2014 TO LOCAL BODY KARAKULAM PANCHAYATH.
- EXT.R1C PHOTOGRAPH OF THE BUILDING AS ON DATE.
- EXT.R1D POLLUTION PHOTOGRAPHS.
- EXT.R1E PHOTOGRAPH OF STRUCTURE TO BE DEMOLISHED.

//TRUE COPY//

PA. TO JUDGE

P.BHAVADASAN, J.

O.P.(C) No. 1819 of 2014

Dated this the 04th day of March, 2015

J U D G M E N T

Challenging Ext.P10 order passed by the Principal Munsiff, Nedumangadu, the petitioner has approached this Court.

2. The facts absolutely necessary for the disposal of this petition are as follows:

The petitioner and the first respondent are neighbours. The petitioner has rubber plantation in his property. He had a shed there to process his rubber sheets. That was an unauthorised construction. The respondent herein took objection to the said conduct of the petitioner and that ultimately landed them before the Lok Adalath. There, Ext.P3 award was passed. As per Ext.P3 award, the petitioner had undertaken to demolish the unauthorised structure.

3. Complaining that he did not comply with the said order of the Lok Adalath, the respondent herein instituted

execution proceedings. Finding that the respondent had a grievance to be redressed, the execution court thought it appropriate to execute the award and deputed an Amin to execute the award on 22.07.2014 and file report before Court on 23.07.2014.

4. Subsequently, the petitioner, after obtaining necessary sanction and permission from the Panchayath concerned, claims to have put up a new structure in the property. In fact, the petitioner would say that , it was keeping required distance under law that the structure was put up.

5. The respondent took objection to the said claim made by the petitioner and contended that the old structure still remains and nothing has been done to that structure and it is in the very same place that the structure now exists. The nuisance which emanated from the working of the machinery continued and it poses threat in future also.

6. Later on, the Panchayat came into the fray and they filed an affidavit pointing out that they had given sanction and permission for putting up the structure and that the structure has been put up strictly in accordance with law. The matter has come to a quietus.

7. But the respondent agitated the issue all over again by pointing out that Panchayat is in hand in glove with the petitioner and the structure is not a new structure and continues to be the old one itself.

8. In order to resolve the issue, this Court thought it appropriate to direct a Commissioner to be appointed by the Family Court, Nedumangad to inspect the place and file a report. The Commissioner so deputed has filed a report dated 19.02.2015.

9. The report includes rough sketch also. As per the report now before this Court, it is pointed out that the two properties were separated by a compound wall which is constructed by granite and cement hollow bricks. The

Commissioner's assessment is that the structure now in dispute is a new one and it is about 1.5 years old. Unit was not functioning and it was kept idle. However, the Commissioner reported that there were two manual rubber sheet making machines fixed and an open waste water canal is also seen which leads to the bio gas tank nearby. The tank was assessed to be more than 25 years old. According to the Commissioner, the distance between bio gas tank and the disputed shed is 3.70 meters. The shed is situated in the petitioner's property having a distance of 1.25 meters on the north-western side and 2.10 meters on the north-western side from the property of the respondent. The temporary residential structure of the respondent is situated 2.35 meters far from the compound wall. According to the Commissioner, he could notice no harm being caused to anyone by the existence of the structure in the property belonging to the petitioner. He also noted that the property of the petitioner is filled with rubber yielding trees.

10. Severe criticism is levelled against the Commissioner's report by pointing out that it does not reflect the true state of affairs and the respondent points out that the claim that the presence of machineries of the rubber sheet making plant is innocuous, cannot be countenanced. It is also pointed out that the report of the Commissioner that building is a new one is also false.

11. It is also contended that even assuming that unit is not now being functioned, the possibility of being it put to use, cannot be ruled out and if that be so, the threat anticipated by the respondent is very much alive and if that be so, the construction is a objectionable one. It is also contended that the Commissioner has not earnestly done his duty and has given a false report.

12. It must be noticed that the respondent is overcritical, he does not trust or believe anybody nor is he willing to accept any information given by any person. For that reason, to set at rest, this Court thought it fit to ask the

Commissioner to visit the property and submit a report. There is reason to believe that the Commissioner so deputed by this Court would give a true report of the state of affairs.

13. The claim that the structure is not a new structure and it continues to be the old one itself, cannot be accepted for the simple reason that as per Ext.P10, the Amin was deputed to demolish the structure. There is no reason to believe that the Amin would not have done his job.

14. Apart from the Commissioner's report, the Panchyat has also pointed out that it had received an application for putting up of a structure in the petitioner's property and it had granted sanction and permission and the construction was strictly in accordance with the rules. The Panchayat ha no complaint.

15. Finding of the court below in Ext.P10 that spirit of the award is that no structure shall ever be put up in the property of the petitioner cannot be countenanced. There could not have been such an intention at the time of passing

the award. Probably, one could say that the unit of the nature which was functioning earlier was not to be continued. But to say that no structure can be put up in the property of the petitioner may not be proper.

16. Going by the Commissioner's report, there is no nuisance caused as of now. The respondent anticipates nuisance in case the unit starts functioning.

17. The respondent has a case that the acts intended are hazardous acts and if that be so, there are special rules under Local Authorities Act and those rules have not been complied with.

18. If the respondent has such a case, he ought to have approached the authorities concerned for appropriate reliefs and it is not for this Court probe into those matters when there are statutory authorities for that purpose who are more competent and well equipped to go into those aspects. Anyhow, as on date, there is nothing to show that there is any nuisance being caused to the respondent. Of

course, it goes without saying that if any of the acts committed by the petitioner causes nuisance, the respondent can certainly agitate the issue. But the claim made by the respondent that the old structure has not been demolished, cannot be accepted for more reason than one which have already been stated.

19. The claim made by the respondent that the construction as it now stands is in violation of building rules cannot be accepted in the light of the stand taken by the Panchayat. Of course, it is true that two manual rubber sheet making machines are installed in the structure put up now in the property of the petitioner. The Commissioner has reported that it is not functioning as of now. Consequences that could result when those machines are functioning is a matter to be looked into at the point of time when it is operated. It is not as if, as already noticed, that the petitioner will have no remedy, if it is found that it causes nuisance to him. To speculate that it will emanate foul

smell, will make the life miserable etc. are matters of anticipatory nuisances which normally does not give rise to cause of action as of now. As already stated, if as a matter of fact, the activity which the petitioner does in the property causes nuisance, the respondent can certainly approach the local authority or the tribunal, as the case may be, to get his grievances redressed. But to say that no structure can be put up is far fetched. The executing court was also not justified in holding that no structure could be put up. Surely and certainly, the award of the Lok Adalath could not be interpreted in such a manner.

20. The petitioner has no grievance regarding the award passed by the Lok Adalath, but only its interpretation by the executing court that it prohibits putting up of a structure for ever. That, as already noticed, cannot be the result of award passed by Lok Adalath.

21. The petitioner can be made liable if it is later found that his activity of operating the machine resulting in

injury to health or cause nuisance to neighbours. As of now, this Court is only concerned with the question whether the finding of the execution court that the award intends and stipulates that by the demolition of structure then in existence but also comprehends that no new structure can be put up in the property is not acceptable. For the above reasons, this petition is allowed to that extent and the finding of the court below that no new structure can be put up in the property is set aside.

22. In future, if any nuisance is caused by the activity of operating machinery, certainly, it will be open for the respondent to approach authorities concerned for redressal of his grievances.

With this observation, this petition is disposed of.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge