

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

RP.No. 118 of 2015 (P) IN WP(C).17148/2014

**AGAINST THE ORDER/JUDGMENT IN WP(C) 17148/2014 of HIGH COURT OF KERALA
DATED 11-11-2014**

REVIEW PETITIONER(S)/RESPONDENTS NO.2 IN RP AND WPC:

**THE KERALA WATER AUTHORITY
VELLAYAMBALAM, THIRUVANANTHAPURAM
REPRESENTED BY THE MANAGING DIRECTOR, 685033**

BY ADV. SRI.MILLU DANDAPANI

**RESPONDENT(S)/REVIEW PETITIONER AND RESPONDENTS 1,3,4,5 AND 6 IN RP AND
PETITIONER &B RESPONDENTS 13,4,5,7 IN WPC:**

- 1. E.JACOB VARGHESE, AGED 63 YEARS
S/O CHACKO KOCHU CHAKO, ELANJICKAL, KARUKAYIL HOUSE
NIRNOM VILLATE, THIRUVALLA TALUK
PATHANAMTHITTA DISTRICT NOW RESIDING AT ELANJICKAL HOUSE
PALLOM PO, KOTTAYAM DISTRICT 686007**
- 2. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY
TO GOVERNMENT, SECERETARIAT, THIRUVANANTHAPURAM 695001**
- 3. PULIKKEEZHU BLOCK PANCHAYAT, VALANJAVATTOM PO, THIRUVALLA TALUK
PATHANAMTHITTA, DISTRICT- 689104
REPRESENTED BY ITS SECRETARY /BLOCK DEVELOPMENT OFFICE
PULIKKEEZHU BLOCK PANCHAYATH, VALANJAVATTOM P[O
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT 689104**
- 4. THE SECRETARY, OFFICE OF THE OMBUDSMAN FOR LOCAL SELF,
GOVERNMENT INSTITUTIONS (LSGI)
SABHALYAM COMPLEX, UNIVERSITY PO, TRIVANDRUM 695 034**
- 5. THE SECRETARY,
LAW DEPARTMENT GOVERNMENT SECRETARIAT
TRIVANDRUM 695001**

**6. THE FOOD SAFETY OFFICER,
CHENGANNOOR CIRCLE NEAR TALUK OFFICE, CHENGANNOOR PO
ALAPPUZHA DISTRICT-689 121**

**R1 BY ADV. E.JACOB VARGHESE (PARTY - IN - PERSON)
R BY SRI.E.JACOB VARGHESE (PARTY IN PERSON)
R BY GOVERNMENT PLEADER SRI.K.M.ABDUL KHADIR**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 11-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Imp

RPNo. 118 of 2015 (P) IN WP(C).17148/2014

APPENDIX

PETITIONER(S) EXHIBITS

**ANNEXURE 1. TRUE COPY OF THE JUDGMENT DATED 11.11.2014 IN W.P.(C)
NO.17148/2014.**

**ANNEXURE 2. TRUE COPY OF THE JUDGMENT DATED 12.10.2012 IN WP(C)
NO.978/2012**

ANNEXURE 3. TRUE COPY OF THE ORDER DATED 14.11.2012 IN R.P.NO.1017/2012

**ANNEXURE 4. TRUE COPY OF THE ORDER DATED 17.12.2014 IN RP NO.944/2014 IN
WP(C) NO.17148/2014**

RESPONDENTS EXHIBITS- NIL

//TRUE COPY//

PA TO JUDGE

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K.SURENDRA MOHAN, J.

R.P. No.118 of 2015

in

W.P.(C) No.17148 of 2014

Dated this the 11th day of March, 2015

ORDER

The second respondent WP(C) No.17148/2014 has filed this writ petition seeking review of the judgment in WP(C) No.17148/2014. As per the judgment, the writ petition was disposed of directing the petitioner herein to consider Exhibit P5 resolution of the third respondent and to pass necessary orders in the matter. Exhibit P8 in the writ petition evidences the reply received from the 6th respondent herein on information sought by the first respondent.

2. According to the counsel for the review petitioner Sri.Millu Dandapani, the judgment of this Court has been passed, without taking into consideration the fact that, all the contentions raised by the first respondent herein had been considered by a Division Bench of this Court in the judgment dated 12.10.2012 in WP(C) No.978/2012. The first respondent's object is to

question the intake point that has been identified by the petitioner for the purpose of drawing water in implementation of a drinking water project that is to benefit various places in Alappuzha District. Initially, according to the counsel the first respondent's land had been identified for acquisition for the purpose of implementing the project. Later on, since water in the area was found to be unfit for drinking due to intrusion of saline water, an appropriate site was identified, further upstream. However, the petitioner aggrieved by the fact that his property was not being acquired has been questioning the action of the review petitioner before various authorities. With respect to the present writ petition that was disposed of by the judgment sought to be reviewed, the learned counsel points out that Annexure A2 judgment had been deliberately suppressed. It is also contended by the counsel that, had the said judgment been produced along with the writ petition, the direction that has now been issued by the judgment sought to be reviewed, would not have been issued. It is

also submitted by the counsel that, the resolution of the Panchayat that this Court has directed to be considered, is a resolution of the year 2003. The said resolution had been considered by the Division Bench in WP(C) No.978/2012 that was dismissed by Annexure A2 judgment. The Division Bench having found that the first respondent was not entitled to any of the reliefs claimed in WP(C) No.978/2012, it is pointed out that, there is no justification for the present direction to consider the same resolution, at this length of time. The said direction therefore, according to the counsel has been obtained by the petitioner without placing the full facts before this Court. In view of the above, the counsel seeks review of the said judgment.

3. The first respondent has appeared before me in person. According to the first respondent, he is not at all aggrieved by the action of the petitioner in not utilising his property for the project that has been implemented. His concern is only with respect to the benefit of the public for whom, the project is being implemented. It is

contended by the first respondent that the omission to make mention of the earlier writ petition and Annexure A2 judgment, in the present writ petition was neither intentional nor deliberate. He had obtained information under the Right to Information Act, 2005 from the Food Safety Officer regarding the quality of water at the intake point presently identified. Since the Food Safety Officer was convinced that, water at the said intake point was polluted, the only wanted the earlier resolution of the Panchayat to be considered. It is contended by the first respondent that, the Food Safety Officer being a statutory authority empowered to assess the quality of water from the angle of food safety, is a competent authority to speak about the matters on which information has been supplied to him, as per Exhibit P8 in the writ petition. It is also alleged by the first respondent that, the petitioner had proceeded to fix the intake point without undertaking any scientific study regarding quality of water. According to the first respondent therefore, there are absolutely no grounds to review the judgment as sought for. It is also

contended by the first respondent that, review petition has been filed only after he had filed contempt case No.09/2015 seeking initiation of action against the review petitioner for non compliance with the direction of this Court. The attempt is therefore, only intended to somehow escape from the said proceedings.

4. The counsel for the review petitioner in answer points out that, the petitioner had sought for information from the Food Safety Officer regarding the materials on the basis of which he had supplied the information contained in Exhibit P8 in the writ petition. The questions and the answer given are produced as Annexures A4 and A5. According to the learned counsel, it is clear from the said documents that the opinion of the Food Safety Officer was not based on any report or scientific data. The counsel also submits that the review petition would have been filed even if the contempt case had not been filed by the first respondent.

5. Heard. A counter affidavit had been filed by the first respondent, to which a reply affidavit has been

filed by the review petitioner. A perusal of the judgment sought to be reviewed shows that what has been directed is to consider the resolution of the Panchayat evidenced by Exhibit P5 in the writ petition, in the light of Exhibit P8 information furnished by the Food Safety Officer. It is true that, I have not gone to the merits of the contentions raised in the writ petition. However, a perusal of Annexure A2 judgment shows that, Exhibit P5 in WP(C) No.17148/2014 had been produced before the Division Bench in WP(C) No.978/2012. In the said writ petition, the same was produced marked as Exhibit P13. The Division Bench has considered the said resolution also in paragraph 22 of Annexure A2 judgment. The question regarding the suitability of the intake point identified by the review petitioner has also been discussed in paragraph 25 of the judgment, which reads as follows:

“In regard to the allegation regarding contamination of water at Pannaikadavu, we do not think that the argument is in any way sustainable. The contention is that, there is a

pilgrim centre in the upstream of the Pannaikadavu site and there is a tributary joining downstream Pannaikadavu site hardly 200 metres away and the polluted water from the tributary converge on to the Pampa river and when water is sucked upstream 200 metres away at Pannaikadavu intake well site, there is a possibility of the polluted water to enter into the intake well. It is not in dispute that the water flows from east to west and the converging point is 200 metres towards west and in view of the fact that pumping station is situated upstream from the converging point, this contention may not hold good. It may be true that effluents are flowing to Pampa river; but still fresh water which comes from west to east in Pampa river can be utilised for the purpose of drinking water purpose after proper treatment and therefore even in a case where there is a possibility of some pollution on account of nearness to commercial areas or pilgrim centres, when there is a facility to treat raw water, the water that will

be supplied to the people at large will have to be within the parameters laid down for drinking water purpose. The existence of the tributary joining the converging point being a cause for an alleged pollution, therefore cannot be a reason to deny this project as the intake well and pumping station is still upstream from the said converging point."

6. On the above reasoning, the challenge against the intake point has been rejected. Though the petitioner was the first petitioner in the said writ petition, the said judgment has not been produced in WP(C) No.17148/2014. It is true that the petitioner has disclosed information in the writ petition regarding the said writ petition, but only by way of a passing reference. Since the direction in the judgment sought to be reviewed has been issued without taking note of the earlier judgment of the Division Bench, Annexure A2, it is only appropriate that further orders in the matter are passed only after considering the effect of said directions also.

Had the findings in Annexure A2 judgment been placed before me, I would not have issued a direction to consider Exhibit P5 resolution. Therefore, it has to be held that the judgment sought to be reviewed has been passed by me without being apprised of the full facts of the case. In view of the above, I am satisfied that the petitioner is entitled to succeed.

For the above reasons, this review petition is allowed. The judgment in WP(C) No.17148/2014 is reviewed and set aside. Post the writ petition for hearing before the appropriate court.

Sd/-
K.SURENDRA MOHAN,
JUDGE

lmp

//TRUE COPY//

PA TO JUDGE

R.P. No.118 of 2015
in
W.P.(C) No.17148 of 2014

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