

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WA.No. 748 of 2012 () IN WP(C).31288/2011

AGAINST THE JUDGMENT IN WP(C) 31288/2011 of HIGH COURT OF KERALA
DATED 09-03-2012

APPELLANT(S)/RESPONDENTS:

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1. KUNNAMTHANAM GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY
GRAMA PANCHAYATH OFFICE, KUNNAMTHANAM P.O.
MALLAPPALLY, PATHANAMTHITTA DISTRICT - 689 581.
 2. SECRETARY, KUNNAMTHANAM GRAMA PANCHAYATH
GRAMA PANCHAYATH OFFICE
KUNNAMTHANAM P.O. MALLAPPALLY
PATHANAMTHITTA DISTRICT - 689 581.

BY ADVS. SRI. PRASAD CHANDRAN
SRI. JOSEPH GEORGE

RESPONDENT(S)/PETITIONER:

KABEER SAHIB
PALAVILA PADEETTATHIL, PALMEL PANCHAYATH
NOORANAD P.O., PIN - 690 504.

R1 BY ADV. SMT. ASHA ELIZABETH MATHEW
R BY ADV. SRI. P. B. SURESH KUMAR (SR.)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

W.A.No.748 of 2012

Dated this the 3rd day of March, 2015

JUDGMENT

Antony Dominic, J.

1.This writ appeal is filed by the respondents in W.P (C).31288/11. The said writ petition was filed by the respondent herein challenging Ext.P19, a resolution passed by the first appellant Panchayat and to direct the appellants to permit him to remove and transport the clay extracted by the first appellant from Anjilithanam-Mulakuzhy chal and to extend the period of Ext.P4 agreement by another 11 months. By the judgment under appeal, learned single Judge disposed of the writ petition quashing Ext.P19 and directing that the period of Ext.P4 contract be extended for a reasonable time and to take effective steps for fulfilling the contract by facilitating the removal of clay. It is aggrieved by this judgment, this appeal is filed.

2. we heard learned counsel for the parties and considered the submissions made.

3.Ext.P4 is the agreement entered into between the Panchayat and the respondent on 24.9.2009 for removal of 21277 cubic metres of clay deposited on the bank of Anjilithanam-Mulakuzhy chal. This was pursuant to an auction conducted by the Panchayat on 14.7.2009. The period of the agreement was 11 months and it is admitted case that during the contract period, only a part of the quantity, about 3957 cubic metres, was removed. The respondent sought for extension of the contract period and pursuant to the direction of this Court in Ext.P13 judgment in W.P(C).34183/10, the Panchayat passed resolution dated 17.12.2010, declining the request.

4.In the mean time, the Panchayat also issued Ext.P16 stop memo. Challenging Ext.P16 stop memo and seeking extension of the contract period, the respondent again approached this Court by filing W.P(C).1019/11. Ext.P18 is the judgment rendered in that case. That judgment shows that pursuant to an interim order passed by this Court, the Geologist submitted Ext.P17 report before this Court, stating that removal of the

clay would not cause any threat to the neighbouring houses, environment or the residents in the neighbourhood. In Ext.P18, this Court interfered with the rejection of the respondent's request and directed the Panchayat to consider the application made by him for extension of the period in terms of the provisions of the agreement and also the report of the Geologist.

5. Accordingly, the matter was considered and the Panchayat passed Ext.P19 resolution. This resolution shows that the committee unanimously opposed to the Secretary's suggestion that the respondent should be permitted to remove the balance quantity of clay and thereafter, the committee rejected the request stating that permitting the respondent to remove the clay would cause danger to the life and property of the residents of the area and that the clay is also necessary to strengthen the bund. It is challenging Ext.P19, the writ petition was filed, which, as stated above, was disposed of by the learned single Judge.

6. Having heard counsel on both sides, we are inclined to think that there is no merit in the contentions raised by the appellants. On an earlier occasion when the case was considered by this Court, considering the objections raised by the Panchayat, a report was called for from the Geologist which shows that the objection was more about the possibility of threat to the houses in the neighbourhood on account of the removal of clay. This has been completely ruled out by the Geologist in Ext.P17 report. The Panchayat has now invented a new reason that removal of the clay would be dangerous to the life and property of the people in the neighbourhood and that the clay is necessary for strengthening the bund. In other words, the present stand of the Panchayat would certainly show that it was searching for reasons to reject the request of the respondent.

7. The terms of Ext.P4 agreement shows that the Panchayat also had an obligation to do everything necessary to facilitate removal of the clay. According to the respondent, there was total failure

on the part of the Panchayat in doing so. Though this allegation is disputed by the Panchayat and it is alleged by them that the breach of the contract was committed by the respondent, the course of conduct on the part of the Panchayat would lend credibility to the case canvassed by the respondent. It was in such circumstances that the learned single Judge interfered in the matter and issued the directions.

8. However, we do not ignore or rule out the contention of the counsel for the appellants that on account of the long lapse or delay, clay has solidified and that its removal at this distance of time is impractical and could affect the safety of the chal. However, there is no material before us either to accept this contention or reject it. In such circumstances, while confirming the directions of the learned single Judge, we direct that the removal of the clay shall be subject to the respondent obtaining necessary statutory clearances. We also direct that the Geologist, Pathanmthitta will supervise the removal

and if he finds that removal of the clay is impractical or would cause any danger to the chal, to the local people or the environment, he will be at liberty to issue appropriate orders even stopping further removal and if any such orders are issued, the Panchayat shall not be liable to the respondent for any consequences thereof.

Appeal is disposed of with the aforesaid directions.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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PS to Judge