

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 5204 of 2005 (T)

PETITIONER(S):

**E.K.THOMAS
ELENJICKAL HOUSE, KOTHAMANGALAM P.O.**

**BY ADVS.SRI.P.SANTHALINGAM (SR.)
SRI.SOORAJ T.ELENJICKAL**

RESPONDENT(S):

- 1. THE SECRETARY,
IDUKKI DISTRICT PANCHAYATH, IDUKKI.**
- 2. THE PRESIDENT,
IDUKKI DISTRICT PANCHAYATH, IDUKKI.**
- 3. THE DEPUTY DIRECTOR,
DEPUTY DIRECTOR OF PANCHAYATH, IDUKKI.**
- 4. THE SECRETARY & PRESIDENT,
KANTHALLOOR PANCHAYATH, IDUKKI.**
- 5. THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, THIRUVANANTHAPURAM.**
- 6. THE DEPUTY TAHSILDAR,
REVENUE RECOVERY, KOTHAMANGALAM.**

**R1 & 2 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
R5 & 6 BY GOVERNMENT PLEADER SRIO.P.V.LONACHAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF TITILE DEED (TRANSFER) DATED 13/5/99**
- P2: COPY OF THE COMPLAINT DATED 11/12/2000 BY THE PETITIONER TO THE OMBUDSMAN**
- P3: COPY OF THE CANCELLATION DT.27/7/02 BY THE R5 AGAINST THE R1**
- P4: COPY OF THE STATEMENT OF THE R1**
- P5: COPY OF THE LAND RELINQUISHMENT LETTER**
- P6: COPY OF THE ORDER PASSED BY THE OMBUDSMAN**
- P7: COPY OF THE SKETCH PREPARED BY THE TALUK SURVEYOR DATED 29/11/2002**
- P7(A): COPY OF THE SKETCH PREPARED BY THE TALUK SURVEYOR DATED 29/11/2002**
- P8: COPY OF THE FINAL ORDER DATED 13/6/03 PASSED BY OMBUDSMAN**
- P9: COPY OF THE POSTAL ENVELOPE**
- P10: COPY OF THE DEMAND NOTICE DATED 18/1/2005.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5204 OF 2005 (T)

Dated this the 18th day of February, 2015

J U D G M E N T

The petitioner is aggrieved by Ext.P8 order passed by the 5th respondent whereby, the 5th respondent dismissed a petition, filed by the petitioner alleging maladministration on the part of the District Panchayat, with compensatory costs of Rs.20,000/-, which the petitioner was directed to pay within one month from the date of the order. It is pointed out that, pursuant to Ext.P8 order, Ext.P10 demand notice was issued by the 6th respondent for recovery of the cost amount under the Kerala Revenue Recovery Act. The grievance of the petitioner is essentially that, while the petitioner had obtained ownership over certain extents of land in Survey No.22/6, Block No.54 of Kanthalloor Village pursuant to a family partition, the sister-in-law of the petitioner, who had obtained ownership of four cents of land in Survey No.22/7 of the same Village, had, by Ext.P5, surrendered the said land to the Idukki District Panchayat, of which the 1st and 2nd respondents are the Secretary and the President respectively. It is pointed out that, despite the sister-in-law of the petitioner having

surrendered four cents of land to the Panchayat for the purposes of construction of a pump shed by the Panchayat, the Panchayat began construction of the pump shed on the land belonging to the petitioner instead of on the land belonging to his sister-in-law. In other words, it is the contention of the petitioner that the Panchayat commenced construction of the pump shed on land other than what was surrendered to them by the sister-in-law of the petitioner. It was this aspect that was pointed out by the petitioner before the 5th respondent. The 5th respondent, however, dismissed the petition preferred by the petitioner on the ground that the petitioner had knowledge, of the fact that the construction by the Panchayat was happening on his land and not on the land that was surrendered by his sister-in-law, and, hence, he was estopped from contending that the construction that was carried out by the Panchayat was illegal. It is under these circumstances that the said order of the 5th respondent is impugned in the present writ petition.

2. I have heard Sri.P.Santhalingam, the learned senior counsel appearing for the petitioner, Sri.Babu Joseph Kuruvathazha, the learned Standing counsel appearing for respondents 1 and 2 and also

Sri.Lonachan.P.V., the learned Government Pleader appearing for respondents 3 to 6.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, inasmuch as it is not in dispute that the construction activities of the Panchayat was on land belonging to the petitioner, over which land, the Panchayat had no manner of right whatsoever, the construction by the Panchayat was clearly illegal. In Ext.P8 order of the 5th respondent, the 5th respondent rejected the petition filed by the petitioner solely on the ground that he was all along aware of the fact that the construction was carried out by the respondent Panchayat on his land, and, therefore, he was estopped from contending that the actions of the Panchayat were illegal. In my view, such a finding by the 5th respondent was clearly illegal in that it is settled law that there cannot be an estoppel against law. Inasmuch as the construction activities carried out by the Panchayat was on the land that was not surrendered to them, and over which they had no manner of right whatsoever, the case of the petitioner that the action of the Panchayat in carrying on construction activities in the said land was illegal, had

to be upheld by the 5th respondent. Since in Ext.P8 order, the 5th respondent has failed to consider this relevant aspect, I quash Ext.P8 order of the 5th respondent and Ext.P10 demand notice of the 6th respondent.

I must now consider the contention of the petitioner, that the property that came to his ownership pursuant to the family partition, has now been trespassed into by the Panchayat, and he has been deprived of the use and enjoyment of the said land owing to the illegal acts of the respondent Panchayat. It is brought to my notice by the learned counsel for respondents 1 and 2 that, the extent of four cents of land that was surrendered to the Panchayat by the sister-in-law of the petitioner is still in the possession and ownership of the Panchayat and can be conveyed to the petitioner, in lieu of the land of the petitioner in which the respondent Panchayat has effected the construction of a pump shed. In the alternative, it is submitted that it would also be open to the petitioner to approach the respondent Panchayat with a claim for appropriate compensation for the land that was taken over by the Panchayat for the construction activities. Taking note of the submission of the learned counsel for the

respondent Panchayat, while allowing this writ petition, by quashing Exts.P8 and P10, I leave it open to the petitioner to approach the District Panchayat, Idukki, with a suitable representation pointing out the aspects that have been highlighted in the writ petition, and seeking appropriate reliefs, either by way of compensation for the use of the property belonging to the petitioner or by way of conveyance of land that was obtained by the Panchayat from the sister-in-law of the petitioner. If the petitioner prefers such a representation before the 1st respondent Secretary, within a period of one month from the date of receipt of a copy of this judgment, the 1st respondent shall consider the same and pass appropriate orders thereon within a further period of one month from the date of receipt of the representation. Needless to say, the petitioner shall also be afforded an opportunity of hearing before taking a decision as directed in this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp