

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

RP.No. 919 of 2003 (V) IN WP(C).16982/2003

AGAINST THE JUDGMENT IN WP(C) 16982/2003 of HIGH COURT OF KERALA
DATED 16-10-2003

REVIEW PETITIONER/1st RESPONDENT IN THE WPC:

NAVAIKULAM GRAMA PANCHAYAT, NAVAIKULAM,
THIRUVANANTHAPURAM, REP. BY ITS SECRETARY

BY ADV. SRI.R.S.KALKURA

RESPONDENTS/PETITIONER/2ND RESPONDENT IN THE WPC:

1. A. JAHFARUDEEN THANGAL, JAT LAND, PUNNODE,
VETTIYARA P.O., NAVAIKULAM,
THIRUVANANTHAPURAM.
2. THE EXECUTIVE ENGINEER, NH DIVISION, THIRUVANANTHAPURAM
(2ND RESPONDENT IN THE WRIT PETITION)

R1 BY ADV. SRI.S.SANTHOSH KUMAR

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON
13-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BABU MATHEW P. JOSEPH, J.

R. P. No.919 of 2003 in
W.P.(C) No.16982 of 2003

Dated this the 13th day of March, 2015

ORDER

This review petition has been filed for reviewing the judgment dated 16-10-2003 in W.P.(C) No.16982 of 2003 passed by this Court.

2. Heard the learned counsel appearing for the review petitioner, learned counsel appearing for the first respondent and the learned Government Pleader appearing for the second respondent.

3. Learned counsel for the review petitioner submits that the writ petition was filed by the first respondent for a direction to the petitioner and the second respondent to shift the waiting shed constructed in front of the first respondent's property to a convenient place as it affects the beneficial use of his property. This Court disposed of the writ petition filed by the first respondent by judgment dated

16-10-2003. But, before pronouncing the judgment on 16-10-2003 by this Court, the first respondent had disposed of his property in question as per Annexure-A1 sale deed dated 04-09-2003. Therefore, the first respondent had no grievance in respect of the matter at the time of disposing of the writ petition by this Court on 16-10-2003. But, that fact was not brought to the notice of this Court. The waiting shed in question constructed by the petitioner Panchayat was with the permission granted by the second respondent Executive Engineer. The waiting shed is beneficial to the passengers. It is not creating any nuisance to anybody. This waiting shed was in existence even prior to the first respondent purchased the property in question. Nobody other than the first respondent objected to the construction or the existence of that waiting shed. In view of these facts, the judgment passed by this Court is liable to be reviewed, contends the learned counsel for the review petitioner.

4. Learned counsel for the first respondent has not disputed the fact that his property in question had been

transferred as per Annexure-A1 sale deed. Therefore, the first respondent has no property on the side of the waiting shed in question.

5. The judgment passed by this Court in W.P.(C) No.16982 of 2003 reads as follows:

“The petitioner feels aggrieved by the establishment of a waiting shed by the 1st respondent Panchayat on the basis of the permission granted by the 2nd respondent in front of his property. According to the petitioner, the said waiting shed blocks the road frontage of his plot. Therefore, he has preferred Ext.P3 representation before the panchayat committee and thereafter this Writ Petition has been filed seeking appropriate reliefs.

The 2nd respondent Executive Engineer has filed a counter affidavit in which it is submitted that the waiting shed has been constructed as proposed by the Navaikulam grama panchayat on the basis of the temporary permission granted by him. It is also submitted in the counter affidavit that on receiving notice in the writ petition and on becoming aware of the objection of the petitioner to the location of the waiting shed, he has immediately directed the panchayat to take action to shift the waiting shed to a convenient place.

I heard the learned Counsel for the panchayat and also the learned Government Pleader appearing for the 2nd respondent. The waiting shed in question, being on a National

highway, can be put up by the panchayat only with the permission of the highway authorities. Therefore, the direction issued by the 2nd respondent is binding on the panchayat. Accordingly, the 1st respondent is directed to take action to shift the waiting shed as directed by the 2nd respondent within two months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above”

In view of the facts submitted by the learned counsel for the review petitioner and admitted by the learned counsel for the first respondent, this Court is of the considered view that the judgment has to be reviewed. Therefore, it is reviewed and set aside.

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

