

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

W.A.No. 1434 of 2013 () IN WP(C).19133/2009

AGAINST THE JUDGMENT IN W.P.(C) NO. 19133/2009 of HIGH COURT OF KERALA DATED
03-04-2013

APPELLANT(S)/PETITIONERS:

1. RAVEENDRAN M.,
S/O.KANAKKARAYI, MULLAMKATTIL HOUSE, CHEMBRA P.O.,
THIRUVEGAPPURA, PALAKKAD DISTRICT.
2. HAMZA,
S/O.MUHAMMED KUNHIPPA, PATTANMARTHODI, CHEMBRA P.O.,
THIRUVEGAPPURAM, PALAKKAD DISTRICT.
3. MUHAMMADALI
S/O. KUNCHALAN, KAINANGATTILE, CHEMBRA P.O.
THIRUVEGAPPURA, PALAKKAD DISTRICT.
4. KRISHNAKUMAR,
S/O. KANAKKARAYI, CHOLAKAVIL, CHEMBRA P.O.,
THIRUVEGAPPURA, PALAKKAD DISTRICT.
5. SAIDALAVI,
S/O. MUHAMMADUKUTTY, KAINANGATTILE, CHEMBRA P.O.,
THIRUVEGAPPURA, PALAKKAD DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENT(S)/RESPONDENTS:

1. M.A.ASHRAF,
S/O. ADIMAKUTTY, MANATHATTU VEEDU, ALANGADU P.O.,
ERNAKULAM DISTRICT, PIN-683 511.
2. RABIYA C.P.
W/O.ASHARAFF, MANATHATTU HOUSE, ALANGAD P.O.
ERNAKULAM DISTRICT, PIN-683 511.

3. MUSTHAF,
S/O. MUHAMMED @ KUNHIMAN HAJI, KINANGATTILE,
CHEMBRA P.O., THIRUVEGAPPURA,
PALAKKAD DISTRICT-679 304.
4. THIRUVEGAPPURA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
THIRUVEGAPPURA GRAMA PANCHAYAT OFFICE,
THIRUVEGAPPURAM, PALAKKAD DISTRICT-679 308.
5. THE VILLAGE OFFICER,
THIRUVEGAPPURA, PALAKKAD DISTRICT, PIN-679 308.
6. THE TAHSILDAR,
OTTAPALAM, PALAKKAD DISTRICT, PIN-679 101.
7. THE REVENUE DIVISIONAL OFFICER,
OTTAPALAM, PALAKKAD DISTRICT, PIN-679 101.
8. THE DISTRICT COLLECTOR,
PALAKKAD-678 001.
9. THE AGRICULTURAL OFFICER,
THIRUVEGAPPURA, PALAKKAD DISTRICT, PIN-679 308.
10. THE GEOLOGIST,
DISTRICT OFFICE OF THE DEPARTMENT OF MINING AND GEOLOGY,
TOWN BUS STAND COMPLEX, PALAKKAD-678 001.
11. THE SUB INSPECTOR OF POLICE,
PATTAMBI, PALAKKAD DISTRICT, PIN-679 303.
12. THE SUPERINTENDENT OF POLICE,
PALAKKAD, PIN-678 001.
13. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R1-R2 BY ADVS. SRI.K.JAJU BABU (SR.)

SRI.N.RAJESH

R1-R3 BY SRI.V.RAJENDRAN (PERUMBAVOOR)

R4 BY ADV. SRI.SANTHEEP ANKARATH

R5 TO R13 BY SR. GOVERNMENT PLEADER, SRI. P.FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02-06-2015, ALONG WITH
WA. 1435/2013 & WA. 1447/2013, THE COURT ON 10-06-2015 DELIVERED THE
FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.Nos.1434, 1435 & 1447 of 2013

Dated this the 10th day of June, 2015

JUDGMENT

Shaji P. Chaly, J.

These writ appeals are preferred against the common judgment of the learned Single Judge dated 03.04.2013 in W.P.(C) Nos.19133 of 2009, 11522 of 2012 and 13898 of 2012. The appellants in Writ Appeal No.1434 of 2013 are the petitioners in W.P.(C) No.19133 of 2009 and party respondents 6 to 10 and 5 to 9 respectively, in the other two writ petitions. Respondents 1 and 2 in the Writ Appeals are the petitioners in W.P.(C) Nos.11522 of 2012 and 13898 of 2012 and respondents 1 and 2 in W.P.(C) No.19133 of 2009. Even though W.P.(C) No.17347 of 2009 was filed by the 1st respondent challenging Ext. P23 order therein, in view of the rejection of licence by the Grama Panchayat, the counsel had submitted before the learned Single Judge that the said writ petition has become infructuous and accordingly, the said writ

petition was dismissed.

2. The learned Single Judge has disposed of W.P.(C) No.13898 of 2012 directing the District Collector, Palakkad to afford an opportunity of personal hearing to the party respondents herein as well as the appellants regarding the request to allow manufacturing of bricks utilizing the clay already stocked in the property of the 1st respondent. So far as W.P.(C) No.11522 of 2012 is concerned, the learned Single Judge has granted liberty to the petitioner therein, who is the wife of the petitioner in W.P.(C) No.13898 of 2012 to approach the District Geologist, seeking permission for excavation of sand in order to start fish farming. W.P.(C) No.19133 of 2009 filed by the appellant herein was disposed of granting them liberty to raise their objections before the authorities concerned against the grant of permissions. It is aggrieved by these directions that these writ appeals are preferred by the appellants.

3. In view of the slight difference in the factual situations arising in the cases, we think it appropriate to briefly refer to the facts of these cases and the reliefs sought for, separately.

4. Writ Appeal No.1434 of 2013 is filed by the petitioners in W.P.(C) No.19133 of 2009, contending that the respondents 1

and 2 in the writ appeal had purchased properties near to the paddy fields of the appellants and are conducting brick manufacturing in the paddy fields purchased by them, thereby causing innumerable difficulties to the appellants for carrying on their agricultural operations. Further, they have contended that due to the activities of brick manufacturing started by the party respondents, water flowing through the nearby stream became contaminated and that it has also affected their agricultural activities. It is the further case of the appellants that several lorry loads of sand and soil is extracted from the properties of the party respondents which has rendered the nearby 'padasekharam' useless and that they are unable to carry on the paddy cultivation. It is also their case that water level in the nearby wells are also affected.

5. The appellants have contended that even though they have filed several complaints before the District Collector, as well as the Panchayat authorities, no action was initiated so as to abate the inconveniences and nuisances caused to them, consequent on the manufacturing of bricks carried on by the party respondents. It is the further grievance of the appellants that consequent on the complaint filed by one K.Sainuddhin and

one Mustafa, Ext.P11 order was passed by the Revenue Divisional Officer, Ottappalam, allowing the removal of soil collected and directing the petitioners to carry on the paddy cultivation in the properties owned by them, thereafter. According to them, the soil stocked should have been ordered to be used for filling the pits in the properties of the respondents.

6. The contesting party respondents in the writ appeals have filed counter affidavit to the writ petition refuting the allegations and statements of the appellants and have contended that the 1st respondent has not excavated sand or soil from the property and that he was conducting the brick manufacturing unit after obtaining necessary licence from the appropriate statutory authorities. It was further contended that Ext.P11 order is not binding on the second respondent since she held properties independently and she being not a party to the proceedings, was not heard before orders under Ext.P11 were passed. Apart from the same, it is the contention of the 2nd respondent that at the time of the purchase of property itself, the property had several pits and the recitals in the documents in her favour also proves the same. In the said factual scenario, it is contended that the writ petitions had no merit and therefore they are liable to be

dismissed. It is pertinent to note that before passing Ext.P11, the 1st respondent namely Ashraf alone was heard and directions were issued against him only.

7. Writ Appeal No.1435 of 2013 is filed by the additional respondents 6 to 10 in W.P.(C) No.11522 of 2013, filed by the 1st respondent in the Writ Appeal, seeking direction to the 2nd respondent therein to permit her to excavate sand or soil from the properties covered by Exts.P1 to P3 sale deeds and permit her to start a fish farm and for other consequential directions.

8. Writ Appeal No.1447 of 2013 is filed by the additional respondents 5 to 9 who are the appellants in the two other Writ Appeals filed against the judgment in W.P.(C) No.13898 of 2012 filed by the 1st respondent in the Writ Appeal, seeking a direction to the District Collector, Palakkad to pass appropriate orders on Ext.P10 application filed by him, and permission to carry on the brick manufacturing activities in the properties purchased by him. He contended that even though in the Village records the properties purchased by him were shown as paddy fields, for the past several years no agricultural activities are carried on in the said properties. He has further contended that he has not carried on any excavation of sand or soil from the said properties. On

the other hand, according to him, he has brought clay stocked, from outside after obtaining necessary permission from the concerned Geologist and was carrying on bricks manufacturing activities without causing any manner of nuisance, prejudice or inconvenience to any one, much less the appellants. On this pleading, he sought a direction to grant his application which was pending before the District Collector, Palakkad.

9. We heard Sri. K.M.Sathyanatha Menon, learned counsel for the appellants, Sri. V. Rajendran, the learned counsel appearing for the contesting party respondents and the learned Government Pleader appearing for various statutory authorities.

10. We have gone through the pleadings and materials produced in the writ appeals as well as in the writ petitions. We have also perused the report of the Advocate Commissioner appointed by the learned Single Judge for submitting a factual report regarding the nature and lie of the properties owned by the contesting party respondents in the appeals. So far as the properties of the 1st respondent is concerned, even according to the appellants, these properties are lying without being excavated, but at the same time, stocked with clay. Of course, the appellants have a contention that the heap of soil stocked in

the properties of the 1st respondent is the outcome of the excavation carried out in the property of the 2nd respondent, which is refuted by the contesting party respondents. Anyhow, it is pointed out by the contesting party respondents as well as the appellants that there is no clay available in the nearby areas for the purpose of manufacturing bricks and there is no material to the contrary. In such circumstances, it can only be inferred that the clay stocked in the property of the 1st respondent can only be what is brought from outside for the purpose of carrying on brick manufacturing activity. Even if the 1st respondent has to carry on the agricultural activities as directed in Ext.P11 order of the R.D.O., Ottappalam, clay now heaped in the property will have to be removed from the properties, without which, the agricultural operations cannot be carried on.

11. The learned counsel for the appellants has contended before us that in the writ petition filed by him, he has assailed that part of Ext.P11 order, allowing the 1st respondent to remove 300 lorry loads of soil stocked in the property of the 1st respondent. According to him, the said soil, which is excavated from the property itself, has to be utilized for the purpose of filling up of the excavated portion. According to us, there is no

dispute with regard to the nature of soil that is stocked and even according to the appellants, the 1st respondent was carrying on brick manufacturing activity using the clay. Apart from that, even though W.P.(C) No.17347 of 2009 was dismissed as infructuous, a finding that the clay that is stocked in the property of the 1st respondent was brought from outside using pass obtained from the Geologist has been entered into. In that background only, the learned Single Judge has entered into a finding with regard to the clay available in the property of the 1st respondent. So also, the Advocate Commissioner has reported that the soil stocked in the property of the 1st respondent appears to be ordinary clay, which is endorsed by the Geologist. Furthermore, the report of the Advocate Commissioner also shows that certain areas of the property belonging to the 1st respondent are planted with coconut saplings and plantain. In such circumstances, the 1st Respondent is entitled to remove the clay and only when the clay is removed from the property, agricultural operations can be carried on, as directed in Ext.P11.

12. We have also found from the pleadings and the reliefs sought for by the appellants in the writ petition filed by them that they have not sought any relief against Ext.P11 order, but a

ground was raised in the said writ petition that a part of the Ext.P11 order permitting the 1st respondent to remove soil from the properties cannot be sustained.

13. Even though there is no precise challenge against Ext.P11 order either by the appellants or by the party respondents, in view of the contentions raised against a part of Ext.P11 order, we are considering the grievance of the appellants that if the soil is removed, the pits formed in the properties consequent to excavation will not be filled up and that would cause difficulties for carrying on paddy cultivation in the area in question. But, from the contentions raised by the rival parties, it is clear that the brick manufacturing was going on in the property of the 1st respondent till the year 2009 and therefore, in absence of clay being available at site, clay was brought from outside and in order to have a practical way out for execution of Ext.P11 order, the clay stocked in the property of the 1st respondent has to be removed either by using the same for manufacture of bricks or by physically removing it from and out of the property. Further, even according to the appellants, pits are in the property of the 1st Respondent's wife and she is not a party to these proceedings. Therefore, not only that there is no pit in the

property of the 1st Respondent to be filled up, but also his wife, in whose property there are pits, being not a party to these proceedings, no order against she could have been passed.

14. The learned Single Judge, on appreciation of the facts and circumstances and the rival contentions urged by the parties in the writ petitions, has found out a practical solution to implement Ext.P11 order of the R.D.O., Ottappalam, by which the 1st respondent is directed to carry on agricultural activities after removing the soil stocked in his properties.

15. The learned counsel for the respondents 1 and 2 in the appeal, on a query from us as to the binding nature of Ext.P11 order against the 1st respondent, has submitted before us that he has not challenged Ext.P11 order due to the reason that he intends to carry on agricultural activities in his properties after utilizing the clay stocked in his property and with that intention in mind only he has filed an application before the District Collector, Palakkad to permit him to carry on the brick manufacturing unit till the clay stocked in the properties is exhausted.

16. In this factual background, we have considered the rival contentions made by the appellants, contesting party respondents and the learned Government Pleader, and are of the

considered opinion that the learned Single Judge has, evolved a practical method for the utilization of the properties of the respondent for agricultural activities in terms of Ext.P11 and appropriate directions were issued to the concerned statutory authorities so as to take a decision in the respective applications pending before them. According to us, the appellants who are provided with opportunity to object to the respective applications filed by the respondents at the time of consideration of the same by the statutory authorities cannot have any grievances at all.

17. Furthermore, the learned counsel for the respondents 1 and 2 has submitted that the respondents 1 and 2 are prepared to file necessary undertaking before the District Collector, Palakkad to the effect that they will comply with Ext.P11 order dated 22.05.2009, issued by the R.D.O., Ottappalam, directing the 1st respondent to carry out the agricultural operations after utilising the soil for manufacturing bricks. While we record this submission, we leave the matter to the District Collector, Palakkad to take a decision in the matter with an open mind, in compliance with the directions in the judgment under appeal.

18. In these circumstances, we dispose of these writ appeals, directing the respective statutory authorities who are directed by the learned Single Judge to take appropriate decisions on the respective applications pending before them. We further direct the District Collector, Palakkad to ensure that Ext.P11 order passed by the R.D.O., Ottappalam is implemented in letter and spirit. Needless to say, the District Collector, Palakkad as well as the District Geologist while considering the respective applications of Respondents 1 and 2 will provide sufficient opportunity to the appellants in the Writ Appeal to raise their objections against the request made by respondents 1 and 2. Such decisions in the applications pending before them shall be taken within a period of three months from the date of receipt of a copy of this judgment.

The Writ Appeals are disposed of accordingly.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI .P. CHALY
JUDGE**

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P.S. to Judge

St/-