

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WA.No. 387 of 2015 () IN WP(C).17195/2014

AGAINST THE JUDGMENT IN WP(C) 17195/2014 of HIGH COURT OF
KERALA DATED 13-10-2014

APPELLANT(S)/3RD RESPONDENT:

N.C.VIJAYAN
S/O.CHATHANNIKATHITHARA HOUSE, NAYARAMBALAM P.O
ERNAKULAM DISTRICT-682509

BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH
SRI.M.SUKUMARAN

RESPONDENT(S)/PETITIOENR IN WP/RESPONDENTS 1 & 2 IN WP:

1. K.J.FRANCIS, AGED 35 YEARS
S/O.JOSEPH, KATTUPARAMBIL, NAYARAMBALAM.P.O
ERNAKULAM DISTRICT- 682509

2. THE DEPUTY DIRECTOR OF PANCHAYATS
ERNAKULAM CIVIL STATION, KAKKANAD
ERNAKULAM - 682 030.

3. THE SECRETARY, NAYARAMBALAM GRAMA PANCHAYAT
NAYARAMBALAM P.O., ERNAKULAM DISTRICT - 682 509.

R3 BY ADV. SRI.K.N.CHANDRABABU
BY GOVERNMENT PLEADER SRI. P.I. DAVIS
ADV.SRI. C.P. PEETHAMBARAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
17-03-2015, ALONG WITH WA. 335/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN , Ag. CJ,
&
A.M.SHAFFIQUE, J.

.....
Writ Appeal Nos. 387 & 335 of 2015
.....

Dated this the 17th day of March, 2015

JUDGMENT

Ashok Bhushan, Ag.CJ.

These two appeals have arisen out of a common judgment in W.P. (C) Nos. 17195 & 21921 of 2014. W.P.C. No. 17195/2014 is filed by K.J. Francis to implement Ext. P6 order dated 11-4-2014 (Ext. P5 in W.P. (C) No. 21921/2014) and to remove the illegal construction made by the third respondent, who is the appellant herein.

2. W.P.C. No. 21921/2014 is filed by the appellant seeking to quash Exts. P4 and P5 which are provisional and final orders issued by the Grama Panchayath calling upon the petitioner to remove the unauthorised construction and to

demolish the same. Ext. P5 is the final order dated 11-4-2014 by which the petitioner was called upon to remove the unauthorised construction put up by him.

3. For convenience the documents referred herein are as described in W.P.C. No. 21921/2014. The short facts involved in the above Writ Petitions would disclose that N.C. Vijayan claims to be the owner in possession of 4.333 cents of property in Survey No. 408/6 of Nayarambalam Village. His neighbour Sri. K.J. Francis has made a complaint that the appellant has made unauthorised construction in the property and has encroached into his property as well. This matter was enquired into by the local authority and a provisional order was passed invoking the power under Sec. 235W (2) of the Kerala Panchayath Raj Act. No explanation was given by the petitioner and, therefore, final order was passed on 11-4-2014.

4. The learned Single Judge after considering the rival

contentions found that there was no reason to challenge Ext. P5 as the petitioner had not availed of the appellate remedy under the statutory provisions. That apart, it was found that filing of the suit O.S. No. 362/2014 before the Munsiff's Court, Kochi, will not preclude the local authority to proceed in accordance with the statutory provisions.

5. While impugning the aforesaid judgment, the learned counsel appearing for the appellants would contend that in so far as O.S. No. 362/2014 is pending before the Civil Court, wherein the petitioner had sought for demarcation of boundaries, there was no reason to implement Ext. P5 order at this point of time. It is argued that the appellant had not encroached into any area of the property belonging to the respondent and this fact can be found out only if the property is measured and the boundaries are fixed. Therefore, it is argued that until fixation of boundary is done in accordance with the statutory provisions, there is no

reason to implement Ext. P5.

6. The learned Single Judge, however, found that the petitioner did not take any steps to challenge Ext. P5 order. When a Writ Petition was filed for implementing Ext. P5 order and after entering appearance in the case, the suit was filed. No interim order has been passed by the Civil Court even as on date. Under such circumstances, it is argued by the learned counsel appearing for the private respondents that there is no reason to interfere with the impugned judgment.

7. Heard the learned counsel for the common appellant and also the contesting respondents.

8. Having regard to the aforesaid factual situation, we are of the view that pendency of the civil suit will not help the petitioner to refrain the Panchayath from proceeding further pursuant to Ext. P5. At the time of issuing provisional order, no explanation was offered by the appellant and, thereafter, the final

order has been passed. Though the appellant has filed a civil suit, he did not feel it necessary to obtain appropriate interim orders from the civil court. If the petitioner has a case that he has not encroached into any area and that the boundary has been wrongly fixed by the Grama Panchayath, necessarily the petitioner is to obtain appropriate interim orders from the civil Court. In so far as the Panchayath has passed Ext. P5 order after complying with all the statutory formalities, it may not be possible for this Court to interfere with the said order as there is no violation of natural justice nor any illegality is made out.

9. Under such circumstances, we do not think that the learned Single Judge has committed any error in disposing of the Writ Petitions directing implementation of Ext. P5. No grounds are made out to interfere with the judgment of the learned Single Judge.

The Appeals are hence dismissed. However, we make it

clear that it shall be open for the appellant to approach the civil court for obtaining appropriate orders in this regard.

Sd/- ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

Sd/- A.M.SHAFIQUE,
JUDGE

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/truecopy/

P.S.toJudge