

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WA.No. 1112 of 2014 () IN WP(C).5473/2014

AGAINST THE JUDGMENT IN WP(C) 5473/2014 DATED 24-07-2014

APPELLANT(S)/RESPONDENTS 1 TO 5 & 7 TO 9 IN WPC :-

1. STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM - 695 001.
2. THE DISTRICT COLLECTOR
ALAPPUZHA, CIVIL STATION - 688 007.
3. THE REVENUE DIVISIONAL OFFICER, ALAPPUZHA - 688 001.
4. THE TAHSILDAR, CHERTHALA, CHERTHALA P.O - 688 524.
5. THE VILLAGE OFFICER, CHERTHALA SOUTH - 688 552.
6. THE SUB INSPECTOR OF POLICE
ARTHINKAL POLICE STATION, ARTHINKAL P.O.CHERTHALA
ALAPPUZHA - 688 530.
7. THE DISTRICT POLICE CHIEF, ALAPPUZHA - 688 001.
8. THE DISTRICT COLLECTOR, ERNAKULAM - 682 021.

BY SR.GOVERNMENT PLEADER SRI.C.S.MANILAL

RESPONDENT(S)/PETITIONER AND 6TH RESPONDENT IN WPC :-

1. MAJOR BABU THOMAS (RETIRED), S/O.K.G.VARGHESE,
KOILPARAMBIL, GOOD SHEPHERD'S BUNGALOW,
ARTHINKAL P.O., CHERTHALA, ALAPPUZHA - 688 530.
2. ST.ANDREWS FORANE CHURCH
REPRESENTED BY ITS VICAR, ST.ANDREWS FORANE CHURCH
ARTHINKAL P.O., CHERTHALA, ALAPPUZHA - 688 530.

BY ADV. SRI.M.K.PRADEEP KUMAR
BY ADV. SMT.SMITHA GEORGE
BY ADV. SRI.S.SREEKUMAR (SR.)
BY ADV. SRI.K RAMAKUMAR(SR.)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16-09-
2015, ALONG WITH WA. 1150/2014, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

APPELLANTS' EXHIBITS

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ANNEXURE I :- TRUE COPY OF THE ORDER OF THE LEARNED ADDITIONAL MUNSIFF COURT, CHERTHALA IN O.S.No.892/2007 DATED 19.8.2014.

ANNEXURE II :- TRUE COPY OF THE COMMON ORDER IN O.P.(C) No.2129/2014 & FAO Nos.296 & 297 OF 2014 DATED 11.11.2014.

RESPONDENT'S EXHIBITS

: -

ANNEXURE R1(a) :- TRUE COPY OF THE ORDER IN SLP 35400/2014.

ANNEXURE R1(b) :- TRUE COPY OF THE ORDER OF THE PRINCIPAL SECRETARY, REVENUE (U) DEPARTMENT BEARING No.26254/2014/RD DATED 27.5.2014 ALONG WITH THE COVERING LETTER DATED 22.12.14 WITH TRANSLATION.

ANNEXURE R1(c) :- TRUE COPY OF THE PETITION DATED 29.9.2014.

ANNEXURE R1(d) :- TRUE COPY OF THE NOTICE No.L-11/74549/14(1) DATED 28.10.2014 ISSUED BY ERNAKULAM DISTRICT COLLECTOR ALONG WITH TRANSLATION.

ANNEXURE R1(e) :- TRUE COPY OF APPLICATION DATED 18.10.2014 UNDER THE RIGHT TO INFORMATION ACT AND THE REPLY DATED 7.11.14 FROM ALAPPUZHA DISTRICT COLLECTOR ALONG WITH TRANSLATION.

ANNEXURE R1(f) :- TRUE COPY OF THE NOTICE DATED 17.3.2015 SENT TO ADVOCATE GENERAL.

ANNEXURE R1(g) :- TRUE COPY OF THE FAX MESSAGE SENT BY THE SR.GOVERNMENT PLEADER DATED 20.3.2015.

ANNEXURE R1(h) :- TRUE COPY OF THE LETTER UNDER RTI ACT FROM KPHCC LTD.

ANNEXURE R1(i) :- TRUE COPY OF THE GAZETTE NOTIFICATION DATED 25.1.1983.

ANNEXURE R1(j) :- TRUE COPY OF THE GAZETTE NOTIFICATION DATED 11.7.1988.

ANNEXURE R1(k) :- TRUE COPY OF THE EXTRACT OF THE BUILDING TAX ASSESSMENT REGISTER OF THE YEAR 1984-1985.

ANNEXURE R1(l) :- TRUE COPY OF THE EXTRACT OF THE BUILDING TAX ASSESSMENT REGISTER OF THE YEAR 1983-84 TO 1987-88.

ANNEXURE R1(m) :- TRUE COPY OF THE EXTRACT OF THE ASSESSMENT REGISTER OF THE YEAR 1987-1988.

ANNEXURE R1(n) :- TRUE COPY OF THE EXTRACT OF THE ASSESSMENT REGISTER OF THE YEAR 1993-94 TO 1997-98.

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A.Nos.1112 & 1150 of 2014

Dated this the 16th day of September 2015

J U D G M E N T

Shaffique, J.

These two writ appeals have been filed by the State and its authorities as well as the 6th respondent in W.P.(C) No.5473 of 2014 challenging the judgment dated 24.7.2014, by which, the learned Single Judge, while disposing of the writ petition directed the petitioner to use the road on the eastern side of the police station without conferring on him any special right. It was further observed that the said arrangement shall continue till Ext.P9 appeal is disposed of by the District Collector, Ernakulam.

2. The facts involved in the writ petition would disclose that the petitioner was claiming right in respect of the alleged pathway passing through the property, which forms part of the police station. It was inter alia contended by the respondents that a portion of the property was surrendered by the 6th respondent, namely; the appellant in W.A.No.1150 of 2014 to the Government under the Kerala Land Relinquishment Act, 1958. Contending that the petitioner has easement right in respect of the said portion of the land, he had filed an appeal before the District

Collector. During the pendency of the said appeal, when an attempt has been made by the appellants in W.A.No.1112 of 2014 to close down the pathway, the writ petition came to be filed.

3. The learned Single Judge, after considering the respective claims, observed that until the appeal is disposed of by the District Collector, the situation as on the date has to be continued and the petitioner should be permitted to use the said pathway. Further, it was observed that the vehicles which were parked on the said pathway has to be removed. It is challenging the aforesaid judgment that these writ appeals have been filed.

4. It is now submitted by the learned counsel appearing on either side that during the pendency of these appeals, the District Collector has dismissed the appeal filed by the writ petitioner.

5. Learned counsel for the writ petitioner submits that the petitioner intends to prefer a further appeal/revision before the Land Revenue Commissioner, for which, time is required and in the mean time, if any attempt is made by the appellants in W.A.No.1112 of 2014 to change the status quo, it may affect their interest as well.

6. The appeals have been filed by the appellants separately on the ground that the claim for easement cannot be

adjudicated by a writ court and in fact separate suits have been filed by the writ petitioner as well as his brother. A request for mandatory injunction was refused by the trial court, against which, the petitioner had filed an original petition before this Court, which came to be dismissed. Against the dismissal of the said original petition, a Special Leave Petition was filed before the Supreme Court, in which, the judgment in the original petition stands stayed.

7. It is clear from the above facts that the remedy of the writ petitioner is only to get his rights adjudicated through a civil court and therefore, it may not be possible for this Court to entertain the writ petition. Further, as far as the apprehension expressed by the writ petitioner is concerned, the learned Special Government Pleader appearing on behalf of the appellants in W.A.No.1112 of 2014 submits that since the matter is pending before the Supreme Court, the State and its authorities are ready and willing to maintain status quo for a period of 15 days to enable the writ petitioner to prefer a revision before the Land Revenue Commissioner.

8. Under such circumstances, we do not think that there is any necessity to consider the impugned judgment on merit as the

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appeal has already been dismissed by the District Collector. We only observe that the status quo as on today shall be maintained for a period of 15 days to enable the petitioner to prefer a revision before the Land Revenue Commissioner and get appropriate orders.

With the above observation, these writ appeals are disposed of.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

Jvt/16.9.2015.