

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**

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WA.No. 1236 of 2014

AGAINST THE JUDGMENT DATED 24-07-2014 IN WP(C) 29685/2012.
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APPELLANT/PETITIONER:

**P.T.ASHOKAN, AGED 50 YEARS,
S/O.THAJAMANI, PERINGATTUKARA VEEDU,
KADUKUTTY P.O., CHALAKKUDY.**

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.**
- 2. DISTRICT COLLECTOR,
AYYANTHOLE, THRISSUR - 680 003.**
- 3. THE EXECUTIVE ENGINEER (ROADS),
PUBLIC WORKS DEPARTMENT,
CHEMBUKKAVU, THRISSUR - 680 001.**
- *4. THE ASSISTANT ENGINEER,
NATIONAL HIGHWAY 17, CHALAKUDY,
THRISSUR - 680 307. (CORRECTED)**
- 5. TAHSILDAR, MUKUNDAPURAM TALUK,
MUKUNDAPURAM, IRINJALAKUDA - 680 121.**
- 6. THE VILLAGE OFFICER, KIZHAKKE CHALAKUDY,
RAILWAY STATION ROAD, CHALAKKUDY - 680 307.**
- 7. CHALAKUDY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, CHALAKUDY, THRISSUR - 680 307.**

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8. SHINY VARGHESE, W/O.VARGHESE,
ALUKKA HOUSE, KUDAPPUZHA,
CHALAKUDY - 680 307.
9. STAFFORD, S/O.JOHNY,
IMMATTIPARAMBIL HOUSE, KUDAPPUZHA,
CHALAKUDY - 680 307.
10. PREETHY, W/O.STAFFORD,
IMMATTIPARAMBIL HOUSE, KUDAPPUZHA,
CHALAKKUDY - 680 307.
11. RAJU, MEKKATT HOUSE, KANAL PALAM, ALOOR,
MUKUNDAPURAM, THRISSUR - 680 683.

*ADDRESS OF R4 IS CORRECTED AS
ASSISTANT ENGINEER,
PUBLIC WORKS DEPARTMENT (ROADS),
CHALAKKUDY - 680 307.
AS PER ORDER DATED 31.10.2014 IN IA.1007/2014)

**ADDL. R12 IMPEADED

THE DISTRICT SURVEY SUPERINTENDENT,
SURVEY DEPARTMENT, AYYANTHOL, THRISSUR - 680 003.

ADDL. R12 IS IMPEADED AS PER ORDER
DATED 1.12.2014 IN IA.1142/2014.

R1 TO R6 & ADDL. R12 BY SENIOR GOVT. PLEADER SRI.C.R.SYAMKUMAR
R7 BY SRI.SHEEJO CHACKO, SC
BY SRI.RENJITH THAMPAN (SENIOR ADVOCATE)
ADV.SMT.P.RREENA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12-03-2015
ALONG WITH WA. 1277/2014, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

mbr/

WA.No. 1236 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A1 : TRUE COPY OF THE SURVEY SKETCH PREPARED BY THE
 ADDITIONAL 12TH RESPONDENT.**

**ANNEXURE A2 : TRUE COPY OF THE LETTER NO.C1/2006 DATED 18.10.2014
 ISSUED BY THE 4TH RESPONDENT ALONG WITH ENGLSIH
 TRANSLATION.**

RESPONDENT'S ANNEXURES: - NIL

/TRUE COPY

P.S. TO JUDGE

mbr/

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

W.A.Nos.1236 & 1277 of 2014

Dated this the 12th day of March 2015

J U D G M E N T

Shaffique,J

These writ appeals are filed by the petitioners in W.P.C.No.29685/2013 and W.P.C.No.20345/2012 dissatisfied by the common judgment dated 24/07/2014 of the learned Single Judge.

2. Petitioners have ventilated a grievance that the respondent authorities are not taking any steps to remove the encroachment and unauthorised constructions effected on the road 'South Chalakudy - KSRTC road'. It is alleged that substantial encroachments have been made by private respondents and despite the fact that materials were available with the PWD authorities and the local authority concerned regarding the encroachment, no steps were being taken by them and therefore the petitioners filed the

aforesaid writ petitions seeking for a direction to respondents 2, 3 and 4 to demarcate and identify the extent and width of the road, to take possession of the same by demolishing all the structures in the encroached area and for a direction to the Municipality to recall all the permits granted in favour of the encroachers and to remove the construction in the encroached area. The 2nd respondent had filed a counter affidavit in W.P.C.No.29685/2012 stating that the survey of PWD road situated in Survey Nos.467 and 495 of East Chalakudy village was carried out with prior notice to all the concerned parties. The property of the 8th respondent is situated in Survey No.474. The northern boundary of the said property is extended to the southern boundary of the road puramboke and therefore there is clear encroachment. The sketch showing the encroachment is handed over to the Assistant Engineer, PWD Road Section, Chalakudy. Further it is stated that approximately 200 meters of the southern part of the road is yet to be

demarcated. The survey stones are seen to be moved which have to be fixed after conducting survey. It is also stated that the respondents had taken all efforts to complete the survey.

3. Counter affidavit is filed by the 7th respondent on behalf of the Municipality stating that occupancy certificate has been issued to the 8th respondent after conducting necessary enquiry in the matter. Further the respondent denied the fact that the width of the road in the area is 15 meters. According to them, there is no basis for the same. It is contended that, on measurement by the Taluk Surveyor, only an extent of 0.08 Ares of land was found in possession of the 8th respondent and the same is now kept as part of the road. Municipality further submits that they are ready and willing to remove any illegal construction in accordance with law.

4. In W.P.C.No.20345/2012, a counter statement is filed by the 1st respondent Municipality through the Counsel

reiterating the very same stand. Counter affidavit is filed by the 3rd respondent also taking similar contentions. They have also produced Ext.R3(a), a sketch showing the road portion and also the encroachments, which according to them are 0.37, 0.08, 0.46 and 0.35 Ares. A statement is filed by the 3rd respondent indicating that petitioner's representation is not pending consideration before them.

5. Counter affidavit is filed by the 6th respondent stating that they have not encroached into any Government land, as alleged.

6. During the pendency of the writ petition, an Advocate Commissioner was appointed and a report has been filed by him before this Court.

7. The learned Single Judge, after considering the rival contentions, disposed of the writ petition observing that the Municipality shall ensure that the violations or omissions as mentioned by the Advocate Commissioner are cured by the respondents, as expeditiously as possible. Further it is

observed that the official respondents should take stringent action in accordance with law after serving notice to all persons who had made encroachment into the road in question including the party respondents.

8. The appellants, while impugning the judgment of the learned Single Judge, observed that there is sufficient material to indicate that the width of the road was about 21 meters. But, no action has been taken by the official respondents to evict the encroachers and widen the road as it was earlier. Sri.T.M.Abdul Latiff, learned counsel for the appellant in W.A.No.1236/2014, relies upon an additional document produced along with I.A.No.1141/2014 to indicate that the actual width of the road was 21 meters.

9. Perusal of the records relating to the above cases clearly indicates that the petitioners are pointing out encroachment into road puramboke. According to them, though they have approached the authorities as well as the Municipality, no action has been taken by any of the

authorities. But, it is evident from the counter affidavits filed that necessary survey has been conducted and appropriate steps had been taken in the matter. That apart, the learned Single Judge had directed the official respondents to ensure that no puramboke land is encroached by any private persons including party respondents.

10. The question involved apparently is regarding the width of the road. Appellants claim that the width of the road is 21 meters whereas the official respondents have denied the said fact. Under such circumstances, we do not think that this Court can arrive at a finding regarding the width of the road in the absence of any satisfactory evidence. The documents relied upon by the appellants do not justify us to arrive at such a conclusion.

11. Under such circumstances, being a disputed question of fact, it is not open for this Court to exercise power under Article 226 of the Constitution of India to

consider such issues. That apart, there is no reason to disbelieve the official respondents. They are well conversant with the actual position regarding width of the road and therefore there is no reason to enter into a finding regarding the width of the road.

Having said so, we are of the view that the learned Single Judge having already issued appropriate directions in the matter, there is no reason for the appellants to be dissatisfied with such directions. We do not find any ground to interfere with the judgment of the learned Single Judge and accordingly these appeals are dismissed.

(sd/-)

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

