

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 3078 of 2012 (H)

PETITIONER :

ROSAMMA ABRAHAM, AGED 83 YEARS,
W/O.LATE ABRAHAM,
THAYYILAYA NEDUMPARAMBIL HOUSE, KUMARAKOM P.O.,
KOTTAYAM – 686563.

BY ADVS.SRI.T.C.SURESH MENON
SRI.I.DINESH MENON

RESPONDENTS :

1. THE SUB DIVISIONAL MAGISTRATE,
MINI CIVIL STATION, KARAPUZHA, KOTTAYAM – 686001.
2. THE KUMARAKAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, KUMARAKAM – 686563.
3. THE VILLAGE OFFICER,
KUMARAKOM – 686563.
4. SRI.P.N.SUGUNAN,
CARETAKER, INDO-PASAFIC HOTELS LIMITED, KUMARAKAM P.O.,
KOTTAYAM – 686563.

R2 BY ADV. SRI.T.A.SHAJI

R1 BY GOVERNMENT PLEADER SRI.RAFEEK.V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P-1 TRUE COPY OF THE REQUEST DATED 27.8.2011 ADDRESSED TO
 THE 2ND RESPONDENT.
- EXT.P-2 TRUE COPY OF THE REQUEST DATED 27.8.2011 ADDRESSED TO
 THE 3RD RESPONDENT.
- EXT.P-3 TRUE COPY OF THE ORDER DATED 28.2.2011.
- EXT.P-4 TRUE COPY OF THE REQUEST FOR ADJOURNMENT DATED 10.1.2012.
- EXT.P-5 TRUE COPY OF THE REQUEST DATED 10.1.2012.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.3078 of 2012

Dated this the 11th day of December, 2015

JUDGMENT

The petitioner, who is the owner of a small extent of land in Kumarakom Village, has approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P3 order passed by the 1st respondent in exercise of his powers under Section 133 of Cr.P.C. and seeking a writ of mandamus commanding the 1st respondent to reconsider the matter on merit after affording the petitioner a reasonable opportunity of being heard. The petitioner has also sought for a writ of mandamus commanding the 1st respondent to remove barbed wire fence put up by the 4th respondent cutting off the entire access to her property.

2. A counter affidavit has been filed on behalf of the 1st respondent. Paragraph 4 of the counter affidavit reads thus:-

"4. It is hereby submitted that on receipt of the reports submitted by the 3rd respondent in respect of the complaints filed by the petitioner as well as the 4th respondent, notices were issued to the petitioner and the 4th respondent. Both the parties appeared before the 1st respondent and after hearing a Conditional Order was issued, directing the petitioner and her son to dismantle the bund constructed across the water way and also directing the 4th respondent to remove the barbed wire

fencing. The petitioner herein filed an objection by stating that she is not possessing any property at the disputed site. On further enquiry it was found that the petitioner is not possessing any property in the disputed area and the Conditional Order was modified and directed Mr. Jose A Thayyil to remove the bund. The 4th respondent removed the barbed wire fencing in obedience to the conditional order issued by the 1st respondent and if the above mentioned Jose A Thayyil failed to obey the Conditional order or failed to furnish proper explanation in respect of the non-implementation of the conditional order, necessary steps will be initiated for the issuance of a final order as provided under Section 138 of the Code of Criminal Procedure. Now the 1st respondent is not proposing any action against the petitioner Mrs. Rosamma Abraham. The barbed wire fencing put up by the 4th respondent was already removed."

In view of the stand taken by the 1st respondent in paragraph 4 of the counter affidavit referred to above, nothing survives in this Writ Petition. Therefore the Writ Petition is dismissed.

Sd/-
ANIL K.NARENDHRAN, JUDGE

skj

True copy
P.A to Judge