

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 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WA.No. 1875 of 2014 ()

(AGAINST THE ORDER/JUDGMENT IN WP(C) 24098/2013 DATED 14-08-2014)

APPELLANT/8TH RESPONDENT:

**NOUSHAD.P.H., AGED 43 YEARS,
S/O.HAMSA, BUSINESS,
RESIDING AT PERUMANAKUZHI MATHUMAKAL HOUSE,
ELOORKKARA, MUPPATHADAM P.O., ALUVA - 683 110.**

BY ADV. SRI.S.ANANTHAKRISHNAN

RESPONDENT(S)/RESPONDENTS:

- 1. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, ROADS AND BRIDGES DIVISION,
THRIKKAKARA, KAKKANAD, ERNAKULAM - 682 021.**
- 2. THE ASSISTANT EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT,
ROADS AND BRIDGES SUB DIVISION, ALUVA,
ERNAKULAM -683 101.**
- 3. THE KADUNGALLOOR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, MUPPATHADAM P.O.,
ALUVA - 683 110.**
- 4. E.V.NIPIN,S/O.VIJAYAN,
RESIDING AT ERRIYATTU HOUSE, KODUVAZHANGA,
NEERICODE P.O., ALANGAD, ALUVA - 683 511.**
- 5. M.S.LATHEEF,S/O.SULAIMAN,
RESIDING AT MANNARATHARA HOUSE,
ELOOKKARA, MUPPATHADAM P.O., ALUVA - 683 110.**
- 6. MADHUSOODHANAN PILLAI,
RESIDING AT IKKARAKATHOOT HOUSE,
IKKARAKATHOOT PARAMBU, ELOOKKARA,
MUPPATHADAM P.O., ALUVA - 683 110.**

W.A.NO.1875/2014

7. SALIM, RESIDING AT PADUVANA HOUSE,
IKKARAKATHOOT PARAMBU, ELOOKKARA,
MUPPATHADAM P.O., ALUVA - 683 110.

R1 & R2 BY SR GOVERNMENT PLEADER SRI.T.P.SAJID
R3 BY ADV. SRI.SAJEEV KUMAR K.GOPAL
R4 BY ADVS. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR
BY ADV.SRI.T.C.SURESH MENON

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 08-01-2015 ,ALONG WITH W.A.NO.1902 OF 2014, THE COURT
ON 29-01-2015 DELIVERED THE FOLLOWING:

sts

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

W.A.Nos.1875 & 1902 of 2014

Dated this the 29th day of January 2015

J U D G M E N T

Shaffique,J

These appeals are filed by the 8th respondent in W.P.C.No.24098/2013 against the common judgment dated 14/08/2014 in W.P.C.Nos.24098/13 and 25173/2013. W.A.No.1904/2014 has been filed with leave of court.

2. W.P.C.No.24098/2013 was filed seeking for a direction to respondents 1 to 3 to take necessary steps to prevent the illegal construction of a drain in Sy.Nos.203/5 204/14, 206/7 of Kadungalloor village by using public funds and for a direction to respondents 1 and 2 to ensure that the work is carried out in strict compliance with Ext.P1 and in the exact location and place where the same has been sanctioned. The issue projected by the petitioner was with reference to construction of a drain which, according to him, was being constructed in a private property. Further, it is

contended that the contract work was awarded to the 4th respondent and he had executed a power of attorney in favour of the 5th respondent who is carrying on the said work which is in total disregard to the Public Works Department Manual. It is contended that, if a public canal is constructed through private property, later on the land owner will claim right over the same and it will not benefit the public or the Panchayath.

3. W.P.C.No.25173/2013 is filed by the Contractor who was awarded the work. Writ petition is filed for a direction to quash Ext.P3 by which a direction has been issued by the Executive Engineer to stop the construction work until further intimation and for a further direction to permit him to carry out the work. It is, inter alia, contended that he had taken all necessary steps for carrying out the work which was in full swing and the drain upto 210 meters was completed and balance work was proceeding in full swing. In the meantime, when the work is stopped he is put to serious hardship.

4. The learned single Judge, on a consideration of the factual circumstances involved in the matter, dismissed W.P.C.No.24098/2013 and allowed W.P.C.No.25173/2013 quashing Ext.P3 and directed the respondents to permit the Contractor to carry out the work allotted to him as per Ext.P1. The learned Single Judge found that the work was started after obtaining No Objection Certificate from the Panchayath, the work was being done in a Panchayath road connecting Kadungalloor-Kayantikkara-Ellookkara-Alupuram PWD road. Ext.R1(a) is the true copy of the relevant extract of road register which reveals that the said road has been included in the register as a road maintained by the Panchayath. It was found that when the Panchayath has a definite case that the work was being done through a public road, there is no legal basis for the contention urged by the petitioner.

5. Heard learned counsel appearing for either side. For easy reference, the parties and documents referred are as shown in W.P.C.No.24098/2013, unless otherwise stated.

6. The learned counsel for the appellant tried to emphasise that the work in question is not being done in a Panchayath road whereas it is in a private property. But, on a perusal of the documents produced, we are unable to arrive at such a conclusion. Ext.P1 is only a detailed estimate in respect of the work. Ext.R1(e) is an affidavit of Sri.N.Madhusoodhanan. Though the affidavit is not in proper form, it is stated that he is in possession of certain item of land in Sy.Nos.203/5 and 203/6. According to him, he and his brothers who are in joint possession, transferred the land to various persons and also for public work on the southern side of the property in Sy.Nos.203/5, 203/6 in which they are residing, and was given to the Panchayath years back and a road has been formed. Further, reference to the report dated 3/10/2013, prepared by the Village Officer indicates that on inspection, it is seen that the road having about 3 meters width on the northern side of the compound wall of one Salim starts from Elukkara Kaintikkara PWD road and comes upto the panchayath road on the western side of Salim's

land. The road and nearby possessed lands are in 203/5, 204/15, 206/7 and 204/14. It is further reported that in the Survey numbers included in the village records, it is not specified as to whether it is a road, canal or road puramboke and on enquiry with the nearby residents, it is learnt that the said land was lying together and possessed by different persons and used for transportation which has later on formed as a road. An affidavit has been filed by the Executive Engineer, PWD Roads Division stating that land which was pointed out by the petitioner is not located in the said area. It is further stated that construction of the drainage was carried out on the basis of repeated demands of the public for the proper drainage and to avoid flooding in the area. It is further stated that PWD under one time settlement scheme, has undertaken the work along Elukkara-Valayaparambu-Onjithodu road which is connecting Kadungalloor-Kayantinkkara-Elookkara-Alupuram road. According to them, there is no basis for the above contention.

7. Having regard to the fact that there is no material to indicate that the scheme was envisaged in the survey numbers mentioned by the petitioner, this Court cannot sit in judgment over a factual issue by which the petitioner contends that the drainage is not constructed in a public road. From the available materials, the learned Single Judge was justified in observing that the work was being carried out in a public road.

8. Yet another contention urged by the appellant is with reference to the power of attorney issued in favour of one Sri.M.S.Latheef. It is argued that the entire work had been assigned in favour of another person though the work was undertaken by the petitioner in W.P.C.No.25173/2013. A perusal of the power of attorney produced as Ext.R4(b) (W.P.C.No.25173/2013) indicates that the same has been accepted by the concerned Executive Engineer on certain conditions. Learned counsel for the respondents relied upon a portion of the PWD Manual to indicate that it is possible to issue power of attorney.

9. As rightly argued by the learned counsel for the appellant, reading of the power of attorney clearly indicates assignment of the entire work which includes receipt of amounts as well as undertaking the obligation to perform the work awarded. But, the learned counsel for the 4th respondent submits that the Contractor has only subcontracted the work to the 5th respondent. Whether such a procedure is permissible under the PWD manual or not is a matter to be verified by the concerned officers. To what extent can a work be assigned to another person depends upon the conditions of the PWD manual. In so far as sufficient materials are not available in the case on hand to come to a different conclusion, we are not interfering with the award of work in question. However, we observe that when a work is assigned by a Contractor to another person, the concerned officers has to verify whether the assignment is in accordance with the provisions of the PWD manual and whether the power of attorney or other documents executed is in consonance with the terms of contract agreed upon. A

lukewarm attitude in accepting power of attorney cannot be appreciated. However, having regard to the fact that the work has proceeded to a considerable extent, and it is submitted by the learned counsel for the Contractor that the power of attorney does not amount to a complete assignment of the work, we do not feel it necessary to interfere with the judgment.

Hence, we are of the view that no grounds are made out for interference in the appeal and accordingly these appeals are dismissed.

(sd/-)
**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

