

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

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WA.No. 1998 of 2014 IN WP(C).23299/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 23299/2014 DATED

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APPELLANT/NOT PARTY TO THE WRIT PETITION :

ABDUL JABBAR AGED 64 YEARS
S/O. SAINUDHEEN HAJI, IKKARAKUDI HOUSE, U.C.COLLEGE
VELIYATHUNAD KARA, KARUMALLOOR VILLAGE, PARUR TALUK
ERNAKULAM DISTRICT.

BY ADVS.SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ

RESPONDENT(S)/RESPONDENTS/PETITIONER & RESPONDENT IN WPC :

1. LENIN.C.T.
CONVENER, MARIAPPADY JANAKERYA SAMITHI, MARIAPPADY
RESIDING AT CHAKKYATH HOUSE, U.C.COLLEGE P.O., ALUVA
ERNAKULAM-683102.
2. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF PWD, SECRETARIAT
THIRUVANANTHAPURAM-695001.
3. CHIEF ENGINEER
ROADS & BRIDGES, PWD, THIRUVANANTHAPURAM-695001.
4. EXECUTIVE ENGINEER
PWD ROADS DIVISIONS, THRIKKAKARA P.O.
ERNAKULAM-682021.
5. ASSISTANT ENGINEER
PWD BRIDGES SUB DIVISION, NORTH PARAVUR-683513.
6. SECRETARY TO GOVERNMENT
DEPARTMENT OF IRRIGATION, SECRETARIAT
THIRUVANANTHAPURAM-695001.

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7. CHIEF ENGINEER
IRRIGATION AND ADMINISTRATION
THIRUVANANTHAPURAM-695001.
8. EXECUTIVE ENGINEER
PERIYAR VALLEY IRRIGATION PROJECT, DIVISION NO.II
ALUVA-683101.
9. THE DISTRICT COLLECTOR, ERNAKULAM-682030.
10. TAHASILDAR, PARAVUR, ERNAKULAM-683513.
11. THE SECRETARY
KARUMALLOOR GRAMA PANCHAYATH, PARUR TALUK
ERNAKULAM-683511.
12. DEPUTY SUPERINTENDENT OF POLICE , ALUVA-683101.
13. CIRCLE INSPECTOR OF POLICE, ALUVA-683101.

R1 BY ADV. SRI.KALEESWARAM RAJ
R2 TO R13 BY GOVERNMENT PLEADER, SRI.T.P. SAJID

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 1998 OF 2014

Dated this the 5th day of January, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard learned counsel for the appellant. This Writ Appeal has been filed against the judgment dated 22.09.2014 in W.P.(C) No.23299 of 2014. The appellant was not a party to the writ petition, who, with the leave of the Court, has filed the present appeal.

2. The writ petitioner, who is the 1st respondent to this writ appeal, had come up with the writ petition alleging that large scale encroachment is made on the side of the canal. Although the encroachers have been identified, but no action has been taken for removing the encroachment. In the writ petition following reliefs were claimed.

"i. To issue a writ of mandamus directing the respondents to take further action as per Ext.P7 order and to commence and complete the construction of Vayalodan-Vellappanpadi Road (Mariyapadi - Vayalakkad Road) for which administrative sanction has been granted as per Ext.P9 and work order has been issued as per Ext.P10, by evicting the encroacher and thereby ensuring that the road gets sufficient width as originally fixed, i.e. 3.5 - 4.25 meters;

ii. To issue a writ of mandamus directing the respondents 1 to 3 to evict all the encroachments in the property of Periyar Valley Irrigation Project including those whose names are shown in the list attached to Ext.P5."

This Court heard the writ petitioner as well as the State and directions were issued in paragraphs 3 and 4 of the impugned judgment which are quoted below.

"3. In such circumstances, the 9th respondent shall remove the encroacher with the assistance of respondents 11 and 12. They shall provide the necessary police assistance to remove the encroachers.

4. The petitioner apprehends that the P.W.D. Undertaking tarring of the road may leave the encroached portion from tarring unless urgent action is taken. In view of the urgency as expressed, the Tahsildar shall take immediate action in the matter with police aid."

3. It has been submitted that after the judgment dated 22.09.2014, Review Petition No.765 of 2014 has been filed which has been disposed of on 05.11.2014. Paragraph 3 of the order in R.P. No.765 of 2014 reads as follows:

"3. In view of the above, the 8th respondent shall take immediate action to remove the encroachment in accordance with Land Conservancy Act after hearing all other affected parties. It is

made clear that while removing encroachment, the authorities shall scrupulously follow the provisions under the Land Conservancy Act. Needful shall be done within an outer limit of two months from the date of receipt of a copy of this order. Once the objection is overruled and order is passed under the Land Conservancy Act to remove encroachment, the 8th respondent shall intimate the PWD department shall tar the road wherever it is required. It is made clear that any order to be passed under the Land Conservancy Act by the authorities will be subject to the result of any decision of the Civil Court."

4. Learned counsel for the appellant submits that appellant has also filed a civil suit being OS No.1000 of 2014 before the Munsiff's Court, Paravur which is pending consideration. He submits that in the event the petitioner is affected, he can approach the civil court where the suit is pending, otherwise appellant will have to suffer irreparable loss. Paragraph 3 of the order in Review Petition as quoted above, clearly contemplates the action to be taken to remove the encroachment in accordance with law, after hearing all affected parties. This has to be done in accordance with the provisions of Land Conservancy Act and the appellant's apprehension is unfounded that without hearing them, removal of encroachment

order shall be passed. We do not find any infirmity in the judgment of the learned Single Judge as reviewed by order dated 05.11.2014. It is open for the appellant to take such steps as permissible before the authorities concerned and in accordance with the provisions of Land Conservancy Act or to pursue the civil suit in accordance with law. No grounds are made out to interfere with the judgment of learned Single Judge in order to invoke the appellate jurisdiction.

With the above observation, the Writ Appeal is dismissed.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**

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