

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 879 of 2014 (H)

PETITIONER(S)/PETITIONER:

**VARGHESE PALELY, AGED 55 YEARS,
S/O.THOMAS, PALELY HOUSE, THURAVOOR P O
ERNAKULAM DIST**

**BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA**

RESPONDENT(S)/RESPONDENTS:

- 1. THURAVOOR PANCHAYAT
REP BY ITS SECRETARY, THURAVOOR, ERNAKULAM-683572**
- 2. THE EXECUTIVE ENGINEER
LSGD DIVISION, ERNAKULAM , KAKKANAD
KOCHI-30**
- 3. SMT.KOCHUTHRESIA FRANK
MANGATT VEEDU, VADHAKKAD, THURAVOOR P O
ERNAKULAM-683572**
- 4. THE DISTRICT OFFICER
GROUND WATER DEPARTMENT, KAKKANAD, KOCHI-682030**

**R1 BY ADV. DR.K.P.SATHEESAN (SR.)
ADV. SRI.M.R.JAYAPRASAD
ADV. SRI.P.MOHANDAS (ERNAKULAM)**

**R3 BY ADV. C.P.WILSON
ADV. SRI.SMT.K.N.RAJANI
ADV. SRI.PRAVEEN.K.JOY
ADV. SRI.ANIL.S.RAJ**

R4 BY ADV. SR.GOVERNMENT PLEADER MR.RAMAPRASAD UNNI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 879 of 2014 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 :- TRUE COPY OF REPRESENTATION SUBMITTED BY THE
PETITIONER AND OTHER RESIDENTS DTD 4/1/14**
- EXT.P2 :- TRUE COPY ORDER DTD 3/1/2014 ISSUED BY THE 2ND
RESPONDENT**
- EXT.P3 :- TRUE COPY OF THE AGREEMENT DTD 6/1/14 ENTERED
INTO BETWEEN 2ND AND 3RD RESPONDENT**

RESPONDENT(S)' EXHIBITS

- EXT.R3(a) :- TRUE COPY OF THE APPLICATION PREFERRED TO THE
DISTRICT PANCHAYAT DATED 31.12.2013.**
- EXT.R3(b) :- TRUE COPY OF THE ORDER DATED 03.01.2014 OF 2ND
RESPONDENT.**

/TRUE COPY/

PA TO JUDGE

VS

A.M.SHAFFIQUE, J

W.P.(C).No.879 of 2014

Dated this the 25th day of June, 2015

JUDGMENT

The petitioner has approached this Court, seeking to quash Ext.P2 and for a direction to the first respondent to consider and dispose of Ext.P1 representation in consultation with the 4th respondent within a time frame to be fixed by this Court.

2. The facts involved in this writ petition would disclose that the petitioner owns an extent of 12 cents of property adjacent to the property of the 3rd respondent having an extent of 7 Acres. The 3rd respondent is carrying on various agricultural operations. There is a pond situated in the said property. It is stated that there is an irrigation canal adjacent to the aforesaid property and the 3rd respondent had recently dug a bore well in her property lying on the western side of the Panchayat road and has been pumping water to her property. Due to such excessive use of ground water, the level of water in that

area has depleted, which resulted in shortage of drinking water. Ext.P2 is the proceedings of the Executive Engineer, by which permission was granted to cut open the road to lay water supply pipe line. Hence this writ petition.

3. The petitioner submitted Ext.P1 representation to the 1st respondent. It is submitted that unless appropriate measures are taken by the respondent authority, to prevent the unauthorised use of water from the bore well, it will amount to depletion of water sources and accordingly, the people including the petitioner will suffer for want of water for drinking and other purposes.

4. A report is submitted by the Ground Water Department, inter alia stating that the 3rd respondent has one bore well and two open wells in her 7 Acre plot, which is used by her for domestic and irrigation purposes. The irrigation canal adjacent to the area, is active only on a day in three weeks. It is the main source of recharge of the dug wells in the area. Further, it is submitted that interference of pumping bore well to the nearby domestic

dug wells and surrounding ground water aquifer can be assessed only in the peak summer months, starting from January onwards. For that, an yield test has to be conducted in the bore well of 3rd respondent.

5. Counter affidavit has been filed by the second respondent stating that only one order was passed on 03.01.2014. Ext.R3(b) is the original copy of the order issued to the 3rd respondent, who made application to cut open the road. The application made by the 3rd respondent was forwarded by the 1st respondent to the 2nd respondent and the request was allowed. The petitioner in the writ petition made an application to the Information Officer attached to the 2nd respondent's office and Ext.P2 is the copy of the order issued to the petitioner. The Information Officer by mistake issued the draft copy of the order to the petitioner which is produced as Ext.P2. It is stated that Ext.P2 is the same in substance as in Ext.R3(b). According to the respondent, Ext.R3(b) is the actual order issued in favour of the 3rd respondent.

6. Counter affidavit has been filed by the 3rd

respondent producing Exts.R3(a) and R3(b), it is stated that the water is being pumped for irrigation purposes and the same has been permitted by the competent authority. It is also stated that it is not a notified area, and permission is not required under the Kerala Ground Water (Control and Regulation) Act, 2002 (hereinafter referred to the 'Act' for short). Further the 3rd respondent submits that he is using only a 1 HP motor for irrigation of nutmeg plants for which permission of authorities is not necessary, even if the area is notified. He also denied the fact that there is depletion of water source.

7. Having regard to the aforesaid facts and circumstances, it is clear that the area is not notified under the Act. There is no necessity to obtain permission for constructing up a bore well. Further the request of the 3rd respondent to cut across the road for laying pipe line was for the purpose of drawing water to the other property, which is used for agricultural purpose. Since the 3rd respondent is using the water for agricultural purposes, it cannot be stated that there will be depletion of water in

the nearby locality. Further, even according to the Ground Water Department, the area is fed by an irrigation canal, where the water source is very minimum and therefore, the 3rd respondent will have no other method of irrigating her land, other than by using the water source from her own property. Under such circumstances, it is not open for the petitioner to challenge the permission granted in terms of Ext.R3(b). There is no illegality in Ext.R3(b).

8. A further request has been made by the petitioner that the representation of Ext.P1 has to be considered. In so far as the 1st respondent has no say in the matter and it is not a notified area in terms with the Act, I do not think that the representation of the petitioner can serve any purpose at all.

Under such circumstances, there is no merit in this writ petition and accordingly it is dismissed.

Sd/-
A.M.SHAFIQUE
JUDGE

VS