

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 1014 of 2015 (B)

PETITIONER(S):

**NAZARULLAKHAN T.P., AGED 53 YEARS,
S/O.A. PICHA MOHAMMED RAWTHER,
R/AT THEVALA THEKKETHIL, MANGARAM,
PANDALAM. P.O., ADOOR TALUK,
PATHANAMTHITTA DISTRICT, PIN-689 501.**

**BY ADVS.SMT.T.S.MAYA (THIYADIL),
SRI.P.Y.AHAMMED PHYSI.**

RESPONDENT(S):

- 1. DISTRICT SURVEY SUPERINTENDENT,
PATHANAMTHITTA DISTRICT, PIN-689 501.**
- 2. PANDALAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
PANDALAM. P.O., PIN-689 501.**
- 3. NEELAKANDAN K.S., S/O.SANKARAN,
PUSHPAMANGALAM, MANGARAM MSM P.O.,
PANDALAM, PIN-689 516.**
- 4. RETNAMONY SURENDRAN, AGED 56 YEARS,
W/O.SURENDRAN, R/AT SURABHI, PULIKUZHIL,
MANAGAM, MSM P.O., PANDALAM,
PATHANAMTHITTA DISTRICT, PIN-689 516.**

**R1 BY GOVT. PLEADER SRI.K.C. VINCENT.
R2 BY ADV. SRI.K.R.RADHAKRISHNAN NAIR.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 1014 of 2015 (B)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- THE COPY OF THE JUDGMENT IN WP(C).NO.7319/2012 OF THE HON'BLE HIGH COURT DATED 12.04.2012.
- P2- THE COPY OF THE REPORT FILED BY THE VILLAGE OFFICER PANDALAM DATED 09.12.2013.
- P3- THE COPY OF NOTICE ISSUED BY THE PANDALAM GRAMA PANCHAYAT TO THE PETITIONER DATED 13.05.2014.
- P4- THE COPY OF THE STAY ORDER OF THE TRIBUNAL DATED 27.05.2014.
- P5- THE COPY OF THE JUDGMENT IN WP(C).NO. 13802/2014 DATED 09.06.2014.
- P6- THE COPY OF THE NOTICE ISSUED BY THE 1ST PETITIONER TO THE PETITIONER DATED 29.08.2014.
- P7- THE COPY OF THE NOTICE ISSUED BY THE 1ST PETITIONER TO THE PETITIONER DATED 20.12.2014.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 1014 of 2015

Dated this the 27th day of January, 2015

JUDGMENT

The petitioner has approached this Court seeking for a direction to be given to the 1st respondent to stop all proceedings as per Ext.P7 notice in connection with the measurement of re-survey number 267/10,3 which according to the petitioner is only to harass the petitioner, at the instance of the respondents 3 and 4.

2. The petitioner is having 9.5 cents of land in Sy. No. 267/10 of Pandalam Village having obtained the same as per Settlement Deed No. 1359/2004 of Pandalam SRO. On approaching the 2nd respondent local authority, for effecting some construction, necessary building permit was issued. But subsequently, it was cancelled alleging that the building had encroached into the property in Sy.No.267/3, which is a land belonging to the Panchayath, where a Homoeo hospital is situated.

2. Being aggrieved of the same, the petitioner approached

the Tribunal for Local Self Government Institution by way of Appeal No. 196/2012, which was disposed of directing the Secretary of the Panchayath to reconsider the matter. The application preferred by the petitioner was turned down, against which the petitioner approached the Tribunal again by way of Appeal Nos. 1020/2012 and 340/2013. It is stated that, in the course of further proceedings, including the direction given by this Court as per W.P.(C) Nos. 16183/2012 and 26862/2013, steps were taken and the construction effected by the petitioner stands regularized by the local authority.

3. Now, it is the turn for the police to trouble the petitioner at the instance of respondents 3 and 4. This made the petitioner to approach this Court by way of W.P.(C). No. 7319/2012. Recording the undertaking given from the part of the respondents, the said writ petition was disposed of as per Ext.P1 judgment.

4. It is stated that, in the course of further proceedings, the 2nd respondent caused measurement of the property with the help of the Taluk Surveyor and found that there was no encroachment into the Panchayath or Puramboke property.

Ext.P2(2) is the report dated 9.12.2013 of the Additional Tahsildar, Adoor in this regard, in favour of the petitioner.

5. The pleadings of the writ petition reveal that, there was yet another exercise by the 2nd respondent Panchayath alleging encroachment and Ext.P3 notice dated 13.05.2014 was issued to the petitioner. The petitioner filed a detailed objection. But without any regard to the same, the 2nd respondent proceeded to demolish a portion of the building constructed, which made the petitioner to file appeal before the Tribunal, wherein Ext.P4 interim order of stay was passed on 27.05.2014. It was thereafter that the respondents 2 and 3 allegedly influenced the police and harassed the petitioner, driving the petitioner to file W.P.(C). No. 13802/2014, which was disposed of as per Ext.P5 judgment dated 09.06.2014 (to which I was also a member), recording the submission of the police that, they did not intend to interfere with the matter any more and that, the aggrieved party had to approach the Civil Court, if at all any sustainable cause of action was there. It is stated that the appeal is still pending before the Tribunal.

6. Yet another notice was issued by the 2nd respondent vide

Ext.P6 dated 29.8.2014, in response to which the petitioner has filed detailed objection. It is also pointed out that, the petitioner has approached the competent Civil Court against the 3rd and 4th respondents who are the adjacent property owners and the said civil suit is also pending. The petitioner is stated as aggrieved of the notice dated 20.12.2014 given by the concerned respondent, informing about an inspection of the concerned property scheduled on 06.01.2015 as to the alleged encroachment. This made the petitioner to approach this Court with the following prayer:

“Issue a writ of mandamus, order or direction to the 1st respondent direct him to stop all proceedings against Ext.P7 notice in connection with measurement of resurvey 267/10,3 with immediate effect and direct them to hear the petitioner before taking any decision regarding that.”

7. Despite the completion of service of notice on admission by special messenger, there is no representation either for the Panchayath or for the party respondents. The learned Government Pleader points out that, pursuant to Ext.P7 notice issued by the Panchayath, survey was conducted at the instance of Panchayath, who had preferred a complaint alleging

encroachment. The survey conducted revealed that there was no encroachment in Sy.No. 267/3 which is the Panchayath land, and that the petitioner is entitled to enjoy the property comprised in Sy.No. 267/10 which belongs to him. It is stated that the fixation of boundaries by the Tahsildar does not suffer from any infirmity.

In the said circumstance, this Court finds that there cannot be any sustainable cause of action for respondents 2 to 4 against the petitioner. The writ petition is disposed of as above.

**P.R. RAMACHANDRA MENON,
JUDGE.**

kp/-