

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 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 1033 of 2015 (D)

PETITIONER(S):

ANSARI.Y AGED 38 YEARS
S/O. YUSUF RAWTHER, WHITE HOUSE, MANGARAM
PANDALAM.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT(S):

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1. DISTRICT POLICE CHIEF
DISTRICT POLICE CHIEF OFFICE
PATHANAMTHITTA- 689 645.
 2. INSPECTOR OF POLICE
CIRLCE OFFICE, PANDALAM- 673 571.
 3. SUB INSPECTOR OF POLICE,
PANDALAM POLICE STATION, PANDALAM- 673 571.
 4. BINU KUMAR,
GENERAL SECRETARY, BHARATHIYA JANATHA PARTY
PANDALAM PANCHAYATH KARIYALAYAMM, PANDALAM -673 571.
 5. UDAYACHANDRAN,
PRESIDENT, BHARATHIYA JANATHA PARTY
PANDALAM PANCHAYATH KARIYALAYAMM, PANDALAM -673 571.

R1-3 BY SR. GOVERNMENT PLEADER SRI. C.R. SYAMKUMAR
R4-R5 BY ADV. SRI.P.HARIDAS
R4-R5 BY ADV. SRI.P.C.SHIJIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE SALE DEED

EXHIBIT-P1(A)-TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P1

EXHIBIT-P2-TRUE COPY OF THE EXTRACT OF THANDAPER ACCOUNT

EXHIBIT-P2(A)-TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P2.

EXHIBIT-P3-TRUE COPY OF THE REPORT OF THE VILLAGE.

EXHIBIT-P3(A)-TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P3

EXHIBIT-P4-TRUE COPY OF THE PERMIT ISSUED BY THE GEOLOGIST.

EXHIBIT-P4(A)-TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P4.

EXHIBIT-P5-TRUE COPY OF THE COMPLAINT FILED BEFORE THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS

EXHIBIT-R4(a)- TRUE COPY OF THE COMPLAINT OF THE PETITIONER DATED JANUARY 2015 WITH ENGLISH TRANSLATION.

EXHIBIT-R4(b)- TRUE COPY OF THE LATEST PETITION DATED 20.01.2015

EXHIBIT-R4(c)- TRUE COPY OF THE PHOTOGRAPH SHOWING THE PROPERTY OF THE PETITIONER AND ENCROACHMENT.

// TRUE COPY //

P.A. TO JUDGE

sou.

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

W.P.(C). No. 1033 of 2015

Dated this the 22nd day of January, 2015

J U D G M E N T

Shaffique, J

Petitioner has approached this court seeking police protection for removing the earth from the property situated in survey No.288/5-2 and for depositing the same in property situated in Block No.111/9535, Re-Survey No.62/13 of Pandalam Village.

2. According to the petitioner, he is the owner in possession of an extent of 6.35 ares of property in Re-survey No.62/13 of Pandalam Village, which was obtained by Sale Deed No.2611/14. Ext.P4 is the permit issued by the Geologist, permitting removal and deposit of sand as aforesaid subject to certain conditions therein.

3. The petitioner complains that fourth and sixth respondents objected to the filling up of the said land, which he is doing only for the purpose of raising the level of the land. The

fourth and fifth respondents have no right to do so and to prevent their illegal acts, a complaint has been filed before the Police to render necessary assistance for carrying on the filling operation as per Ext.P4. Since Police has not taken any action, he has approached this Court by filing the writ petition.

4. Counter affidavit has been filed by fourth and fifth respondents inter alia stating that the property involved is wet land. The petitioner encroached into certain puramboke land, and the intention of the petitioner is to fill up the wet land. That apart, respondents submits that they have already preferred a complaint before the Revenue Divisional Officer and the matter is pending consideration before the said authority.

5. Learned Government Pleader on instructions submits that the petitioner is entitled to transport sand only in the vehicles which were specified in the permit. A crime has been registered when another vehicle was being used for removing sand.

6. Having regard to the aforesaid factual situation, the question to be considered is whether fourth and fifth respondents have any right to obstruct the removal of sand and

filling the same in the property of the petitioner covered by Ext.P4 permit. Though it is contended by the fourth and fifth respondents that the property is wet land, on a reference to Ext.P3 dated 23.12.2014 issued by the Village Officer to the Geologist, it is evident that as per the Basic Tax Register the property is described as dry land. It is argued by learned counsel for the petitioner that the private respondents are unnecessarily creating obstructions. The petitioner's intention is only to raise the level of the land and not to filling of wet land or paddy land.

7. Under such circumstances, the fourth and fifth respondents have no right to obstruct the filling up of land by the petitioner. Since the fourth and fifth respondents have already moved the Revenue Divisional Officer, orders passed in this police protection matter will be subject to orders to be passed by the Revenue Divisional Officer in this regard.

8. Having regard to the fact that presently there is no restriction imposed for proceeding with the removal of earth, we direct the third respondent to ensure that no physical obstruction is caused to the petitioner in the matter relating to filling up of land covered by Ext.P4 permit. Police is bound to ensure

maintenance of law and order in the area. This order of police protection will however be subject to further orders, if any, passed by the Revenue Divisional Officer in this regard.

Sd/-
**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE**

Sd/-
**A.M.SHAFFIQUE,
JUDGE.**

sou.