

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. 1501 of 2015 (K)

PETITIONER(S) :

- 1. KUTTIKRISHNAN P,
SON OF LATE P. LAKSHMIKUTTIAMMA
AGED 62 YEARS**
- 2. KANAKALATHA,
WIFE OF M. GOPINATH, AGED 61 YEARS
PETITIONERS ARE PERMANENTLY RESIDING AT POLLEKKAT HOUSE
PULINELLI P.O., KOTTAYI, PALAKKAD**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S) :

- 1. THE ASSISTANT EXECUTIVE ENGINEER,
MALAMPUZHA PROJECT, LEFT BANK CANAL SUBDIVISION
PALAKKAD – 678 001.**
- 2. THE ASSISTANT ENGINEER,
IRRIGATION DEPARTMENT, MALAMPUZHA CANALS SECTION
MATHUR, PALAKKAD DISTRICT, PIN 678571.**

R1 & R2 BY SR. GOVT. PLEADER SRI. JOSEPH GEORGE

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

Mn

WP(C).No. 1501 of 2015 (K)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT-P1: A TRUE COPY OF THE SALE DEED NUMBER 209 OF 1959 OF THE SRO PARLI.**
- EXHIBIT-P2: A TRUE COPY OF THE DEED NUMBER 210 OF 1959 OF THE SRO PARLI.**
- EXHIBIT-P3: A TRUE COPY OF THE NOTICE DATED MARCH 18, 2014 ISSUED BY THE SECOND RESPONDENT.**
- EXHIBIT-P4: A TRUE COPY OF THE REPLY DATED MARCH 24, 2014 SENT BY THE SECOND PETITIONER IN RESPOSE TO EXHIBIT-P3.**
- EXHIBIT-P5: A TRUE COPY OF THE NOTICE DATED DECEMBER 1, 2014 ISSUED BY THE FIRST RESPONDENT TO THE SECOND PETITIONER.**
- EXHIBIT-P6: A TRUE COPY OF THE REPLY DATED DECEMBER 19, 2014 SUBMITTED BY THE SECOND PETITIONER IN RESPONSE TO EXHIBIT-P5.**
- EXHIBIT-P7: A TRUE COPY OF THE ORDER DATED JANUARY 1, 2015 ISSUED BY THE FIRST RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.1501 OF 2015

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Dated this the 27th day of January, 2015

JUDGMENT

The petitioners have approached this Court by challenging the correctness and propriety of Ext.P7, whereby the 2nd petitioner has been required to effect surrender of the alleged extent of encroachment into the Government property and also to remove the temporary fencing which is stated as effected by the petitioner to safeguard her property.

2. The learned counsel for the petitioner points out that the petitioner is having every right to enjoy the property covered by Exts.P1 and P2 sale deeds. Pursuant to Ext.P3 notice issued by the 2nd Respondent, alleging encroachment and such other incriminating circumstances, the 2nd petitioner submitted Ext.P4 reply. This was followed by Ext.P5 notice dated 01.12.2014 issued by the 1st respondent to the 2nd petitioner, who submitted Ext.P6 reply pointing out the actual facts and figures. However, without any regard to the nature of contentions raised by the petitioner, Ext.P7 has been issued, which *per se* wrong and unsustainable and hence under

challenge. It is also stated that no encroachment has been committed by the petitioner at any point of time and that the petitioner has never been served with any notice or order under the relevant provisions of the Land Conservancy Act.

3. Heard the learned Government Pleader as well, who points out that the factum of construction of fence was admitted by the 2nd petitioner in Ext.P6 reply. But the stand of the 2nd petitioner as reflected from paragraph 6 is to the effect that, the steps taken by the said petitioner were only to protect the property of the petitioner, that too, by way of temporary fencing effected at the entry of the canal and that the petitioner is ready to have it removed at any time, if water is caused to be flown through the canal, for the benefit of the beneficiaries concerned. It is also pointed out that the petitioner is ready to clean the canal and to cause necessary steps for the free flow of water through the canal at her expense and that if the property of the petitioner at the relevant spot is left open, there is every chance for cattle and others to enter into the property and do mischief.

4. After hearing both the sides, this Court finds that no proceeding has been served to the petitioner at any point of time with regard to the alleged encroachment, if at all any. In such circumstances, the concerned respondents are set at liberty to issue notice under the relevant provisions of the Land Conservancy Act or such other enactment as relevant, and it will be open for the petitioners to defend the case. Without prejudice to the rights and liberties in this regard, the writ petition is disposed of.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

//true copy//

P.S. To Judge

St/-