

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No.1598 of 2015 (Y)

PETITIONERS :

1. C.N.RADHAKRISHNAN, AGED 49 YEARS,
S/O.NARAYANAN, PUTHENVELI, WARD NO.6,
MUHAMMA.P.O., ALAPUZHA DISTRICT, PIN: 688 525.
2. C.V.INDULAL,
S/O.VASU, CHIREVELI, WARD NO.5,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
3. C.K.PUSHKARAN,
S/O.KUMARAN, MANIYIL, WARD NO.6,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
4. P.K.SUGATHAN,
S/O.KOCHUNANU, PUTHENVELI, WARD NO.6,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
5. C.K.THILAKARAJ,
S/O.KUMARAN, MANIYIL, WARD NO.6,
MUHAMMA.P.O., ALAPUZHA DISTRICT, PIN: 688 525.
6. P.K.MAHIDHARAN, S/O.KOCHUKUTTY,
VATTATHARA, WARD NO.6, MUHAMMA P.O.,
ALAPUZHA DISTRICT, PIN: 688 525.
7. P.K.SURENDRAN,
S/O.KOCHUKUTTY, PUTHUVELIKKAL, WARD NO.6,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
8. P.K.SASI,
S/O.KOCHUKUTTY, PUTHUVELIKKAL, WARD NO.6,
MUHAMMA.P.O., ALAPUZHA DISTRICT, PIN: 688 525.
9. N.K.VELAYUDHAN,
S/O.KUNHACHAN, PERUGAZHIYIL, WARD NO.5,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.

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10. SINDHU.P.R.,
D/O.RADHA, PUTHUVELIL, WARD NO.6,
MUHAMMA.P.O., ALAPUZHA DISTRICT, PIN: 688 525.
11. KARTHYAYANI.V.K.,
D/O.KESHAVAN,
VATTATHARA, WARD NO.6, MUHAMMA P.O.
ALAPUZHA DISTRICT, PIN: 688 525.
12. SANTHOSH P.R.,
S/O.RADHA, PUTHUVELIL, WARD NO.5,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
13. BABU, S/O.KARTHYAYANI,
PEEDIYAKKAL, WARD NO.5, MUHAMMA P.O.,
ALAPUZHA DISTRICT, PIN: 688 525.
14. C.C.MOHANAN,
S/O.CHINNAPPAN, KALATHIL, WARD NO.5,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
15. C.V.ANIL KUMAR,
S/O.VIDHYADHARAN, VADAKKEPARAMBU, WARD NO.6,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
16. SHAJI.P.R.,
S/O.RAGHAVAN, THONIPURAKKAL, WARD NO.6,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
17. V.V.UDAYANANDAN, S/O.VAVACHAN,VATTATHARA,
WARD NO.6, MUHAMMA P.O., ALAPUZHA DISTRICT,
PIN: 688 525.
18. P.S.RAJESH,
S/O.SIVARAMAN, PUTHENVELI, WARD NO.6,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
19. V.K.RAMANAN, S/O.KOCHAYYAN,
VATTATHARA, WARD NO.6, MUHAMMA P.O.
ALAPUZHA DISTRICT, PIN: 688 525.
20. N.K.SHARNGAN,
S/O.KUNHACHAN, PERUNGIZHAYIL, WARD NO.5
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.
21. V.K.GOPI,
S/O.KUCHAYYAN, VATTATHARA, WARD NO.6,
MUHAMMA P.O., ALAPUZHA DISTRICT, PIN: 688 525.

BY ADVS.SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SRI.ROVIN RODRIGUES

RESPONDENTS :

1. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM – 695 001.
2. THE DISTRICT COLLECTOR,
COLLECTORATE, ALAPPUZHA DISTRICT – 688 525.
3. MUHAMMA GRAMA PANCHAYAT,
REP. BY SECRETARY, ALAPPUZHA DISTRICT – 688 525.
4. THE TAHSILDAR,
CHERTHALA TALUK, ALAPPUZHA DISTRICT – 688 524.
5. THE SUB INSPECTOR OF POLICE,
MUHAMMA POLICE STATION, MUHAMMA P.O.,
ALAPPUZHA – 688 525.
6. SOMANATHAN T.R.,
S/O.LATE KRISHNAN,
RESIDING AT USHA NIVAS (THAIMATTATHIL)
MUHAMMA P.O. , ALAPPUZHA DISTRICT, PIN: 688 525.

Addl.R7 :-

THE COMMISSIONER OF LAND REVENUE,
PUBLIC OFFICE BUILDINGS,
THIRUVANANTHAPURAM – 695 033.

(Additional 7th respondent is suo moto impleaded as per judgment dated 31.3.2015)

R6 BY ADV. SRI.A.JAYASANKAR
R6 BY ADV. SRI.C.V.MANUVILSAN
R6 BY ADV. SRI.MANU GOVIND
R3 BY ADV. SRI.J.OM PRAKASH
BY SR.GOVERNMENT PLEADER SRI.MOHAMMED SHAFI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS :-

P1: TRUE COPY OF THE REPORT SUBMITTED BY THE ADDITIONAL TAHSILDAR BEFORE RESPONDENT NO.2, DISTRICT COLLECTOR, ALAPPUZHA, DT: 25/02/2013.

P2: TRUE COPY OF THE JUDGMENT IN WPC NO.17413/2013, DT: 26/7/2013.

P3: TRUE PHOTOGRAPH SHOWING THE BRIDGE AND BOAT JETTY CONSTRUCTED BY RESPONDENT NO.6.

P4: TRUE PHOTOGRAPH SHOWING THE BRIDGE AND BOAT JETTY CONSTRUCTED BY RESPONDENT NO.6.

P5: TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONERS AND OTHERS TO RESPONDENT NO.2, DISTRICT COLLECTOR, DT: 11/02/2014.

P6: TRUE PHOTOGRAPH SHOWING THE SMALL WOODEN POLES PLACED BY THE PETITIONERS IN THE SHALLOW AREA OF LAKE FOR TYING COUNTRY BOATS.

P7: TRUE COPY OF THE ORDER NO.65073/2012/C4, DT: 22/02/2014 PASSED BY RESPONDENT NO.2.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDHAN, J.

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Dated this the 31st day of March, 2015

JUDGMENT

According to the petitioners, they are persons who are earning their livelihood by collecting 'clams' from Vembanad lake. The petitioners have approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P7 order dated 22.2.2014 passed by the second respondent and for a writ of mandamus commanding the third respondent to demarcate parking area convenient for the petitioners to park their country boats and till such time not to disturb the parking of their country boats on the banks of Vembanad lake.

2. A counter affidavit has been filed by the 6th respondent contending, inter alia, that the present writ petition is not maintainable before this Court, under Article 226 of the Constitution of India, since Ext.P7 is an order appealable under Sub-section (3) of Section 16 of the Kerala Land Conservancy Act, 1957, and that, if the petitioners are aggrieved by Ext.P7 they have to approach the appellate authority provided under the said Act.

3. I heard the arguments of the learned counsel for the petitioners, learned Senior Government Pleader appearing for the official respondents and also the learned counsel appearing for the 6th respondent.

4. By Ext.P7 order, the District Collector, Alappuzha, the 2nd respondent herein, has directed the petitioners to remove the wooden/concrete poles erected in Vembanad lake for tying their country boats. It is not in dispute that, Ext.P7 order is one passed by the 2nd respondent in exercise of his powers under Section 11 of the Kerala Land Conservancy Act, 1957 (hereinafter referred to as 'the Act' only). As per Sub-section (3) of Section 16 of the Act, any person aggrieved by any decision or order of the Collector under the Act (otherwise than on appeal or revision) may appeal to the Board of Revenue (presently the Commissioner of Land Revenue), and that appellate authority may pass such order on the appeal as it thinks fit. Going by Sub-section (7) of Section 16 of the Act, pending disposal of such an appeal, the appellate authority may suspend the execution of the decision or order appealed against.

5. Section 17 of the Act prescribes the period of limitation for filing such an appeal and as per Sub-section (1) of Section 17 of the Act, no appeal or revision shall be preferred under Section 16 of the Act, after the expiration of thirty days from the date on which the decision or order appealed against was received by the appellant. But, going by Sub-section (2) of Section 17 of the Act, notwithstanding anything contained in Sub-section (1), the appellate authority may admit an appeal preferred after the period specified in that sub-section, if such authority is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

6. Since Ext.P7 order passed by the second respondent is an order appealable under Sub-section (3) of Section 16 of the Act, I find absolutely no grounds to entertain the present writ petition filed by the petitioners invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. If the petitioners are aggrieved by Ext.P7 order passed by the 2nd respondent dated 22.2.2014, they will have to invoke the statutory remedy provided under Sub-section (3) of Section 16 of the Act, by filing an appeal before the Commissioner of Land Revenue.

7. The Commissioner of Land Revenue, Public Office Buildings, Thiruvananthapuram-695 033, is suo moto impleaded as additional 7th respondent in this writ petition. The learned Senior Government Pleader takes notice for the additional 7th respondent.

8. In such circumstances, without expressing anything on the merits of the rival contentions raised by both sides, this writ petition is disposed of, relegating the petitioners to avail the statutory remedy of appeal under Sub-section (3) of Section 16 of the Act, against Ext.P7 order passed by the 2nd respondent dated 22.2.2014. If the petitioners are moving an appeal before the additional 7th respondent, under Sub-section (3) of Section 16 of the Act, against Ext.P7 order passed by the second respondent dated 22.2.2014, within a period of one month from the date of this judgment, along with a petition for condonation of delay under Sub-section (2) of Section 17 of the Act, the additional 7th respondent shall consider and pass appropriate orders on that petition and appeal (if the delay is condoned), strictly in accordance with law, after affording an opportunity of personal hearing to the petitioners and the 3rd and 6th respondents. The Additional 7th respondent shall

pass orders, as directed above, as expeditiously as possible, at any rate, within a period three months from the date of filing of such an appeal along with a petition for condonation of delay.

9. By order dated 16.1.2015, this Court stayed all further proceedings in Ext.P7 order passed by the second respondent dated 22.2.2014, initially for a period of one month, which order was extended for a further period of two months, by order dated 13.2.2015. The said interim order shall continue to be in force for a further period of two months from the date of this judgment, so as to enable the petitioners to move an application before the additional 7th respondent, under Sub-section (7) of Section 16 of the Act, to suspend the execution of Ext.P7 order appealed against, pending disposal of that appeal. If any such application is moved, the additional 7th respondent shall pass appropriate orders thereon within a period of two months from the date of this judgment, with notice to the 3rd and 6th respondents.

No order as to cost.

ANIL K.NARENDHAN, JUDGE

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