

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 1902 of 2014 (K)

PETITIONER(S) :-

SARASWATHY AMMA, AGED 58 YEARS
W/O. APPUKUTTAN PILLAI, SARASWATHY NIVAS
CHEMMAKKADU.P.O., PANAYAM VILLAGE, KOLLAM DISTRICT.

BY ADVS.SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER

RESPONDENT(S) :-

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
WATER RESOURCES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. KERALA WATER AUTHORITY
REPRESENTED BY ITS MANAGING DIRECTOR, JALA BHAVAN
VELLAYAMBALAM, THIRUVANANTHAPURAM-695033.
3. THE DISTRICT COLLECTOR, KOLLAM.
4. THE ASSISTANT EXECUTIVE ENGINEER
P.H. SUB DIVISION, KERALA WATER AUTHORITY, KOLLAM.
5. RADHAMANIAMMA, AGED 65,
D/O. KARTHIYAYANI AMMA, MUKALUVILA VEEDU
CHEMMAKKAD.P.O., PANAYAM, KOLLAM-691603.

R5 BY ADV. SRI.P.PRIJITH

SRI.THOMAS P.KURUVILLA

R1 & R3 BY SR.GOVERNMENT PLEADER SRI.MOHAMMED SHAFI

R2 & R4 BY SRI.GEORGE MATHEW, SC, KWA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

WP(C) .No. 1902 of 2014 (K)

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXT.P1. THE TRUE COPY OF THE JUDGMENT DATED 28-10-2010 IN OS 700/2008 OF THE PRINCIPAL MUNSIFF COURT, KOLLAM.

EXT.P2. THE TRUE COPY OF THE JUDGMENT DATED 16-2-2012 IN AS 275/2010 OF THE III ADDITIONAL DISTRICT JUDGE, KOLLAM.

EXT.P3. THE TRUE COPY OF THE JUDGMENT DATED 19-7-2012 IN RSA 917/2012 OF THE HON'BLE HIGH COURT OF KERALA.

EXT.P4. THE TRUE COPY OF THE ORDER DATED 1-7-2013 IN SLP(C) 30778/2012 OF THE HON'BLE SUPREME COURT OF INDIA.

EXT.P5. THE TRUE COPY OF THE WATER CONNECTION WORK ORDER DATED 11-12-13 ISSUED BY THE 3RD RESPONDENT.

EXT.P6. THE TRUE COPY OF THE NOTICE DATD 9-12-13 ISSUED BY THE 3RD RESPONDENT.

EXT.P7. THE TRUE COPY OF THE OBJECTION DATED 16-12-13 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.P8. THE TRUE COPY OF THE COMPLAINT DATED 17-12-13 FILED BEFORE THE 3RD RESPONDENT.

EXT.P9. THE TRUE COPY OF THE LETTER DATED 19-12-13 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S) ' EXHIBITS :-

EXT.R5(a) : TRUE COPY OF PLAINT IN O.S.No.700 OF 2008 OF MUNSIFF'S COURT, KOLLAM.

EXT.R5(b) : TRUE COPY OF DECREE DATED 16.2.2012 IN A.S.No.275 OF 2010 OF IIIRD ADDITIONAL DISTRICT JUDGE, KOLLAM.

EXT.R5(c) : TRUE COPY OF NOTICE DATED 25.8.2008 ISSUED FROM COLLECTORATE.

EXT.R5(d) : TRUE COPY OF NOTICE DATED NIL ISSUED FROM TALUK OFFICE, KOLLAM.

//TRUE COPY//

P.A. TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J.

W.P (C) No.1902 of 2014

Dated this the 8th day of January, 2015

J U D G M E N T

Heard the learned counsel for the petitioner.

2. The petitioner and the 5th respondent had fairly dragged on civil litigation, in which, the petitioner got a decree in her favour from the first appellate court. That was one declaring easement right by prescription over a parcel of land and protecting her right for user of that parcel of land for ingress and egress. That decree stands affirmed by the Honourable Supreme Court. Thereafter, the Kerala Water Authority, 'KWA' for short, took up the application of the petitioner and granted a water connection work order, in terms of which, it is stated that water supply was effected on 19.11.2013. The work was carried out by laying the water supply line through the afore-noted parcel over which the right of easement by prescription was declared by the civil court. Taking the stand that what was declared ultimately and granted as per the decree was right of ingress and egress, the 5th respondent objected to the water connection given by the

KWA. The immediate reaction of the local officer of the KWA was to effect disconnection. This situation obviously shows that the KWA never considered any objection of the 5th respondent before laying the line. Nor did it even notify the petitioner or issue any notice to show cause calling upon the writ petitioner as to why the connection shall not be closed down.

3. In the aforesaid fact situation, admitting the writ petition at the instance of the petitioner, this Court granted an interim order to effect reconnection provisionally and subject to the result of the writ petition.

4. Going by the afore-noted facts, what falls for consideration pointedly is the applicability of Section 53 of the Kerala Water Supply and Sewerage Act, 1986. The sweep of that section empowers the competent authorities and officers of the KWA to do such things as are required to carry out the purpose of that Act or any Rule or Regulation made thereunder, along with different other enumerated matters contained in that section. The Chairman of the KWA is conferred with power to decide on a dispute in case of any question arising as to compensation, its sufficiency or

-: 3 :-

otherwise. Therefore, the practical approach that can be adopted at this point of time is for the 4th respondent to refer the case in hand to the Chairman of the KWA, who shall determine as to what is the compensation, if any, to be paid, by the petitioner to the 5th respondent to continue with the supply of water through the pipe line that has been put for the purpose of effecting supply to the petitioner. The 4th respondent will make such reference to the Chairman of the KWA within a period of three weeks from the date of receipt of a copy of this judgment and thereupon, the Chairman's Office will issue notice of hearing to the petitioner and the 5th respondent and the Chairman may, either by himself or through a duly authorised delegate, extend an opportunity of personal hearing to the petitioner and the 5th respondent. Thereupon, the Chairman will decide on the dispute in terms of sub section (2) of Section 53 of the Kerala Water Supply and Sewerage Act, 1986 and communicate the decision to the petitioner and the 5th respondent within a period of three months. The parties will have to abide by such decision and the petitioner will make such payment to the 5th respondent as may be determined by the Chairman of the KWA within a

-: 4 :-

period of one month from the date of receipt of the decision of the Chairman.

The writ petition is ordered accordingly without expressing anything on the merits of the rival claims as regards the question of compensation that has to be considered by the Chairman, KWA. The temporary connection now granted in terms of the interim order will continue to hold and will be finalised as may be directed by the Chairman, KWA.

**Sd/-
THOTTATHIL B. RADHAKRISHNAN
JUDGE**

Jvt