

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 1747 of 2015 (P)

PETITIONER(S) :-

KUNNAMPALLI UNNIKRISHNAN, AGED 42 YEARS
S/O.SAROJINI AMMA, KOTTAKUNNU
PUNNAPPALA (PO) NILAMBUR TALUK.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.DILIP

RESPONDENT(S) :-

1. THE STATE OF KERALA
REP.BY THE SECRETARY TO THE GOVT., HOME DEPARTMENT
GOVT. SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. THE SUPERINTENDENT OF POLICE
S.P.OFFICE, DISTRICT POLICE OFFICE, UP HILL, MALAPPURAM - 676 505.
3. THE CIRCLE INSPECTOR OF POLICE, NILAMBUR POLICE STATION - 676 542.
4. THE SUB INSPECTOR OF POLICE, NILAMBUR POLICE STATION - 676 542.
5. THE SECRETARY, MAMPAD GRAMA PANCHAYAT, MAMPAD (P.O)
MALAPPURAM DISTRICT, PIN-676 542
6. SULFIKKAR, S/O.KUNHI MUHAMMAD, MALIYEKKAL HOUSE
VEEMBUNGAL, MAMPAD (PO), MALAPPURAM DISTRICT - 676 542.

ADDL.7.M.R.SUBRAMANIAN, S/O.VALIYA RAMAN, AGED 42 YEARS,
MUNDAMTHODIKA HOUSE, PULLIPADAM, MALAPPURAM DISTRICT.

ADDL.R7 IS IMPEADED AS PER ORDER DATED 6.4.2015 IN I.A.No.4683/2015.

R5 BY ADV. SRI.P.VENUGOPAL (1086/92)
ADDL.R7 BY ADV. SRI.BABU S. NAIR
R1 TO R4 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXT.P1 - A TRUE COPY OF A SURVEY PLAN SHOWING THE PROPERTY OF THE PETITIONER DATED NIL.

EXT.P2 - A TRUE COPY OF THE PHOTOGRAPHS SHOWING THE ENCROACHMENT MADE BY THE 6TH RESPONDENT DURING THE YEAR 2013 DATED NIL.

EXT.P3 - A TRUE COPY OF THE JUDGMENT OF THIS HONBLE COURT IN WPC.3684/14 DATD 6-2-14.

EXT.P4 - A TRUE COPY OF THE REPLY OF THE 5TH RESPONDENT DATED 24-4-2014 WITH TRANSLATION.

EXT.P5 - A TRUE COPY OF THE LAWYER NOTICE ISSUED TO THE 5TH AND 6TH RESPONDENTS DATED 30-12-2014.

EXT.P6(A) - A TRUE COPY OF ACKNOWLEDGMENT TO THE LAWYER NOTICE SHOWING DELIVERY TO THE 5TH RESPONDENT DATED 3-1-15.

EXT.P6(B) - A TRUE COPY OF THE ACKNOWLEDGMENT TO THE LAWYER NOTICE SHOWING DELIVERY TO THE 6TH RESPONDENT DATED 6-1-15.

EXT.P7 - A TRUE COPY OF THE PHOTOGRAPHS EVIDENCING THAT THE LORRY BEARING REGISTRATION NO. KL 10 AM 5360 ENCROACHED INTO THE PROPERTY OF THE PETITIONER DATED NIL.

EXT.P8- A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE 2ND, 3RD AND 4TH RESPONDENTS DATED 13-1-2015.

EXT.P9 - A TRUE COPY OF THE RECEIPT ISSUED TO THE PETITIONER BY THE OFFICE OF THE 2ND RESPONDENT DATED 13-1-2015 WITH TRANSLATION.

RESPONDENT(S) ' EXHIBITS :-

EXT.R5(a) : TRUE COPY OF THE RELEVANT PAGE OF THE ASSET REGISTER MAINTAINED BY TE MAMPAD GRAMA PANCHAYAT WITH TRANSLATION.

EXT.R5(b) : TRUE COPY OF THE LAWYER NOTICE DATED 28.3.2014 ISSUED ON BEHALF OF THE PETITIONER TO THE GRAMA PANCHAYAT WITH TRANSLATION.

EXT.R7(a) - TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 7TH RESPONDENT BEFORE THE DISTRICT COLLECTOR, MALAPPURAM DATED, 22.1.2015.

EXT.R7(b) - TRUE ENGLISH TRANSLATION OF EXT.R7(a).

EXT.R7(c) - TRUE COPY OF THE MAHAZAR AND SKETCH PREPARED BY THE DEPUTY COLLECTOR DATED NIL.

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EXT.R7(d) - TRUE ENGLISH TRANSLATION OF EXT.R7(c) .

EXT.R7(e) - TRUE COPY OF THE CERTIFICATE, ALONG WITH THE LIST OF FAMILIES
USING THE ROAD ISSUED BY THE SECRETARY, MAMPAD GRAMA PANCHAYAT.

EXT.R7(f) - TRUE ENGLISH TRANSLATION OF EXT.R7(e) .

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.P.(C) No.1747 of 2015

Dated this the 6th day of April 2015

J U D G M E N T

Ashok Bhushan, C.J

Heard the learned counsel for the petitioner and the learned counsel appearing for respondent Nos.5 and 6.

2. The petitioner claims to be the owner in possession of 16.88 Acres of land in different Re-survey numbers, which are described in paragraph 2 of the writ petition. The petitioner has come up with this writ petition seeking for the following reliefs :-

- “(i) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents 2, 3 and 4 to provide sufficient and appropriate police protection to the life and property of the petitioner, his family members against the threat posed by the respondents 5 and 6, in the interest of justice.
- (ii) Issue an appropriate writ, order or direction commanding the 2nd respondent, to take up the complaint as evidenced by Exts.P7 and P8 and to consider the same objectively, within such time as may be fixed by this Hon'ble Court in the interest of justice.”

3. Allegations have been made against respondent Nos.5 and 6 that they are interfering and obstructing the enjoyment of property by the petitioner. Lawyer's notice was issued by the petitioner on 30.12.2014 to respondent Nos.5 and 6. The

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petitioner alleges that 6th respondent's men along with some people belonging to the tribal colony encroached into the property of the petitioner with a tipper lorry. A copy of the photograph evidencing the said incident has been produced herein as Ext.P7.

4. Learned counsel appearing for respondent Nos.5 and 6 submits that there is a road which goes through the property of the petitioner and reaches to the tribal colony, which was being used for last several decades. It is submitted that the photograph, which is produced as Ext.P7 is the photograph of tipper lorry which is standing on the road. Learned counsel further submits that the road is in the Asset Register of the Panchayat. It is submitted that the petitioner had earlier filed a writ petition, W.P.(C) No.3684 of 2014, wherein it was noted that a 7 meter concrete road was constructed through the property of the petitioner. This Court, in its judgment dated 6.2.2014 observed that the dispute has to be decided in a properly instituted civil suit and that the writ petition was not entertained. Learned counsel submits that thereafter the petitioner has filed this writ petition under the guise of police protection and which was entertained by this Court and also granted an interim order

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on 16.1.2015. It is submitted that after the interim order, the petitioner has filed a suit as O.S.No.129 of 2015 before the Munsiff's Court, Manjeri for permanent mandatory injunction, wherein, an interim injunction has also been granted in favour of the petitioner.

5. Learned counsel for the petitioner submits that the suit has been filed under Order I Rule 8 of CPC.

6. We have considered the submissions made by the learned counsel for the parties and perused the records.

7. From the facts brought on record, it does appear that there is serious dispute regarding the existence of a pathway and right to use the said pathway, which claims to be passing through the property of the petitioner. This Court has already held in its judgment dated 6.2.2014 as referred to above, the said issues have to be decided by the competent civil court. In the above view of the matter, we are of the view that this writ petition need not be proceeded with, leaving all issues open for the parties to agitate before the competent civil court.

8. Learned counsel for the petitioner also submits that since O.S.No.129 of 2015 has been filed before the Munsiff's Court, Manjeri, the parties may get their rights adjudicated in the

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above suit.

9. It is open for respondent Nos.5 and 6 to take such steps before the civil court regarding interim injunction as permissible under law. We only clarify that we have not expressed anything on the merits of the case and the civil court may proceed to decide the issue between the parties untrammelled by any of the observations made by this Court.

The writ petition is closed accordingly.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE