

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 6TH DAY OF NOVEMBER 2012/15TH KARTHIKA 1934

WP(C) .NO. 6159 OF 2012 (T)

PETITIONER(S) :

1. BABU P.R., AGED 43,
S/O.PADIYATH RAGHAVAN, GANDHI NAGAR, KOLAZHI
THRISSUR DISTRICT.
2. K.K.SIVAN,
S/O.KONATH KUNJU, ATHEKADU, KOLAZHI
THRISSUR.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
IRRIGATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-698001.
2. THE KOLAZHI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, KOLAZHI,
THRISSUR-680001.
3. THE ASSISTANT ENGINEER,
MAJOR IRRIGATION SECTION, THRISSUR-680001.

R2 BY ADV. SRI.P.SANTHOSH (PODUVAL)
R2 BY ADV. SMT.R.RAJITHA
RR1 & R3 BY ADV. STATE ATTORNEY
R3 BY ADV. GOVERNMENT PLEADER, SRI. T.J. MICHAIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-11-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- EXT.P1 A TRUE COPY OF THE PHOTOGRAPH OF THE CONCRETE POSTS LAID
OVER THE BUND DATED NIL.
- EXT.P2 A TRUE COPY OF THE MASS COMPLAINT SUBMITTED BY THE
PERSONS OF THE LOCALITY DATED NIL.
- EXT.P3 A TRUE COPY OF THE PHOTOGRAPH DATED NIL.

RESPONDENTS' EXHIBITS

- EXT.R2 (A) : TRUE COPY OF THE DECISION NO. 23/12 TAKEN IN THE MEETING
OF THE PANCHAYATH COMMITTEE DTD. 23.4.2012.

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.6159 of 2012

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Dated this the 6th day of November, 2015

J U D G M E N T

The petitioners are aggrieved by the steps taken by the 3rd respondent to demolish a bridge constructed across an irrigation canal, without getting permission of the Irrigation Department. They prayed for issuing a writ of mandamus or order or direction to the respondents commanding them not to cause any interference with the unauthorised bridge constructed by them.

2. The petitioners claim that they are persons residing on the sides of the irrigation canal at Athekad-padukad in Thrissur District. A public road is passing along the opposite side of the canal and therefore, for access to the public road, they have to cross over the canal. Two concrete posts were laid across the canal for

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the ingress and egress of the petitioners from their property to the public road. While so, the petitioners and others constructed a concrete ramp, after removing the electric post, in the place where the concrete posts were laid.

3. When the matter came to the knowledge of the 3rd respondent, the 3rd respondent initiated steps to remove the bridge: Though, they have filed Ext.P2 petition before the 2nd respondent, the 2nd respondent also has not taken any steps to prevent the demolishan of the bridge. This is the grievance projected in this Writ Petition.

4. The 3rd respondent filed a counter statement contending that the property over which the bridge was constructed belongs to the Irrigation Department and the bridge was constructed, without the permission of the Irrigation Department. A colony is situated 300

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metres away from the top side of the culvert and up to the colony, a tar road was already constructed by the Kolazhi Panchayat through the right bank of the canal and two temporary wood bridges were laid over the canal for entrance to the left bank of the canal. In addition to this, to provide motor traffic facilities, a permanent culvert is situated about 450 metres downstream side of the canal from where the colony is located. Hence, the additional culvert between the colony and existing canal is not required for the ingress and egress of the people who are residing in the colony, to the public road. Thus, the people of the above colony have enough facility to cross the canal through these bridges. The 1st petitioner is neither an inmate of the colony nor is he a resident of that area. He is only a caretaker of the property situated on the right bank, road side of the canal. The owner of the property has

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constructed this disputed culvert across the canal, in front of his property, for his commercial purpose, such as construction of flat, villa etc. He dismantled his compound wall in front of the illegally constructed culvert to enter into his property. The owner of the property lying adjacent to the canal is the person behind the construction of the bridge and public purpose is not the motive behind the construction of the bridge. On the other hand, private interest alone is the motive, which prompted the petitioners to construct the bridge, without getting permission from the Irrigation Department.

5. Heard the learned counsel for the petitioners, the learned Government Pleader and the learned counsel appearing for the 2nd respondent Panchayat.

6. The facts are not disputed. It stands admitted that the petitioners and others have constructed a

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concrete bridge across an irrigation canal without permission of the Irrigation Department. The Authority of the Irrigation Department over the canal and the property lying adjacent to both sides is not disputed or challenged. It is the case of the petitioners that they have made the above unauthorised construction for public purpose only.

7. Per contra, the 3rd respondent contended that the 1st petitioner is not a resident of the locality and he is the caretaker of the property lying adjacent to the canal and the bridge was constructed by the owner of the said property, to achieve his commercial interest such as construction of flat, villas ect. Whatever be the motive, I am unable to accept the construction of the concrete bridge over the property in the possession of the Irrigation Department without getting permission of the Irrigation Department. Even if, it is for public purpose the

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petitioner and others should not have made an attempt to make such a construction, without getting the permission of the competent authority. It is pertinent to note that even though, the Panchayat has also filed a counter affidavit, the Panchayat has not supported or justified the act done by the petitioners and the Panchayath has stated that since the Panchayath is not the competent authority, Panchayat has referred Ext.P2 petition to the 3rd respondent. So many persons are residing on both sides of the canal. If one person or group of persons are allowed to make construction of an unauthorised bridge over the canal, for their convenience certainly it will cause temptation to others also to make such construction so as, to get easy ingress and egress to their property from the public road. Therefore, an unauthorised construction cannot be allowed to stand there, under the guise of public purpose. Every citizen is

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liable to act in accordance with law only. This Court is not inclined to exercise the jurisdiction under Art.226 of the Constitution of India in favour of a persons who are not a law abiding citizens, particularly, for legalising a constrcution, which was made without permission of the custodian of the property.

This Writ Petition is devoid of merits and is dismissed accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

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P.A. To Judge