

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 6689 of 2012 (I)

PETITIONERS:

RT.REV.THOMAS K.OOMMEN, AGED 58 YEARS,
S/O.LATE K.C OOMMEN, KANJIRAPPALLIL HOUSE,
KUNTHIRICAL P.O., THALAVADY-689 575,
ALAPPUZHA DISTRICT

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF PUBLIC WORKS,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM PIN 695 001.

2. THE CHIEF ENGINEER,
PWD (ROADS AND BRIDGES),
THIRUVANANTHAPURAM PIN-695 001.

3. ASSISTANT ENGINEER,
PWD ROADS SECTION, EDATHUA,
ALAPPUZHA DISTRICT-PIN 689 573.

4. EXECUTIVE ENGINEER,
PWD ROADS AND BRIDGES DIVISION, NEAR COLLECTRATE,
COLLECTORATE P.O., ALAPPUZHA-685 007.

5. MEHRAJ BUILDERS AND DEVELOPERS (P) LTD.,
EDAYAR, MUPPATHADAM P.O., ERNAKULAM-691 502,
REPRESENTED BY ITS MANGING DIRECTOR.

R1-R4 BY GOVERNMENT PLEADER SRI.T.J. MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 23-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

W.P. (C) NO.6689 OF 2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - COPY OF THE REGISTERD WILL NO.1/1984 DATED 3/1/1984.

EXT.P2 - COPY OF THE LAND TAX RECEIPT DATED 24/8/2011.

EXT.P3 - COPY OF THE ROUGH SKETCH.

EXT.P4 - COPY OF THE REVISED ESTIMATE REGARDING CONSTRUCTION OF CULVERT, OBTAINED UNDER THE RIGHT TO INFORMATION ACT.

EXT.P5 - COPY OF THE EIGHT PHOTOGRAPHS SHOWING ILLEGAL CONSTRUCTION.

EXT.P6 - COPY OF THE APPLICATION DATED 13/2/2012 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P7 - COPY OF THE REPLY DATED 12/3/2012 ISSUED BY THE 3RD RESPONDENT.

EXT.P8 - COPY OF THE REPRESENTATION DATED 6/3/2012 SUBMITRTED BY THE PETITIONER TO THE THIRD RESPONDENT.

EXT.P9 - COPY OF THE PHOTOGRAPH SHOWING THE RAMP CONSTRUCTED.

EXT.P10 - COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE RESPONDENTS 3 AND 4 DATED 17/4/2012.

RSPONDENTS' EXHIBITS:

EXT.R4(a) - TRUE OCPY OF THE LETTER SENT TO THE LOCAL AUTHORITY.

EXT.R4(b) - TRUE COPY OF THE REPORT SENT BY THE 3RD RESPONDENT TO THE SUB INSPECTOR OF POLICE, EDATHUA.

EXT.R4(c) - TRUE COPY OF THE RECEIPT ISSUED BY THE SUB INSPECTOR OF POLICE, EDATHUA.

//true copy//

P.S. to Judge

K. HARILAL, J.

W.P. (C) No.6689 of 2012-I

Dated this the 23rd day of November, 2015

JUDGMENT

The petitioner is the owner in possession of 22 Ares of land comprised in Sy.No.2/2 of Thalavady Village, Kuttanad Taluk and 4 Ares of land comprised in Sy.No.4/1 of the same Village by virtue of Exts.P1 and P2. The Chakkulam - Edathua PWD road passes through east-western side of the petitioner's property. Now, there is a proposal to construct a culvert near the aforesaid property of the petitioner. The apprehension of the petitioner is that as part of the reconstruction of the culvert, a ramp is attempted to be constructed from the PWD road to the channel mentioned above, though it was not originally part of the estimate or

scheme. This ramp cannot be constructed without interfering with the petitioner's property. So also, there is a proposal to construct an approach road in connection with the culvert. According to the petitioner, either the channel or the approach road cannot be constructed without taking possession of the petitioner's property. But, no proceeding has been initiated under law to acquire the aforesaid property from the petitioner. On the above apprehension, the petitioner has prayed for issuing a writ of mandamus or direction commanding the respondents 1 to 4 or any others under them not to make any construction including the approach road or ramp in the north-western side of the property of the petitioner covered by Exts.P1 and P2, without obtaining his consent or without acquiring the land in accordance with law and for issuing a writ of mandamus or any other appropriate writ or direction commanding the respondents 1 to 4 to take proper steps to ensure that the petitioner's access to the channel on the western side is not blocked or

interfered with any manner and to further direct the respondents to restore the steps starting from the petitioner's property and leading to the channel.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. In the counter affidavit filed by the 4th respondent, it is specifically stated that the construction of the culvert is being made purely on the P.W.D. road and the same will not affect the possession and enjoyment of the petitioner's property. Therefore, the apprehension of the petitioner that his property would be taken away by force without resorting to due process under law, is unfounded and incorrect. The sum and substance of the contentions raised in the counter affidavit is that, at present, the respondents have no proposal to make any construction affecting the petitioner's property.

4. Going by the averments in the petition and the arguments raised at the Bar, the apprehension of the petitioner is that a culvert would be constructed by taking his property by force. As regards the

apprehension, the undertaking made by the respondents that the petitioner's property will not be taken by force without resorting to the procedure contemplated under law will stand recorded. According to Art.300A of the Constitution of India, no person shall be deprived of his property, save by authority of law. Therefore, the petitioner shall not be deprived of his property, except in accordance with law. Needless to say, the interim order passed in the writ petition will stand absolute also. It is made clear that the petitioner is at liberty to remove the earth dumped in his property by somebody other than the respondents 1 to 4. If anybody resists the removal of earth, the petitioner is at liberty to seek the aid of concerned authorities to remove the earth in accordance with law.

This writ petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge