

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 3319 of 2014 (L)

PETITIONER(S) :

- 1. M/S.DUAL FOODS AND BEVERAGES (P) LTD
PULLUVAZHY P.O., PERUMBAVOOR
REPRESENTED BY ITS MANAGING DIRECTOR SUNNY MATHEW.**
- 2. M/S.PAM LABS INDIA HEALTH CARE (P) LIMITED
PULLUVAZHY P.O., PERUMBAVOOR, ERNAKULAM DISTRICT
REPRESENTED BY ITS MANAGING DIRECTOR DR.P.P.PATHROSE.**

**BY SENIOR ADVOCATE SRI.RAJU JOSEPH
BY ADV.SRI.K.T.POULOSE (KORATTY)**

RESPONDENT(S) :

- 1. RAYAMANGALAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
RAYAMANGALAM P.O.,
PERUMBAVOOR, PIN – 683 545.**
- 2. ANNAMMA
W/O.LATE KURIYACHAN, THOMBARAMATTAPPILLIL HOUSE
IRINGOLAKARA, PERUMBAVOOR,
ERNAKULAM DISTRICT, PIN – 683 542.**
- 3. MOHANAN
S/O.LATE KURIYACHAN, THOMBARAMATTAPPILLIL HOUSE
IRINGOLAKARA, PERUMBAVOOR, ERNAKULAM DISTRICT.
PIN – 683 542.**

**R1 BY ADV. SRI.BINU PAUL
R2 & R3 BY ADVS. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015,
THE COURT ON 30-01-2015 DELIVERED THE FOLLOWING:**

Mn

WP(C).No. 3319 of 2014 (L)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1 : TRUE COPY OF THE SALE DEED NO.4906/2000 DT.1-9-2000.**
- EXHIBIT P2 : TRUE COPY OF THE SALE DEED NO.1936/1/03 DT.22-4-2003.**
- EXHIBIT P3 : TRUE COPY OF THE SAID NOTICE DT.27-10-2011.**
- EXHIBIT P4 : TRUE COPY OF THE PETITION FILED BY THE PANCHAYAT BEFORE THE SI OF POLICE PERUMBAVOOR DT.18-10-2012.**
- EXHIBIT P5 : TRUE COPY OF THE JUDGMENT DT.27-5-2013 IN WPC 29869/2012.**
- EXHIBIT P6 : TRUE COPY OF THE COMMON JUDGMENT DT.21-6-2006 IN AS NOS.13/2005 AND 14/2005.**
- EXHIBIT P7 : TRUE COPY OF THE COMMON JUDGMENT DT.21-6-2004 IN OS 159/94 AND 272/95.**
- EXHIBIT P8 : TRUE COPY OF THE LETTER DT.7-9-2005.**
- EXHIBIT P9 : PHOTOS SHOWING THE PRESENT POSITION OF ROAD.**

RESPONDENT(S)' EXHIBITS :

- EXT. R3(a) COPY OF THE REPORT FILED BY THE ADVOCATE COMMISSIONER IN IA NO. 1046/94 IN OS NO. 159/94 OF MUNSIF'S COURT, PERUMBAVOOR.**
- EXT. R3(b) COPY OF THE REPORT FILED BY ADVOCATE COMMISSIONER IN IA 2940/94 IN OS NO. 159/94 DT. 17.12.94.**
- EXT. R3(c) COPY OF SURVEY PLAN PREPARED BY THE SURVEYOR IN OS 159/94 DATED 12.7.01 OF MUNSIF'S COURT, PERUMBAVOOR.**
- EXT. R3(d) COPY OF COMMON DECREE IN AS 13/05 AND 14/05 DATED 21.6.06 OF ADDITIONAL DISTRICT COURT, NORTH PARAVUR.**
- EXT. R3(e) COPY OF THE REPORT OF THE AMIN DATED 28.7.2011 IN EP NO. 143/2010 IN OS NO. 272/95 OF MUNSIF'S COURT, PERUMBAVOOR.**
- EXT. R3(f) COPY OF THE REPORT FILED BY THE COMMISSIONER ON 28.7.2011 IN EP 143/2010 IN OS NO. 272/95 OF MUNSIF'S COURT, PERUMBAVOOR.**

(Contd...)

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**EXT. R3(g) COPY OF JUDGMENT OF THE HON'BLE COURT IN WP(C) NO. 25961/11
DATED 27.3.12.**

**EXT. R3(h) COPY OF NOTICE NO. A5-4866/14 DATED 1.7.14 ISSUED BY IST
RESPONDENT TO THE 3RD RESPONDENT.**

//TRUE COPY//

P.S. TO JUDGE

Mn

A.V.RAMAKRISHNA PILLAI, J

WPC No.3319 of 2014

Dated this the 30th day of January, 2015

JUDGMENT

Alleging that respondents 2 and 3, who have properties on the side of a road, had tried to encroach upon a public road by unloading granite stones for constructing boundary wall in their property encroaching into the portion of the public road and the respondent Panchayat is not taking any action against the alleged illegal encroachment, the petitioners have come up before this Court.

2. The petitioners allege as follows:

Both the petitioners are Private Limited Companies. The first petitioner is a manufacturer of soft drinks. The second petitioner is manufacturing Ayurvedic Medicines. The manufacturing units of the petitioners are situated on the side of a Panchayat road viz, Malamuri-Nakkalikkattu Road. The road is vested with first respondent Panchayat. Malamuri-Nakkalikkattu road is a connecting road to MC road. The petitioners allege that a large number of people are using the road. Respondents 2 and 3 have properties on

the side of the said road. Earlier, there was a pathway having 8 feet width which was used by the public. During the year 1994, the first respondent Panchayat and the adjacent Panchayat, viz., Vengola Panchayat passed resolution to widen the road, considering the request of the public and also realizing the importance of the road. People on either side of the pathway including respondents 2 and 3 had surrendered portions of their land and with the co-operation of the entire public, the road was widened. Due to some unknown reason, respondents 2 and 3 later changed their mind and approached the Munsiff's Court, Perumbavoor by filing O.S.No.159/94 praying for permanent prohibitory injunction. Four persons were impleaded as defendants in the suit. All of them had contended that they had nothing to do with widening of the road and there is no cause of action against them. They had also contended that they cannot be impleaded as representative of persons who are interested in the road, even though an application under Order 1 Rule 8 CPC was filed. The Munsiff's Court allowed the injunction application, and the defendants in the suit

challenged the same before this Court in CRP No.1508/1994. While disposing of CRP, this Court directed the defendants in the suit to file the names of interested persons in the court and further directed the plaintiff to implead those persons, so as to have an effective contest in the matter. However, the suit was proceeded with, without any impleadment. While the first suit was pending, another suit was filed as O.S.No.272/1995 praying for declaration of title and recovery of possession. There was no Order 1 Rule 8 publication in the said suit. The learned Munsiff dismissed both the suits on valid grounds. However, in appeal, the Additional District Judge decreed the suit. While the appeals were pending, respondents 2 and 3 gave a surrender letter to the Panchayat allowing the Panchayat to take land necessary for the road. Presumably, on the basis of surrender letter, the appeals were not contested by the defendants and thus in appeal, the suits were decreed as per judgment dated 21.6.2006. Even after the suits were decreed, respondents 2 and 3 did not raise any objection with regard to the usage of road by the public and hence,

the matters remained as such without any further action by both the parties. In the year 2010, an execution petition was filed which was later allowed. However, the surrender letter could not be produced before the execution court as there was no obstruction by respondents 2 and 3 and also for the reasons that execution petition was not contested properly for the want of affected persons in the party array. After the execution petition was allowed, respondents 2 and 3 made attempt to encroach on the public road. They had unloaded granite stones for constructing boundary wall in their property encroaching into a portion of the public road. The Panchayat thereupon issued notice to respondents 2 and 3 asking them to remove the obstruction. Unmindful of the said notice, respondents 2 and 3 had made further attempt to reduce the width of the road. As requested by the Panchayat, the Police have registered a case, but no further action was taken. Presently, the granite stones are lying on the spot. Respondents 2 and 3 may start construction at any movement. Nevertheless, the Panchayat is taking a very passive attitude to the burning problem of a large

number of persons for whom this Panchayat road is the only access from their respective properties. The petitioners have purchased the property when there was no obstruction and when there was a pacca Panchayat road in existence. It is with this background, the petitioners have approached this Court.

3. In the counter affidavit filed by the third respondent, they contended that the properties in dispute is their property and a new way was cut open through their property without their permission, they approached the civil court concerned and ultimately, they have obtained a decree in their favour for recovery of possession of the property which was converted as a road and the decree is put to execution and delivery is yet to be effected.

4. I have heard the learned senior counsel for the petitioners, the learned standing counsel for the respondent and the learned counsel for respondents 2 and 3.

5. While the petitioners allege that previously respondents 2 and 3 had agreed to surrender a portion of their property for widening an existing pathway, they later

withdrew from their offer. The party respondents, *per contra*, would contend that there was no such agreement and without their consent or connivance, a pathway was cut open encroaching upon a portion of their property. However, they sought remedies from the civil court and a decree for recovery of possession is pending for execution.

6. The learned counsel for the party respondents made a frontal attack against the maintainability of the writ petition itself. The learned counsel for the party respondents would point out that the questions involved in Ext.P5 writ petition filed by the petitioners before this Court and the questions involved in this writ petition are substantially same and the parties are also same. In Ext.P5, this Court observed as under:

“Learned counsel for the Panchayat would submit that actually the 4th respondent has surrendered his rights in respect of the property in questions. Learned counsel for the 4th respondent (the third respondent in this writ petition) would submit that the 4th respondent has not executed any such document. Essentially this is a controversy which we cannot decide in our jurisdiction under Article 226. Accordingly, we decline jurisdiction, but without prejudice to the right of the petitioner to seek appropriate relief before any competent forum.”

7. The Division Bench of this Court had observed that the issue has to be resolved by approaching some other competent forum by the petitioners. It is the very same issue which is further raised in this writ petition. Therefore, I see valid force in the contention raised by the learned counsel for the party respondents regarding the maintainability.

8. This writ petition is filed for a direction to the first respondent to take appropriate action to remove the obstruction created by party respondents in the alleged public road. According to the party respondents, there is no public road and there is no obstruction created by them. The second respondent is the mother of the third respondent. They would contend that the third respondent is having properties having an extent of 1.5 hectares in various sub divisions of Re-Survey Nos.43 and 44 of Block No.18 of Perumbavoor Village and they are permanently residing in the building in the property with their family. They would further point out that their property is protected by well fixed boundaries on all sides. According to them, in the year

1994, they got information that certain persons in the locality were attempting to cut open a new way through their property by demolishing the boundary walls and kayyalas. The second respondent, therefore, filed a suit against few persons in the locality before the Munsiff's Court as O.S.No.159/1994 for a decree for permanent prohibitory injunction. An application was filed for temporary injunction which was allowed. According to the petitioners, however, the defendants forcefully cut open a new way violating the order of injunction causing extensive damages to the property. True copy of the report filed by the Commissioner is produced as Ext.R3(a) in this case. According to the respondents, mischief continued even thereafter. Therefore, once again, the Commissioner was deputed and Ext.R3(b) report was obtained. Thereafter O.S.No.72/1995 was filed by the party respondents for fixation of boundary and recovery of possession. An Advocate Commissioner and Surveyor were deputed. The property was measured. Ext.R3(c) is the survey plan prepared by the surveyor in O.S.No.159/1994. The report says that about three cents of

property of the respondents was trespassed upon by demolishing a compound wall. The suits were tried jointly. The trial court dismissed both the suits. Appeals were preferred before the Additional District Court, North Paravur as A.S.Nos.13/2005 and 14/2005 which allowed the appeals reversing the trial court judgments. Ext.R3(d) is the common decree. On the basis of Ext.R3(d), an execution petition was filed before the Munsiff's Court, Perumbavoor as E.P.No.143/2010. Amin was deputed along with the Commissioner and Village Officer. Ext.R3(e) is the report dated 28.7.2011 submitted by the Amin. The commissioner's report is Ext.R3 (f). After recovery, respondents decided to construct a compound wall, but this was obstructed by the defendants in the said suit. They also filed a second appeal before this Court challenging Ext.P6 judgment. The second appeal was dismissed by this Court. Therefore, Ext.P6 judgment and Ext.R3(d) decree has become final.

9. The petitioners do not have a case that they were unaware of the aforesaid proceedings. The respondents pointed out that both the suits were filed in a representative

capacity against the defendants under Order 1 Rule 8 of the Code of Civil Procedure. Necessary publications were also made in the suit. According to the petitioners, the party respondents had agreed to surrender a portion of their property for the construction of the road. The Panchayat had issued a notice on the basis of Ext.P8. According to the respondents, Ext.P8 is a concocted document. It would be idle to believe that the party respondents had executed Ext.P8 while they were contesting the appeal suit. Even assuming that Ext.P8 letter has been given to the Panchayat, it will not create any right for the Panchayat over the property since there are specific provisions of law which prescribes the mode of surrender of property to Panchayat or other authorities. Without complying with the above legal formalities, the Panchayat will not get any right or possession over the property.

10. The argument of the learned counsel for the Panchayat, the property is lying as road and there is dedication by Ext.P8 cannot be accepted. According to the learned counsel for the Panchayat, that is the only

connecting link between the two Panchayats and the disputed portion is in the middle which remains untarred.

11. The learned senior counsel for the petitioners would submit that though the party respondents were directed by this Court in the CRP against the interim order passed by the civil court to implead interested persons, none was impleaded and therefore, according to the learned counsel for the petitioners, the decree was obtained behind the back of the persons who are interested.

12. If such a grievance is there, the petitioners can very well file necessary applications before the execution court by getting themselves impleaded or they can file an obstruction petition under the relevant provisions of the Code of Civil Procedure. The relief now sought for issuing a direction to the first respondent to initiate action against the party respondents cannot stand in the eye of law.

13. On a consideration of the entire materials now placed on record, this Court is of the view that the petitioners are not entitled to get the reliefs prayed for in this writ petition.

Therefore, the writ petition is dismissed. It shall be open to the petitioners to seek reliefs before the execution court by filing proper petitions, if they are so advised.

**Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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true copy

P.S.TO JUDGE