

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 3345 of 2014 (P)

PETITIONERS:

PAULOSE ALIAS SHAJI, AGED 39 YEARS,
S/O. KURUVILA, PUNNATHARA HOUSE, PIRAMADOM P.O.
MUVATTUPUZHA, PIN: 686 667.

BY ADV. SRI. M. S. UNNIKRISHNAN

RESPONDENTS:

1. REVENUE DIVISIONAL OFFICER
MUVATTUPUZHA, PIN: 686 661.
2. PAMBAKUDA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, PIN: 686 667.
3. VILLAGE OFFICER,
ONAKUR VILLAGE OFFICE, PAMBAKUDA P.O., PIN: 686 667.
4. ANIL. P. Y., AGED 41 YEARS
S/O. YOUYAKI, PUNNACHUVATIL, PAMPAKUDA KARA
ONNAKUR VILLAGE, MUVATTUPUZHA TALUK, PIN: 686 667.
5. MATHAI, S/O. VARKEY,
PUNNACHUVATTIL, PAMBAKUDA, PIN: 686 667.

R1 BY GOVERNMENT PLEADER SRI. SOHA JAMES

R2 BY ADV. SRI. GEORGE SEBASTIAN

R5 BY ADVS. SRI. K. K. CHANDRAN PILLAI (SR.)

SRI. THOMAS JAMES MUNDACKAL

SMT. K. V. SHENU

SMT. S. AMBILY

SRI. ARUN ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3345 of 2014 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: COPY OF PARTITION DEED NO.3929/1996 OF SRO PIRAVOM.

EXT.P2: COPY OF THE PETITION DATED 24/6/2011 SUBMITTED BEFORE 1ST
RESPONDENT BY THE PETITIONER.

EXT.P3: COPY OF THE ORDER DATED 3/9/2013 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). No.3345 of 2014

Dated this the 13th day of November, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking direction to the 1st and 2nd respondents to implement Ext.P3 order dated 3.9.2013.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner is a owner of properties having an extent of 16.62 Ares lying in Sy.No.663/2, 19.23 Ares in Sy.No.663/2A, 8.9 Ares in Sy.No.663/3/3, 10.12 Ares in Sy.No.664/3A and also other extents of properties secured as per Partition Deed No. 3929 of 1996 of SRO Piravom.

4. The grievance voiced by the petitioner in this writ petition is that, there is a public drain vested with 2nd respondent Panchayat along the eastern side of the Kadukattu-Aykarakandam Panchayat road. To the east of the Panchayat road there is a quarry, the said quarry is not functioning for the last 8 years, and the same is filled with water and during rainy

season and when there are adverse climatic conditions, water flowing out from the said quarry is creating disturbance and nuisance to the petitioner.

5. Circumstances being so, petitioner has submitted Ext.P2 representation before the 1st respondent consequent to which 1st respondent has passed Ext.P3 order after having found that the drain is obstructed after certain distance and consequent to which only the flooding is taking place in the property of the petitioner. Therefore, a direction was issued to complete the drain in order to remedy the grievance of the petitioner.

6. Second respondent Panchayat has filed a counter affidavit contending that the facts leading to Ext.P3 order passed by the 1st respondent is not correct and the said order was passed without hearing the Panchayat. In order to comply with the direction a drain is to be constructed upto a distance of 60 meters and therefore, the Panchayat will have to find out its own resources and funds for the construction of the said drain.

7. Learned counsel appearing for the Panchayat submitted that if an opportunity is provided to the Panchayat before implementing Ext.P3 order, the Panchayat can work out practical remedies in order to implement Ext.P3 order.

8. Heard learned counsel for the petitioner as well as learned counsel for the Panchayat, perused the records and pleadings. I am of the considered opinion that since the construction of the drain is to be carried out to an extent of 60 meters, the Panchayat has to be heard by the 1st respondent. Ext.P3 order was passed and directions were issued without hearing the 2nd respondent Panchayat. Therefore, it is just and necessary that Ext.P3 order passed by the 1st respondent will be implemented only after hearing the Panchayat. The 1st respondent will issue notice to the petitioner as well as the 2nd respondent Panchayat and any other affected persons within a period of 15 days from the date of receipt of a copy of this judgment and the whole exercise should be completed by taking into account the grievance voiced by the petitioner within a period of 30 days thereafter.

Writ Petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
13.11.2015