

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WP(C).No. 7385 of 2012 (W)

PETITIONER(S):

- 1. V. FARUK, AGED 59 YEARS,
S/O.LATE WAHAB RAWTHER.**
- 2. V.VELLAPPA, S/O.LATE WAHAB RAWTHER,
BOTH ARE RESIDING AT RANGODE KALAM, KUTHANUR P.O.
PALAKKAD-678721.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.K.A.ANAS**

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO MINOR IRRIGATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE ASSISTANT EXECUTIVE ENGINEER (M.I.),
IRRIGATION LB CANAL SUB SECTION, PWD OFFICE, THAREKKAD,
PALAKKAD-678001.**
- 3. KUTHANNUR PANCHAYATH,
REPRESENTED BY ITS SECRETARY, KUTHANNUR P.O.,
PALAKKAD-678121.**
- 4. THE SUB INSPECTOR OF POLICE,
KUZHALMANNAM POLICE STATION, KUZHALMANNAM,
PALAKKAD-678702.**

R3 BY ADV. SRI.SAJAN VARGHEESE K.

R3 BY ADV. SRI.LIJU. M.P

R1,R2 & 4 BY GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P1 TRUE COPY OF THE INTERIM ORDER IN CMP.4362/2000 IN
A.S. NO. 465/2000 ON THE FILE OF THIS COURT DATED 11/8/2000.**
- EXT.P2 TRUE COPY OF THE 'PATTa' ISSUED IN FAVOUR OF THE
PREDECESSORS-IN-INTEREST OF THE PETITIONERS DATED
9/8/1978.**

RESPONDENTS' EXHIBITS :

- EXT.R3(A)- TRUE COPY OF THE BASIX TAX REGISTER ISSUED BY THE VILLAGE
OFFICE, KUTHANUR-I, VILLAGE.**
- EXT.R3(B)- TRUE COPY OF THE SKETCH**
- EXT.R3(C)- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE LOCAL
RESIDENTS TO THE DISTRICT COLLECTOR, PALAKKAD**
- EXT.R3(D)- TRUE COPY OF THE RESOLUTION PASSED BY THE 3RD RESPONDENT
PANCHAYAT**

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.7385 of 2012

Dated this the 21st day of December, 2015.

JUDGMENT

The predecessors-in-interest of the petitioners are the owners in possession of 1 acre and 22 cents of property comprised in Sy.No.27/15 and another 22 cents in Sy.No.27/14 of Alathur Taluk in Palakkad District. According to the petitioners, the above properties are laying as a pond and its varamba and the said properties are the subject matter of a partition suit numbered as O.S.548/93 on the files of the Subordinate Judge's Court, Palakkad. Though the suit has been decreed, the appeal is pending before the appellate court as A.S.No.465/2000 and the passing of final decree is stayed by Ext.Pl. According to the petitioners, during the pendency of the matter, on 2.3.2012 morning, a contractor by name Jose, a native of Ernakulam, came to the above property with a JCB

excavator and more than 30 workers, to clean up the pond. Some standing crops were also cut down by the workers. Immediately the petitioners rushed to the place and intervened in the highhanded action of the contractor who trespassed into the property at the instance of the respondents 2 and 3. The petitioners have also preferred a complaint before the 4th respondent with relevant documents to show the ownership and possession over the property. but the 4th respondent has not taken any action on the representation filed by the petitioner. This is the allegation made by the petitioner in this writ petition, which is filed with a prayer for issuing a writ of mandamus or direction directing the 2nd respondent or his men to restrain them from undertaking any development activities, in the petitioners' property and also to issue a writ of mandamus directing the 4th respondent to ensure that the respondents 2 and 3 and the contractor engaged by them do not enter the petitioners' property, which is the subject matter of civil dispute.

2. Per contra, the 2nd respondent filed a counter affidavit denying the allegations levelled against the respondents and their officers. According to the Panchayat, the "Anthurkulam", which is the subject matter of the above writ petition is owned and possessed by the 3rd respondent Panchayat and thereby it is a public pond. To substantiate the said contention, the Panchayat has produced Ext.R3(a) copy of the Basic Tax Register and Ext.R3(b) copy of the sketch prepared by the Revenue authorities. It is stated that on receipt of a mass petition submitted by the local residents before the District Collector, Palakkad, and the 3rd respondent Panchayat, the Panchayat took a decision to do necessary works so as to renovate the said pond by Ext.R3(d) resolution. According to the respondent Panchayat, the petitioners do not have any right over the said pond and this writ petition is liable to be dismissed as frivolous and vexatious.

3. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent

Panchayat in extenso.

4. Going by the pleadings on both sides, it is seen that the question in controversy centers around the ownership and possession over a pond. According to the petitioners, they are the absolute owners in possession of the said pond; whereas, the case of the Panchayat is that the pond is vested with the Panchayat as a public pond and on receipt of mass petition seeking renovation of the pond, the Panchayat has arranged renovation work for the same. Both the petitioners and the 4th respondent produced Ext.P2 and Ext.R3(b) respectively to substantiate their rival claims.

5. Having regard to the pleadings of both parties in this writ petition, this Court is of the view that, the question in controversy is a civil dispute falling under Section 9 of the Code of Civil Procedure and the proper remedy lies within the jurisdiction of the civil court only. This Court is not inclined to determine the disputed title or possession over the property, in exercise of jurisdiction under Article 226 of the

Constitution of India. The above view is supported by the decisions in Mohan Pandey v. Usha Rani Rajgaria [1992 (4) SCC 61] and Prasanna Kumar Roy Karmakar v. State of West Bengal [1996 (3) SCC 403]. In the above view of the matter, this Court declines jurisdiction and the writ petition will stand dismissed. The parties are at liberty to seek appropriate remedies before civil court and this judgment will not stand in the way of such proceedings.

Sd/-
K. HARILAL, JUDGE

okb.