

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 3703 of 2015 (K)

PETITIONER :

**RAJEEV GANDHI VAYANASALA,
NEAR AJANTHA THEATRE, LG PAI ROAD,
MATTANCHERY VILLAGE, KOCHI TALUK
ERNAKULAM DISTRICT
REPRESENTED BY ITS PRESIDENT
SANILMON J., AGED 32 YEARS
S/O.JOSY, NEAR AJANTHA THEATRE
LG PAI ROAD, FORTKOCHI VILLAGE, KOCHI TALUK
ERNAKULAM DISTRICT, PIN - 682 002.**

**BY ADVS.SRI.R.O.MUHAMED SHEMEEM
SMT.NASEEHA BEEGUM P.S.
SRI.T.PABDUL HAMEED**

RESPONDENT(S) :

- 1. THE REVENUE DIVISIONAL OFFICER,
FORTKOCHI, KOCHI - 682 001.**
- 2. THE ADDITIONAL SECRETARY,
CORPORATION OF COCHIN,
MATTANCHERY ZONAL OFFICE,
KOCHI - 682 002.**
- 3. VENKATESHWARA MALLAYA,
AGED 66 YEARS, S/O.NARAYANA MALLAYA, NEAR AJANTHA THEATRE
MATTANCHERY VILLAGE, LG PAI ROAD, KOCHI - 682 002.**

**R1 BY GOVT. PLEADER SRI. JOSEPH GEORGE
R2 BY ADVS. SRI.E.D.GEORGE, SC
SRI.P.K.SOYUZ, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-02-2015, ALONG WITH WPC. 4884/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 3703 of 2015 (K)

APPENDIX

PETITIONERS' EXHIBITS :

**EXT. P1: TRUE COPY OF THE JUDGMENT DATED 20.12.2014 IN WPC
 NO.30878 OF 2014.**

**EXT. P2: TRUE COPY OF THE IMPUGNED ORDER DATED 13.01.2015 IN
 F/7841/14/K DIS.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

P.R. RAMACHANDRA MENON, J.

W.P(C). Nos. 3703 & 4884 of 2015

Dated this the 23rd day of February, 2015

J U D G M E N T

The issue involved in these cases are closely interlinked and they are dealt with together. The petitioner in WP(C) No.4884/2015 had approached this Court earlier by filing WP(C) No.30878/2014 with regard to the encroachment made by the 6th respondent (who is the petitioner in the other case) by putting up a new building, construction of which is still to be completed, whereby the Government land lying just in between the property of the petitioner and the road has almost been fully encroached preventing access to the petitioner. The matter was examined by the concerned authorities and the Sub Collector had given necessary direction to the authorities of the Corporation to remove the encroachment. Since this was not given effect to, intervention of this Court was sought for as per the above writ petition. The said matter (WP(C) No.30878/2014) came up for consideration before this Court on 20.12.2014 and both the sides were heard. The 6th respondent herein was also a party to the proceedings and was represented through a lawyer. The said writ

petition was disposed of directing the RDO to take appropriate action in accordance with law, after hearing the writ petitioner and the 6th respondent within one month. Pursuant to the said direction, the RDO passed Ext.P9 order dated 13.01.2015, whereby the encroachment into the road puramboku has been established and the same has been ordered to be removed with immediate effect. This is not given effect to so far and hence the case by way of WP(C) No.4884/15.

2. The 6th respondent in WP(C) No.4884/2015 has approached this Court by filing WP(C) No.3703/2015 challenging Ext.P2 order dated 13.01.2015, passed by the RDO pursuant to Ext.P1 judgment (which documents have been produced and marked as Exts.P9 & P8 respectively in the other writ petition). According to the petitioner 'Vayanasala', the property concerned herein is in their exclusive possession for quite long. It is stated that, the concerned respondent (who is the petitioner in the other case) is not in good terms with the petitioner and that dubious steps are being taken to cause the petitioner 'Vayanasala' to be evicted from the present premises. It is stated that, the petitioner in WP(C) No.4884/2015 has put up the building after purchase of

the land in question in the year 2008, in total violation of the relevant Building Rules and approved plan. It is only to cover up the issue and to enjoy the concerned property, that the said petitioner has moved strings before the Revenue authorities and has approached this Court by filing the writ petition.

3. Heard the learned counsel for the petitioners, learned standing counsel for the Corporation and the learned Government Pleaders.

4. The standing counsel as well as the learned Government Pleaders point out that, appropriate steps have been taken to ascertain the facts and figures and in the course of such proceedings, it was established that there was encroachment at the hands of the 'Vayanasala' in putting up the building in the land belonging to the Government, which is a 'road margin'. It is in the said circumstance, that Ext.P9 order was passed, pursuant to the judgment passed by this Court and when steps were being pursued to have it implemented, the present writ petition came to be filed.

5. The learned counsel for the petitioner in WP(C) No.3703/2015 submits that, the petitioner-'Vayanasala' had

already moved the concerned authority by filing necessary application for assignment of the land in question. It is also stated that, in spite of the clear direction given by this Court as per Ext.P1 judgment to afford an opportunity of hearing to the petitioner, no such opportunity was given when the proceedings were finalized by the RDO by passing Ext.P2 order, which discloses the hearing given to the 3rd respondent alone, who is the petitioner in the other case.

6. After hearing both the sides, this Court finds that the direction given by this Court as per Ext.P1 judgment has not been fully satisfied, in so far an opportunity of hearing was denied to the petitioner in WP(C) No.3703/2015. But the question to be considered is whether any prejudice has been caused to the petitioner in this regard. The materials on record reveal that, the issue was considered in detail by the RDO and a finding has been rendered to the effect that the property concerned herein has been encroached by the 'Vayanasala'. But there is no case for the petitioner that, the property in any manner belongs to the petitioner 'Vayanasala' or that they have any document to establish the rights and interests over the property. The only

case is that, the property is being enjoyed by them for the past several years and that they have already moved the concerned authorities for assignment of the land.

7. The direction given by the RDO as per Ext.P2 order passed, pursuant to Ext.P1 judgment, is in the following terms:

"The vayanashala is encroached the road puramboke land, which is vested, with the Corporation of Kochi. Hence Secretary, Corporation of Kochi shall remove the encroachment with immediate effect. The said "Rajive Gandhi Vayanashala" is blocking the access to the petitioner's building No.CC9/1164. The Secretary, Corporation of Kochi if required may request the assistance of Additional Tahsildar, Kochi to demarcate the puramboke land through the Taluk Surveyor. The Additional Tahsildar, Kochi is also directed to demarcate the puramboke land on the request of the Corporation of Kochi through the Taluk Surveyor. A copy of the application 1st cited, copy of the report of the Village Officer and copy of the judgment of the Hon'ble High Court is also sending to the Secretary, Corporation of Kochi. The petition of Sri.Venkitesh Mallayya is disposed as above and the judgment of the Hon'ble High Court in W.P.(C) 30878/14 dt.20.012.2014 is complied with."

From the above, it is clear that, the property has been ordered to be identified after proper measurement with the intervention of the Taluk Surveyor and as such, the order now passed by the RDO could not have resulted any prejudice to the petitioner in WP(C)

No.3703/2015. The only aspect to be considered is whether the property concerned wherein the 'Vayanasala' is situated is a 'road puramboku' or 'revenue puramboku'. If it belongs to the former category, it is settled law that, 'road puramboku' cannot be assigned in favour of anybody and the same has to be made use of for the development of road. If the measurement turns out to be the result that the property is a 'revenue puramboku', then the application, if any, for assignment of the land in question is to be considered subject to the relevant provisions of law.

8. With regard to the submission made by the learned counsel for the petitioner in WP(C) 3703/2015 that the 3rd respondent therein (petitioner in the other case) has put up the construction in total violation of the relevant Building Rules, the learned counsel for the Corporation submits that, no such complaint has been preferred by anybody so far. If any such complaint is received, the same will definitely be looked into and appropriate proceedings will be taken in terms of the relevant provisions of law, so as to cause the encroachment or violation to be abated by causing the relevant portion to be demolished.

9. After hearing both the sides, this Court finds that, the

WP(C) No.3703/2015 filed by the petitioner 'Vayanasala' does no more deserve to be considered in any manner. The challenge raised against Ext.P2 fails and the writ petition stands dismissed accordingly.

10. Coming to WP(C) 4884/2015 in view of the observations made by the RDO in Ext.P9, the property shall be caused to be measured out with the assistance of the Taluk Surveyor and once the encroachment is established, it will be open for the concerned authorities/respondents to proceed with further steps to cause the encroachment to be abated by causing demolition of the property concerned, if necessary, with the assistance of Police. The violation of Building Rules, if any, on the part of the petitioner in WP(C) No.4884/2015 (3rd respondent in WP(C) No.3703/2015) shall be considered by the respondents 3 & 4 respondents and appropriate steps shall be taken, in accordance with law, within a further period of six weeks.

It is disposed of accordingly.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.