

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 6549 of 2013 (P)

PETITIONER(S):

**ROY SEBASTIAN AGED 40 YEARS
S/O.LATE SEBASTIAN, KADAPLAKKAL HOUSE
PARAKKADAVU KARA, THANKAMANI VILLAGE
UDUMBANCHOLA TALUK, IDUKKI DISTRICT.**

**BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.G.MANU KRISHNAN**

RESPONDENT(S):

- 1. STATE OF KERALA REP.BY SECRETARY
DEPT. OF LOCAL SELF GOVT. INSTITUTION, SECRETARIAT
TRIVANDRUM-695001.**
- 2. THE DISTRICT COLLECTOR
IDUKKI DISTRICT, CIVIL STATION, KUYILIMALA
PAINAVU-685626.**
- 3. THE TAHSILDAR
UDUMBANCHOLA TALUK, UDUMBANCHOLA-685105.**
- 4. THE KAMAKSHY GRAMA PANCHAYAT
PANCHAYAT OFFICE, THANKAMANI
REP.BY ITS PRESIDENT-685609.**
- 5. THE SECRETARY
THE KAMAKSHY GRAMA PANCHAYAT, PANCHAYAT OFFICE
THANKAMANI-685609.**
- 6. JOSE
S/O.CHACKO, MUTHALAKAVIL HOUSE, PARAKADAVU KARA
THANKAMANI VILLAGE, NELLIPARA P.O., PIN 685515.**
- 7. THE SUB INSPECTOR OF POLICE
KATTAPPANA POLICE STATION, KATTAPPANA-685515.**

**R5 BY ADV. SRI.K.M.KURIAN
R6 BY ADV. SRI.P.B.KRISHNAN
R6 BY ADV. SRI.N.AJITH
R6 BY ADV. SRI.P.B.SUBRAMANYAN
R6 BY ADV. SRI.P.M.NEELAKANDAN
R1-R3, R7 BY SRI NOUSHAD THOTTATHIL, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT-P1: COPY OF THE BASIC TAX RECEIPT DATED 29.11.2012 ISSUED BY VILLAGE OFFICER, THANKAMANI VILLAGE.
- EXHIBIT-P2: COPY OF THE NOTICE CUIM-MEMO TO STOP CONSTRUCTION DATED 10.12.2012.
- EXHIBIT-P3: COPY OF THE OBJECTION GIVEN BY THE 6TH RESPONDENT.
- EXHIBIT-P4: COPY OF THE ORDER ISSUED BY THE 5TH RESPONDENT DATED 06.06.2012
- EXHIBIT-P5: COPY OF THE LETTER DATED 12.06.2012 GIVEN BY THE 5TH RESPONDENT TO THE 7TH RESPONDENT.
- EXHIBIT-P6: COPY OF THE FIRST AGREEMENT DATED 11.03.2009 EXECUTED BETWEEN THE PETITIONER AND THE 6TH RESPONDENT
- EXHIBIT-P7: COPY OF THE AGREEMENT DATED 18.12.2012

RESPONDENTS' EXHIBITS:

- R5(A) : COPY OF NOTICE BY PANCHAYAT DATED 09.05.12
- R5(B) : COPY OF NOTICE BY PANCHAYAT DATED 17.05.2012
- R5(C) : COPY OF NOTICE BY PANCHAYAT DATED 25.05.2012
- R5(D) : COPY OF NOTICE BY PANCHAYAT DATED 04.06.2012
- R5(E) : COPY OF NOTICE BY PANCHAYAT DATED 13.06.2012
- R5(F) : COPY OF NOTICE BY PANCHAYAT DATED 22.06.2012
- R5(G) : COPY OF NOTICE BY PANCHAYAT DATED 28.11.2012
- R6(A) : COPY OF THE AGREEMENT ENTERED INTO BETWEEN RESPONDENT NO.6 AND THE PETITIONER DATED 20.03.2012
- R6(B) : COPY OF THE OBJECTION/REPLY SUBMITTED BY RESPONDENT NO.6 TO THE STOP MEMO ISSUED BY RESPONDENT NO.4

//TRUE COPY//

P.A.TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.6549 of 2013

Dated this the 4th day of September, 2015

JUDGMENT

The petitioner, who is the resident of Ward No.VI in Kamakshy Grama Panchayat is stated to be in possession of property having an extent of 40 cents comprised in Re-Sy No.620/1 in Block No.44 of Thankamani Village, covered by partition deed No.2256/2004 of SRO, Kattappana, has approached this Court in this writ petition seeking a writ of mandamus commanding respondents 4 and 5 to complete the proceedings initiated and reflected under Ext.P4 provisional order dated 06.06.2012 issued under Section 253 W(1) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act') and pass final orders and cause implementation of the same within a time frame in accordance with law. The petitioner has also sought for other consequential reliefs including a writ of mandamus commanding respondents 4 and 5 to strictly enforce that part of Ext.P4 order preventing further construction, which is reflected in Ext.P4, as well as the direction in Ext.P2 memo dated 01.12.2012, in letter and spirit and prevent further construction by using the iron arm of law.

2. Going by the averments in the writ petition, the access to the 40 cents of land owned by the petitioner is from Thankamani-Erattayar PWD Road, which is a tarred route maintained by the Public Works Department. There is a 10 feet wide private road having a length of 21 meters which connects the property of the petitioner with the public road. According to the petitioner, the 2nd respondent is in possession, without ownership, of a property having an extent of 6 cents, which is a Government land. In view of the provisions under the Kerala Panchayat Building Rules, 2011 which was notified by Government Order dated 14.02.2011, any construction in the property in occupation of the 6th respondent require a permit issued by the local authority. Further, Section 235 W of the Act empower the Secretary of the local authority to order demolition/alteration of building works unlawfully commenced, carrying on or completed.

3. The specific case of the petitioner is that, during the last week of April 2012, the 6th respondent started construction of a building in the land in his occupation by further trespassing into the panchayat thodu known as Thankamani-Erattayar thodu, which is situated adjacent to the aforesaid property. On

02.05.2012, the petitioner submitted a complaint before the Secretary of Kamakshy Grama Panchayat, the 5th respondent herein. Since the property is a Government land, the petitioner has also submitted similar complaint before the District Collector, Idukki and also the Tahsildar, Udumbanchola Taluk, the 2nd and 3rd respondents herein. Based on the complaint made by the petitioner, the 5th respondent issued Ext.P2 stop memo to the 6th respondent directing him to stop all construction illegally carried out in Government land in Block No.44 in Re-Survey No.620/6 of Thankamani Village forthwith.

4. On receipt of Ext.P2 stop-memo, the 6th respondent submitted Ext.P3 objection in which he has admitted that he has not obtained any sanction from the Panchayat for carrying out the construction. After considering Ext.P3 objection submitted by the 6th respondent, the 5th respondent passed Ext.P4 provisional order under Section 235 W (1) of the Act, by which the 6th respondent was directed to demolish the construction carried out at the land in question in violation of provisions under the Panchayat Building Rules. In Ext.P4, it was also made clear that if the 6th respondent fails to comply with the direction contained therein, the construction would be demolished by

invoking the power under Section 235W(2), (3) and (4) of the Act. In spite of Ext.P4 provisional order, the 6th respondent proceeded with the construction and in such circumstances, the 5th respondent submitted Ext.P5 request before the 7th respondent seeking police assistance for ensuring compliance of Ext.P4 order. Even after Ext.P5, the 6th respondent proceeded with the construction and it was in such circumstances, the petitioner has approached this Court in this writ petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the 5th respondent, in which it has been stated that on receiving complaint from the petitioner regarding the unauthorized construction, the 5th respondent conducted an enquiry in which it was found that a double storied building with four shutters in the ground floor was being constructed by the 6th respondent, without obtaining any permission from the Panchayat. The 6th respondent was issued with Ext.R5(a) notice dated 09.05.2012 to stop the construction immediately and submit explanation within a period of 15 days. After issuance of the said notice, the Panchayat made further enquiry in which it was revealed that the building is being constructed jointly by the 6th respondent

and the Vicar of St.Xavier's Church, Nellipara. On the basis of the above information, the 5th respondent issued Ext.R5(b) notice dated 17.05.2012 to the Vicar of St.Xavier's Church, calling upon him to stop construction with immediate effect. On receipt of Ext.P2 stop memo, the 6th respondent submitted Ext.P3 reply in which he has taken a contention that the construction is being carried out in his private land by SHG at Parakkadavu. On an enquiry it was found that SHG is a name sake organisation and its name was dragged into the issue by the 6th respondent with ulterior motive and in fact the 6th respondent alongwith Vicar of the church is constructing the building. As the explanation given by the 6th respondent is not satisfactory, the 5th respondent by Ext.R5(c) notice dated 25.05.2012 directed the 6th respondent to stop the construction and to show cause on or before 01.06.2012 as to why action under Section 235W(2) of the Act and under Rule 20 of the Kerala Panchayath Building Rules should not be taken against him. Ext.R5(d) is a similar notice dated 04.06.2012 issued to the Vicar of the church. As the explanation given by the 6th respondent to Ext.R5(c) notice was not satisfactory, the 5th respondent passed Ext.P4 order under Section 235W(1) of the Act directing the 6th respondent to stop

the construction and to demolish the illegal construction with immediate effect. As the Vicar of the church has not given any reply, Ext.R5(e) order was issued to him as well. In spite of the aforesaid orders, the 6th respondent and the vicar of the church continued with the construction and it was in that circumstances, the 5th respondent requested the 7th respondent, the Sub Inspector of Police, to take effective steps to stop the illegal construction. But according to the 5th respondent, no effective action was taken by the 7th respondent. The 5th respondent would contend further that, in view of the contention taken by the 6th respondent that the land in question is a private land, the 6th respondent has requested the 3rd respondent Tahsildar by Exts.R5(f) and R5(g) communications dated 22.06.2012 and 28.11.2012 respectively, to determine with the help of Taluk Surveyor whether the land is a Government land or not. The counter affidavit further says that, the 5th respondent is ready to take further steps in the above matter as and when clarification regarding the character of the land is received from the 3rd respondent.

6. A counter affidavit has also been filed by the 6th respondent contenting that the petitioner is attempting to widen

the way passing through his property, for which he is not amenable, which according to him is an attempt to violate the terms of Ext.R6(a) agreement dated 12.03.2012 executed between the parties. The 6th respondent would contend that he is in possession of about 2 cents of land in Survey No.620/6 of Thankamani Village. Another extent of 2.70 Ares i.e., about 6.5 cents was in possession of one Pappi. He assigned the property and by subsequent assignment about 2 cents thereof came to vest in the 6th respondent and the remaining property belongs to St.Xaviers Church, Nellipara. In the portion obtained by the 6th respondent, there is a shop room bearing No.KP 1/42 of Kamakshi Grama Panchayat. The remaining portions of the building having other door numbers now belong to the church. The 5th respondent would contend that the 6 1/2 cents of land and the buildings situated therein partly belong to him and to the church. The 5th respondent would contend further that, he has already submitted an application before the Government for assignment of the land. Once patta is issued there would be no difficulty to regularise the construction made. He has also submitted Ext.R6(b) objection to the stop memo issued by the 5th respondent.

7. From the pleadings and documents on record, it is explicitly clear that the 6th respondent has undertaken a construction in the property in question absolutely without obtaining any permission from the Panchayat and it was in such circumstances, proceedings were initiated against him under Section 235W of the Act. The counter affidavit filed by the 5th respondent and also that of the 6th respondent make it explicitly clear that such construction made by the 6th respondent is an illegal construction. In spite of various notices issued by the 5th respondent, the 6th respondent proceeded with the construction. It was in such circumstances, after issuing Ext.P4 provisional order the 5th respondent approached the 7th respondent seeking Police assistance in terms of Section 235X(3) of the Act. But in spite of statutory mandate under Section 235X(3) of the Act the 7th respondent failed to afford sufficient Police assistance as a result of which the petitioner has to approach this Court in this writ petition seeking various reliefs.

8. As I have already noticed, the 6th respondent has absolutely no case that he has obtained any permission whatsoever from the 5th respondent for carrying out the construction. On a preliminary finding that the construction

carried out by the 6th respondent is in clear violation of the provisions under Section 235W of the Act, Ext.P4 preliminary order has been issued by the 5th respondent. From the stand taken by the 5th respondent, in the counter affidavit it is evident that the proceedings pursuant to Ext.P4 is yet to be finalized.

In such circumstances, this writ petition is disposed of directing the 5th respondent to finalize the proceedings pursuant to Ext.P4 within a time limit, after hearing the petitioner, the 6th respondent and also the Vicar of the church. The proceedings in this regard shall be completed within a period of three months from the date of receipt of a copy of the judgment.

It is made clear that any construction undertaken by the 6th respondent during the pendency of this writ petition will be subject to the final orders that has to be passed by the 5th respondent as directed above.

It is also made clear that this Court has not expressed anything on the merit of the contentions of both sides and also the question as to the right, title or possession of the properties in dispute. All such contentions are left open.

SD/-
ANIL K. NARENDRA,
JUDGE