

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No. 4206 of 2015 (A)

PETITIONER:

**KUTTAPPAN, S/O.PALLI, AGED 71 YEARS,
PALLIPARAMBU HOUSE, PALLIPARAMBU,
VANDAZHI P.O., ALATHUR TALUK,
PALAKKAD DISTRICT.**

**BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

RESPONDENT(S):

- 1. THE VANDAZHI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
VANDAZHI P.O., PALAKKAD DISTRICT.**
- 2. THE SECRETARY,
VANDAZHI GRAMA PANCHAYAT, VANDAZHI P.O.,
PALAKKAD DISTRICT.**
- 3. HARIDASAN,
S/O.LATE PAZHANIMALA, MARUTHAMPADAM HOUSE
VANDAZHI P.O., PALAKKAD DISTRICT.**
- 4. KUMARAN, S/O.LATE PAZHANIMALA,
MARUTHAMPADAM HOUSE, VANDAZHI P.O.,
PALAKKAD DISTRICT.**
- 5. RATHEESH @ PRADHEESH,
S/O.LATE PAZHANIMALA, MARUTHAMPADAM HOUSE,
VANDAZHI P.O., PALAKKAD DISTRICT.**
- 6. SUDEVAN, S/O.VELAPPAN, PALLIPARAMBU,
VANDAZHI P.O., PALAKKAD DISTRICT.**
- 7. PONNU, S/O.PALLI, PALLIPARAMBU, VANDAZHI P.O.,
PALAKKAD DISTRICT.**
- 8. KANDUNNI, S/O.PAZHANELAN, PALLIPARAMBU,
VANDAZHI P.O., PALAKKAD DISTRICT.**

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**9. VINOD, S/O.VELAYUDHAN, PALLIPARAMBU,
VANDAZHI P.O., PALAKKAD DISTRICT.**

**R1 & R2 BY ADVS. SRI.P.RAVINDRA NATH
SRI.IMAM GRIGORIOS KARAT
R3 TO R9 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

**P1: TRUE COPY OF THE PARTITION DEED BEARING NO.587/2000 OF SRO
ALATHUR.**

P1(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P1.

P2: TRUE COPY OF THE PHOTOGRAPHS OF THE PATHWAY.

P3: TRUE COPY OF THE PLAIN IN OS. NO.165/2014 OF SUB COURT, PALAKKAD.

**P4: TRUE COPY OF IA.NO.2314/2014 IN OS.NO.165/2014 OF SUB COURT,
PALAKKAD.**

**P5: TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER UNDER
RIGHT TO INFORMATION ACT BEFORE THE 2ND RESPONDENT.**

P5(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P5.

**P6: TRUE COPY OF THE LAWYER NOTICE ISSUED ON BEHALF OF THE
PETITIONER.**

**P7: TRUE COPY OF THE REPLY RECEIVED FROM THE 2ND RESPONDENT TO THE
LAWYER NOTICE.**

P7(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P7.

RESPONDENT(S)' EXHIBITS:

**EXT. R1(A) : TRUE COPY OF THE RELEVANT EXTRACT FROM THE ASSET
REGISTER MAINTAINED BY THE FIRST RESPONDENT.**

/TRUE COPY/

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.4206 of 2015

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Dated this the 19th day of June, 2015

JUDGMENT

Alleging that the respondent panchayat is trying to encroach upon a portion of the property to widen the existing road, the petitioner has come up before this Court.

2. The petitioner is a resident of Ward No.9 of Vandazhi Grama Panchayat in Alathur Taluk of Palakkad district. The petitioner and his wife, who are senior citizens, are residing in the property which devolved upon him by virtue of Ext.P1 partition deed. The property is having an extent of 11 cents. The party respondents, the adjacent land owners, had been compelling the petitioner to surrender some portion of the land for widening the private pathway which exists on the eastern and southern sides of the petitioner's property. The petitioner resisted the same.

3. The petitioner alleges that there were several complaints before the police which resulted in a direction to him to construct a compound wall so as to give a quietus to the issue and he decided to construct the compound wall. In the meanwhile, the party

respondents interfered and compelled him to construct the wall leaving some portion of the road. Thereafter respondent through the 9th respondent preferred a civil suit.

4. The petitioner further alleges that subsequently respondents 1 and 2 had decided to tar the road. Though he applied for a copy of the decision, the same was not made available to him. It is stated that if such a decision is there, the same is unsustainable as the road in question is a private pathway; it is alleged. According to him, and there is no automatic vesting in the panchayat as contemplated under Section 169 of the Kerala Panchayat Raj Act. Moreover, the said road is not included either in the asset register or in the road register of the respondent panchayat. It is with this background, this writ petition is filed.

5. In the counter affidavit filed by the respondent panchayat, it was contended that the petitioner's case is bound to fail on the sole ground that the road in question is a public road and has been included in the asset register since its inception. Ext.R1(a) which is the copy of the relevant extract from the asset register was also produced in support of the said contention. It was further contended that it is not the first occasion where the respondent

panchayat has undertaken the maintenance works of the said road. It is contended that during 2003-2004 using panchayat funds the road was metalled, including the eastern and southern portion. It was also contended that in fact, the petitioner's has constructed a compound wall around his property which defines his property. Therefore, they prayed for a dismissal of the writ petition.

6. Arguments have been heard.

7. Today, when the matter came up for hearing, the learned counsel for the petitioner would submit that against the illegal encroachment upon a portion of the petitioner's property, he has approached the Sub Court, Palakkad with O.S No.165 of 2014 and the matter is pending consideration.

8. The learned standing counsel for the respondent panchayat, per contra, would submit that the panchayat is not a party to the original suit. However, it is open to the panchayat to get themselves impleaded in the said suit.

9. As a civil court is considering the lis, this Court is of the view that any order passed by this Court can only be subject to the final outcome of the civil suit now pending. As it was argued by the learned standing counsel for the respondent panchayat that they

have made an arrangement for tarring the work, the writ petition is disposed of permitting the respondent panchayat to complete the tarring work. However, it is made clear that the same shall be subject to the final outcome of the original suit.

If it is ultimately found by the civil court that any portion of the tarred road is owned by the petitioner herein, the respondent panchayat shall not stick on to the fact that the panchayat has been allowed to proceed with the tarring work by this Court.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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