

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No.4619 of 2015 (B)

PETITIONER:

**N.N.GIRISH,NAMBRATH HOUSE,ALUVA,
(AT PRESENT EMPLOYED IN ABU DHABI UAE.)
REPRESENTED BY POWER OF ATTORNEY HOLDER
SINDHU GIRISH,NAMBRATH HOUSE,ALUVA.**

BY ADV. SRI.M.M.RAVINDRAN

RESPONDENTS:

- 1. THE RDO,ERNAKULAM-682001.**
- 2. THE THAHASILDAR,ALUVA-683101.**
- 3. THE VILLAGE OFFICER,ALUVA WEST VILLAGE,ALUVA-683101.**
- 4. THE TALUK SURVEYOR,SURVEY SUPERINTENDANT OFFICE,
ALUVA-683101.**
- 5. USHA SARASAN,ADIAZHAKATHU MELETHIL HOUSE,
KEEZHMADU KARA,ALUVA EAST VILLAGE,ALUVA-683101.**

R1 TO R4 BY SENIOR GOVT. PLEADER SRI.JOSEPH GEORGE.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE COPY OF PARTITION DEED NO.1416 OF 2009.

EXHIBIT P2:TRUE COPY OF ASSIGNMENT DEED NO.1570 OF 2009

**EXHIBIT P3:TRUE COPY OF SALE DEED NO.2563 OF 1976 DATED 22.7.1976
ALONG WITH THE RECEIPT AND SKETCH.**

**EXHIBIT P4:TRUE COPY OF LAND TAX RECEIPT DATED 20.3.1997 FOR 4.20
ARES (10.377 CENTS) IN THE NAME OF THE PETITIONERS FATHER.**

**EXHIBIT P5:TRUE COPY OF SALE DEED GIVEN TO THE MOTHER OF THE
PETITIONER BEFORE THE EXECUTING THE SALE DEED.**

EXHIBIT P6:TRUE COPY OF THE PLAINT IN OS NO.310/2012 FILED ON 3.7.2012.

EXHIBIT P7:TRUE COPY OF JUDGMENT IN OS 310/2012 DATED 7.6.2013.

EXHIBIT P8:TRUE COPY OF JUDGMENT DATED 27.9.2013 IN OS 261/2012.

**EXHIBIT P9:TRUE COPY OF COMPLAINT FILED BEFORE THE SUB INSPECTOR
OF POLICE ALUVA BY THE WIFE OF THE PETITIONER.**

EXHIBIT P10: TRUE COPY OF REPRESENTATION DATED 17.6.2014.

**EXHIBIT P11:TRUE COPY OF REPORT OF THE VILLAGE OFFICER SUBMITTED TO
THE THAHASILDARS.**

**EXHIBIT P12:TRUE COPY OF NOTICE SERVED ON THE PETITIONER BY THE 4TH
RESPONDENT.**

EXHIBIT P13:TRUE COPY OF APPLICATION.

EXHIBIT P14:TRUE COPY OF APPLICATION DATED 2.1.2015.

EXHIBIT P15:TRUE COPY OF REPLY DATED 13.1.2015.

**EXHIBIT P16:TRUE COPY OF FMB SKETCH OBTAINED FROM THE VILLAGE
OFFICE.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.4619 of 2015

Dated this the 13th day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"1. To call for the records leading to Exhibit P11 and quash.

2. To declare that Exhibit P11 report is vitiated by malafides and issued in collusion with the 5th respondent.

3. To declare that the alleged encroachment mentioned in Exhibit P11 is inconsistent with the re-survey records and FMB sketch of Survey No.60/63 and 60/74 of Aluva West Village and therefore the respondents 1 and 2 if proceeding against Exhibit P10 complaint shall de hors the report of the 3rd respondent.

4. To declare that Exhibit P11 is issued without conducting a proper enquiry affording an opportunity of hearing to the petitioner or complying any formalities prescribed under the provisions of Surveys and Boundaries Act. To stay all further proceedings pursuant to Exhibit P10 complaint and its file C1N/258/14 in the office of the 1st respondent.

5. To declare that 5th respondent has no right to move any authority to measure the property of petitioner in the guise of an alleged encroachment and disturb the peaceful enjoyment of the property of the petitioner.

6. To issue any other appropriate writ order to direction which the Hon'ble Court deem fit and necessary in the facts and circumstances of the case."

2. The learned counsel for the petitioner points out that, there is absolutely no basis for the findings/inference made by

the 3rd respondent in Ext.P11 report, intending to proceed with further steps for evicting the alleged encroachment at the hands of the petitioner and that such a report has been submitted simply dancing to the tune of the 5th respondent, who made a complaint. The learned counsel also places reliance on Ext.P15 information gathered by the petitioner invoking the remedy under the Right to Information Act and that the said reply dated 13.01.2015 has been issued by none other than the Village Officer himself.

3. Heard the learned Government Pleader as well.

4. After going through the pleadings and proceedings, it is seen that the report of the Village Officer given by Ext.P11 is only with intent to evict the encroachment, if any, on the public pathway and it is with this intent that, appropriate instructions are sought for, to cause the measurement and fixation of the boundaries with the involvement of the Taluk Surveyor. The measurement has to be conducted by the Taluk Surveyor, in accordance with the relevant provisions of law, with notice to all concerned, including the petitioner and the 5th respondent. The learned Government Pleader also points out that, it was pursuant

to the said exercise, that Ext.P12 notice was issued to all concerned by the Taluk Surveyor. It is also stated that, the proceedings will be finalised with regard to the measurement in accordance with law and if at all there is any encroachment, further steps will be pursued in terms of the Kerala Land Conservancy Act/Rules by issuing notice to all the persons concerned.

The said submission is recorded. The proceedings as above shall be finalised only with reference to all the relevant records and not solely on the basis of Ext.P11.

The writ petition is disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE**

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