

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WP(C) .NO. 9081 OF 2012 (I)

PETITIONER:

RAGHAVAN VIJAYARAJAN, AGED 52 YEARS,
VRINDAVANATHIL, PADINJATTAKKARA, THEKKUMURI,
THAZHAVA, KOLLAM.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT\S:

1. THAZHAVA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, S.R.P MARKET P.O.,
THAZHAVA, KOLLAM-690 539.
2. THE SECRETARY,
THAZHAVA GRAMA PANCHAYAT, S.R.P.MARKET P.O., THAZHAVA
KOLLAM-690 539.

R1,R2 BY ADV. SRI.B.SURESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1- TRUE COPY OF THE PETITION DATED 25.7.2011 FILED BY THE
PETITIONER BEFORE THE KARUNAGAPPALLY TALUK LEGAL SERVICE
AUTHORITY.

EXHIBIT P2- TRUE COPY OF THE REPORT OF THE COMMISSIONER DATED
29.8.2011 IN PLP NO.153/2011 BEFORE THE KARUNAGAPALLY
TALUK LEGAL SERVICE AUTHORITY.

EXHIBIT P3- TRUE COPY OF THE ORDER DATED 16.9.2011 IN PLP NO.53/2011
BEFORE THE KARUNAGAPALLY TALUK LEGAL SERVICE AUTHORITY.

EXHIBIT P4- TRUE COPY OF THE REPRESENTATION DATED 25.2.2012 FILED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

= = = = =

W.P. (C) No.9081 of 2012

- - - - -

Dated this the 22nd day of December, 2015

J U D G M E N T

Petitioner is the owner in possession of 15.15 Ares of property situated in R.Sy. No. 304/13 of Thazhava Village in Karunagappally Taluk, by virtue of documents Nos. 2103/1979, 2627/1980, 2904/1981, 3012/1983 and 2993/1983 of Oachira Sub Registry Office. According to the petitioner, the southern side of the aforesaid property lies Kottolimukku pond of Thazhava Panchayat. During the monsoon, the said pond gets flooded and the water spills out and flows through the canal to the north into the paddy field. The said canal is the only exit for the overflowing of water. During the period 2009-10, under the guise of the employment guarantee

-: 2 :-

scheme, sand from the said pond adjacent to the southern boundary of the petitioner's property was removed to the depth of 2 metres by the respondent Panchayat. Because of this unlawful act, the southern boundary of the petitioner's property started sliding and soil keeps falling into the pond, by the removal of sand from the pond adjacent to the southern boundary of the petitioner's property. The flow of water from the pond has completely obstructed and the overflowing of water gets staggered in the petitioner's property and after gets it filled it overflows into the paddy field on the southern side with strong current eroding soil. Aggrieved by the illegal act of the Panchayat, though the petitioner had filed Ext.P4 representation. The Panchayat has not considered the said representation so far. The inaction on the part of the Panchayat is arbitrary and illegal.

-: 3 :-

2. *Per contra*, the respondent Panchayat filed a counter affidavit, denying the allegations levelled against the Panchayat. According to the contentions raised in the counter affidavit, this Writ Petition is filed for the sole purpose of blocking the newly constructed pathway, on the eastern side of the Kottolimukku pond. The property, where the petitioner had constructed his house was a paddy field. He had constructed house by removing clay from his property and he had sold away the clay from his property and on account of removal of clay from his property, there is water logging on the northern side of his property. Thus, the water logging is his own creation and it is due to removal of clay from his own property. This is the contention raised by the respondent Panchayat in the counter statement.

3. Going by pleadings of both parties, this

-: 4 :-

Court finds that the question in controversy centres around the disputed fact, as to the reason for flood of water, if any in the petitioner's property. Needless to say, disputed fact cannot be decided in exercise of jurisdiction under Article 226 of the Constitution of India. Therefore, this Court declines jurisdiction to pass any positive order, as prayed for by the petitioner. But, the respondent Panchayat is directed to dispose Ext.P4 representation, if it is pending, after affording an opportunity of being heard, to the petitioner, at the earliest.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge