

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C). No.8383 of 2013 (W)

PETITIONER(S):

1. **SULOCHANA P P, AGED 40 YEARS,
W/O.VASU P.P., PP NIVAS, POOLEKKEPARAMBIL,
KATTUKULAM, OTTAPALAM TALUK, PALAKKAD DISTRICT.**
2. **AMMU, AGED 65 YEARS,
S/O.LATE RAMAN, PP NIVAS, POOLEKKEPARAMBIL,
KATTUKULAM, OTTAPALAM TALUK, PALAKKAD DISTRICT.**
3. **VASU P.P., AGED 45 YEARS,
P.P. NIVAS, POOLEKKEPARAMBIL, KATTUKULAM,
OTTAPALAM TALUK, PALAKKAD DISTRICT.**

**BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SMT.R.LEELA**

RESPONDENT(S):

1. **THE REVENUE DIVISION OFFICER,
OTTAPALAM, PALAKKAD DISTRICT-678 001.**
2. **THE TAHSILAR,
OTTAPALAM, PALAKKAD DISTRICT-678 001.**
3. **THE VILLAGE OFFICER,
SREEKRISHNAPURAM-II VILLAGE
OTTAPALAM TALUK, PALAKKAD DISTRICT-678 001.**
4. **MADHU, S/O.CHANDRAN,
CHOONACKAL HOUSE, POLACKAL PARAMBIL
KATTUMULAM AMSOM DESAM, OTTAPALAM,
PALAKKAD DISTRICT-678 001.**

**R4 BY ADV. SRI.K.RAVI (PARIYARATH)
BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT P1. TRUE COPY OF THE REPRESENTED DATED 6/9/2011.

EXT P2. TRUE COPY OF THE SERVICE CERTIFICATE FROM RAJAGIRI COLLEGE DATED 27TH JUNE 2010.

EXT P3. TRUE COPY OF THE CERTIFICATE ISSUED BY THE RAJAGIRI SCHOOL OF ENGINEERING AND TECHNOLOGY DATED 14/09/2010.

EXT P4. TRUE COPY OF THE JUDGMENT IN WPC NO.25743/2009 DATED 18/3/2011.

EXT.P5. TRUE COPY OF THE NOTICE DATED 20.03.2013.

EXT.P6. TURE COPY OF THE DOCUMENT PERTAINING TO THE 1ST PETITIONER'S PROPERTY.

EXT.P7. TRUE COPY OF THE AREA SKETCH ISSUED BY A PRIVATE SURVEYOR DATED 18.6.2011.

RESPONDENT(S)' EXHIBITS:-

EXT.R4(A):- COPY OF THE COMPLAINT FILED AT THE INSTANCE OF THE 4TH RESPONDENT BEFORE THE FIRST RESPONDENT DATED 7.7.09.

EXT.R4(B):- COPY OF THE REPORT AND SKETCH SUBMITTED BY THE ADDL. TALUK SURVEYOR, OTTAPPALAM DATED 7.4.10.

EXT.R4(C):- COPY OF THE ORDER ISSUED TO THE SECOND RESPONDENT WITH COPY TO THIS RESPONDENT DATED 30.4.2011.

EXT.R4(D):- COPY OF THE COUNTER AFFIDAVIT FILED IN W.P(C) NO.23248/11 AT AT THE INSTANCE OF THE SECOND RESPONDENT DATED 15.6.2012.

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/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.8383 of 2013

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Dated this the 15th day of January, 2015

JUDGMENT

Ext.P5 notice issued by the second respondent is under challenge in this writ petition.

2. The petitioners allege that they are in possession of 40 cents of land and they are paying land tax in respect of the same. They further allege that the 4th respondent approached the petitioners as well as one Vijayan and Sasidharan who were having property near the mouth of the way leading to Pariyaram Petta Bhagavathy Temple for releasing a portion of their land for widening the way. The petitioners agreed that they were ready to release a portion provided, the 4th respondent also gave a portion of his land for the said road so that it would reach up to the houses situated on the southern end of the pathway. The 4th respondent refused the same and hence, the petitioners and other neighbours refused to release their portion of land.

3. The petitioners further allege that as a retaliatory measure, the petitioner approached this Court and obtained Ext.P3 judgment behind the back of the petitioners. They allege that though there

was a direction in Ext.P3 to issue notice to the respective parties within five months, no opportunity are being offered to the petitioners. Therefore, they submitted Ext.P4 request for measuring out their proper in accordance with the survey records. However, the petitioners were served with Ext.P5 notice directing them to surrender the property which according to the second respondent was encroached upon by the petitioners. It is with this background, they have come up before this Court.

4. The 4th respondent contended that the petitioners were encroachers upon the Government land and accordingly, he submitted a complaint before the 1st respondent and the 1st respondent called a report from the Taluk Surveyor, Ottappalam, who submitted Ext.R4(b) report. Thereafter an enquiry was conducted by the 1st respondent wherein the 2nd respondent was directed to remove the encroachment under the Kerala Land Conservancy Act as per Ext.R4(c).

5. As nothing happened long after the said order, the 4th respondent approached this Court with a writ petition wherein the 2nd respondent herein had countered that once steps have been taken to remove the encroachment. The said writ petition was disposed of directing the respondent to complete the proceedings

within a time frame. According to the 4th respondent, the allegation that the petitioners were unaware of the proceedings is not true.

7. The State has also filed a counter affidavit supporting the stand taken by the 4th respondent.

8. Arguments have been heard.

9. While the petitioners allege that the respondents are trying to encroach upon their property, the definite stand taken by the respondents is that the petitioners are encroachers upon a Government land and the Government have initiated proceedings under Kerala Land Conservancy Act. It is crucial to note that though there is a provision for appeal against the orders passed under the land conservancy proceedings, the petitioners have approached this Court without approaching the appellate authority.

10. Law was set in motion by the 4th respondent by filing Ext.R4(a) complaint before the Revenue Divisional Officer, Ottappalam. Ext.R4(b) report was obtained by the Revenue Divisional Officer and thereafter enquiry was conducted and the 2nd respondent was directed to remove the encroachment resorting to the KLC Act. Ext.R4(c) is the direction given by the R.D.O to the Tahsildar, Ottappalam. Ext.R4(d) is the counter affidavit filed by the Deputy Tahsildar, Taluk Office, Ottappalam in W.P(C) No.23248 of

2011 wherein it is stated that existing pathway has been encroached upon by certain persons, including the petitioners herein and the same has been brought to the notice of the encroachers and they have agreed to withdraw the encroached land. As the parties withdrew from the said undertaking, the Taluk Surveyor re-fixed the encroachment and the matter has been discussed in the Taluk Vikasana Samithi held on 15.5.2010. As the matter was not settled, on 22.5.2010 again a special samithi had conducted negotiation with the encroachers. They maintained the stand that the land in question was only a 'nadavazhi' (pathway) and they have not encroached upon any land and it was decided to settle the matter amicably before 10.6.2010. As the matter was not settled, the Village Officer, Sreekrishnapuram on 14.6.2011 proceeded to the spot to remove the encroachments.

11. It is further stated that at this time, the Village Officer was attacked by some local persons along with the encroachers and a criminal case was registered. Therefore, the land conservancy proceedings under the KLC Act were initiated against the encroachers and accordingly, the Village officer had booked 'A' Form under Rule 4 of KLC (Amendment) Act, 2009 against the encroachers, including the petitioners. An extent of property tress

passed by the encroachers were also ascertained and a notice under Section 12, Rule 9 of the KLC Act was issued to the parties. It is suppressing all these facts, the petitioners have filed this writ petition.

12. If the petitioners are aggrieved by the orders passed by the Tahsildar under the Land Conservancy Act, they have an alternate remedy of filing an appeal under the Act. If the petitioners' case is that any portion of their property is being taken over by the Government, it is open to them to bring the matter before a competent civil court for redressal of their grievance.

13. Therefore, the petitioners are not entitled to get any relief prayed for.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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