

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C) .No. 6104 of 2015 (K)

PETITIONER:

BRAN AYISHA, AGED 52 YEARS
S/O.MAMMOOTTY HAJI, AKKARA HOUSE, KANDOTH VIA
VELLAMUNDA P O, WYNAD DIST

BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL

RESPONDENTS:

1. THE ASSISTANT EXECUTIVE ENGINEER
PWD ROAD SUB DIVISION, MANANTHAVADY-670645, WYNAD DIST
2. THE EXECUTIVE ENGINEER(ROADS)
PWD ROADS SUB DIVISION
MANANTHAVADY-670645, WYNAD DIST
3. THE EXECUTIVE ENGINEER(NATIONAL HIGHWAY)
PWD ROADS SUB DIVISION, MANANTHAVADY-670645
WYNAD DIST
4. STATE OF KERALA
REP BY SECRETARY TO GOVERNMENT
PUBLIC WORKS DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001

R BY GOVERNMENT PLEADER SRI.K.C.VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 6104 of 2015 (K)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1:-A TRUE COPY OF THE PARTITION DEED NO 1250/1984 OF MANANTHAVADY
SRO

P2:-A TRUE COPY OF THE COMMUNICATION UNDATED ISSUED BY THE 1ST
RESPONDENT

RESPONDENT(S) ' EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

SCL.

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.6104 of 2015

Dated this the 27th day of February, 2015.

JUDGMENT

The petitioner has approached this Court being aggrieved by Ext.P2 notice, whereby the petitioner is directed to remove the encroachment before 11.2.2015, failing which the same would be removed under Section 15(1)(2) of the Highway Protection Act and the cost for removal of encroachment will be recovered as per Section 16 of the Highway Protection Act.

2. The learned counsel for the petitioner submits that the petitioner has not effected any such encroachment and that the building is in existence for more than a decade, in the property covered by Ext.P1. It is also pointed out that no opportunity of hearing has been given to the petitioner before passing Ext.P2; which in fact is an order.

3. Heard the learned Government Pleader as well.

4. After hearing both the sides, this Court finds that if at all any encroachment is there, the respondents are at liberty to have the same evicted by passing appropriate proceedings.

But an opportunity of hearing has necessarily to be given to the petitioner so as to meet the *principles of natural justice*.

In the said circumstance, Ext.P2 is ordered to be treated as a notice and the petitioner will be free to submit his objections, if any, which shall be done within 'two weeks' from the date of receipt of a copy of this judgment. If any objection is obtained, the proceedings shall be finalized by the first respondent, after affording an opportunity of hearing the petitioner, at the earliest, at any rate within 'one month' thereafter. '*Status quo*' will continue till such time. The contentions raised by the petitioner with reference to the mandatory requirement under Section 18(2) of the Highway Protect Act and such other issues are left open.

The writ petition is disposed of. The petitioners shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Scl.