

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 6384 of 2015 (W)

PETITIONER:

MARIAM BEEVI, AGED 40 YEARS,
D/O SYED MOHAMMED, ANUGRAHA HOUSE,
ATHIRAMPUZHA VILLAGE, PADINJARUBHAGOM
KARA, ATHIRMAPUZHA P.O, KOTTAYAM TALUK,
KOTTAYAM DISTRICT

BY ADVS.SRI.SIRAJ KAROLY
SRI.R.PARAMESWARA IYER

RESPONDENTS:

1. THE SECRETARY, ATHIRAMPUZHA GRAMA PANCHAYATH,
ATHIRAMPUZHA GRAMA PANCHAYATH OFFICE,
ATHIRAMPUZHA P.O, KOTTAYAM DISTRICT 686 562.
2. ATHIRAMPUZHA GRAMA PANCHAYATH,
REP. BY ITS SECRETARY, PANCHAYATH OFFICE,
ATHIRAMPUZHA P.O, KOTTAYAM TALUK,
KOTTAYAM DISTRICT 686 562.
3. THE DISTRICT COLLECTOR, KOTTAYAM,
COLLECTORATE, KANJIKUZH, KOTTAYAM 686 001.
4. THE DIRECTOR OF PANCHAYATH,
THIRUVANANTHAPURAM 695 001.
5. THE SECRETARY, LOCAL SELF ADMINISTRATION,
GOVERNMENT OF KERALA,GOVT. SECRETARIAT,
THIRUVANANTHAPURAM 695 001.

R1-R2 BY ADV. SRI.RAJESH THOMAS
R3-R5 BY GOVT. PLEADER SMT.C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-03-2015, THE COURT ON 10-04-2015 DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 6384 of 2015 (W)

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 16.02.2015 ISSUED BY ATHIRAMPUZHA VILLAGE OFFICE

EXHIBIT P1(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT P1

EXHIBIT P2 TRUE COPY OF THE SKETCH OF THE PROPERTY DATED 16.02.2015 ISSUED BY THE VILLAGE OFFICER, ATHIRAMPUZHA.

EXHIBIT P2(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P2

EXHIBIT P3 TRUE COPY OF THE LAND TAX PAID RECEIPT

EXHIBIT P3(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT P3

EXHIBIT P4 TRUE COPY OF THE APPLICATION DATED 28-03-2011

EXHIBIT P4(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT P4

EXHIBIT P5 TRUE COPY OF THE APPLICATION DATED 12-02-2015

EXHIBIT P5(A) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT P5

EXT. P6 TRUE COPY OF THE REPRESENTATION GIVEN TO THE PANCHAYAT TO REMOVE THE ROAD FROM THE ASSET REGIATER

EXT. P6(a) ENGLISH TRANSLATION OF EXT P6

EXT. P7 TRUE COPY OF THE REPLY

EXT. P7(A) ENGLISH TRANSLATION OF EXT P7

EXT. P8 TRUE COPY OF THE PURCHASE DEED DATED 15.3.2002 HAVING NO. 603/2002 OF THE ETTUMANNOR SUB REGISTRY

EXT. P8(a) ENGLISH TRANSLATION OF EXT P8

RESPONDENT'S EXHIBITS:

EXT. R1(a) TRUE RELEVANT EXTRACT OF THE DIGITALIZED ASSET REGISTER MAINTAINED BY THE PANCHAYAT

EXT. R1(b) TRUE ENGLISH TRANSLATION OF EXT R1(a)

EXT. R1(c) TRUE COPY OF THE REPRESENTATION DATED 4.10.2013 FILED BY THE BENEFICIARIES OF THE GARDEN ROAD

EXT. R1(d) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT R1(c)

EXT. R1(e) TRUE PHOTOGRAPHS OF THE ROAD SHOWING THE WORKS CARRIED OUT

EXT. R1(g) TRUE COPY OF ESTIMATE FOR PRVIDING INTERLOCK BRINCKS TO PAVE GARDEN ROAD IN WARD 8 OF ATHIRAMPUZHA PANCHAYAT

EXT. R1(H) TRUE COPY OF THE SITE HAND OVER ORDER DATED 28.1.2015 TO THE CONVENOR OF THE WORK

Dama Seshadri Naidu, J.

W.P.(C)No.6384 of 2015 W

Dated this the 10th day of April, 2015

JUDGMENT

The issue in this writ petition is whether the road in question leading to the houses of the petitioner and six others is an exclusive private path, meant for the benefit of those seven persons; or a public road vested in the respondent Grama Panchayat, meant for the benefit of the general public.

2. Briefly stated, the petitioner, having a residential building within the limits of the respondent Grama Panchayat, shares a pathway with six others in the locality. The pathway, formed when an area of 71 cents of private land was plotted out by the owner of the property, was only meant to serve the needs of the houses constructed on either side of it.

3. When the petitioner and her neighbours came to know in 2011 that the Panchayat had included the private pathway in its Asset Register around 2011, all of them submitted Exhibit P4 application to the Panchayat seeking the removal of the road from the Asset Register. Though there is no official reply, the then Panchayat secretary and Assistant Engineer of the Grama Panchayat are said to have informed the petitioner and others that the pathway had been removed from the Asset Register. After considerable lapse of time, now the respondent Grama Panchayat, without any manner of right, started laying interlocking blocks on a part of the road at the behest of the member of the ward.

4. Alarmed at the turn of events, the petitioner is said to have submitted to the first respondent Exhibit P5 application under the Right to Information Act to know how the Grama Panchayat could lay a road on a private path.

Having not been heard from the Grama Panchayat, the petitioner has filed the present writ petition.

5. The learned counsel, in the above factual background, has strenuously contended that the Grama Panchayat has brought a private pathway into its Asset Register without following the due procedure. According to him, despite the property belonging to private persons, the Grama Panchayat has been making efforts to appropriate the pathway without even putting the petitioner and others on notice. In elaboration, the learned counsel would contend that it is being done at the behest of the ward member and two other interested persons who have an axe to grind.

6. The learned counsel has also contended that, if the respondent Panchayat completes the task of paving the road with the interlocking blocks, during the rainy season

the water will flow down to the low-lying areas affecting the petitioner and other property owners.

7. The learned counsel, addressing himself to the statutory aspects of the issue, would contend that the Government has formed certain guidelines regarding the preparation of the Asset Register, but the Grama Panchayat has not followed the said guidelines, when it included the private pathway in the Asset Register. According to him, unless the owners of the property, in the present instance the petitioner and 6 others, relinquish the right in the property under the provisions of the Kerala Land Relinquishment Act, 1958, the Grama Panchayat would not get any manner of right over the pathway. In support of his submissions, the learned counsel has drawn my attention to sections 3 and 4 of the said Act.

8. Per contra, the learned counsel for the respondent Grama Panchayat has contended that the so-called private

pathway, known as garden road, was included in the digitalised Asset Register in 2011. According to him, it is a long-standing demand of the people residing by the side of the road, as well as the common commuters, that the road be subjected to tarring or concrete work to avoid soil erosion during rainy season. In support of his submissions, the learned counsel has drawn my attention to Exhibit R1(c) representation before the second respondent seeking a properly laid road for their benefit. He has laid stress on the fact that Exhibit R1(c) was submitted, among others, by the petitioner's brother and also two other persons who are said to be the signatories to Exhibit P4.

9. The learned counsel for the Grama Panchayat has contended that, though laying a proper road is for the benefit of all, the petitioner seems to have been actuated by the fear that given the narrow width of the road, she may be compelled in future to part with a part of her property to

widen the road. According to the learned counsel, by the time the petitioner filed the writ petition, the respondent Panchayat had completed 65% of the road work. The learned counsel has also contended that though the digitalised Asset Register was prepared in 2011, the property in question was found included in the Asset Register even prior to that period.

10. Adverting to section 169 of the Kerala Panchayat Raj Act, 1994, the learned counsel contends that all the public roads exist in the Grama Panchayat. Summing up his submissions the learned counsel would urge that unless this court vacated the interim order of status quo granted on 27.02.2015, the public interest would suffer immeasurably.

11. In reply, the learned counsel for the petitioner has strongly contested the statement made by the Grama Panchayat that the owners of the property on either side of the road have given any representation for laying a proper

road. He has drawn my attention to Exhibit P6, which is said to be a representation dated 25.03.2015 said to have been submitted by the people in the vicinity declaring that they had never given any consent to lay the road. The learned counsel has also contended that unless the Grama Panchayat acquires the property by taking recourse to land acquisition proceedings, the question of vesting private property in the Grama Panchayat does not arise. According to him, there is no record to show how the private property is brought into the Asset Register of the Panchayat by following the due process. The road came into existence, contends the learned counsel, only in 2002; when the owner plotted out the property, he sold the individual plots along with right in the pathway, thereby collecting from the purchasers the cost of the pathway as well. In the end, the learned counsel has urged this court to order the Grama

Panchayat to restore the road to its original condition at its own cost.

12. Heard the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayat, apart from perusing the record.

13. I have already adumbrated the scope of adjudication Prefatorily at the beginning. Indeed, the petitioner has essentially raised a title dispute masquerading it as an invasion of his constitutional right to property by the local self-government, calling for a public law remedy under Article 226 of Constitution. It has, without much cavil, assumed aphoristic proportions to hold that under Article 226 of Constitution any infraction or invasion of an established constitutional or civil right by the state or any of its instrumentalities could be questioned; the public law remedy, however, cannot be invoked to establish the very right. So long as the respondent Grama Panchayat does not

admit the title of the petitioner or any other person to the alleged private pathway, the issue continues to remain in the realm of a title dispute.

14. If we examine the statutory scheme, Section 2, the lexical provision, of the Kerala Panchayat Raj Act, 1994, defines the public road as follows:

(xxxv) 'public road' means any street, road, square, court, alley, passage, cart-track, foot-path or riding path, over which the public have right of way, whether a thoroughfare or not, and includes, -

(a) The road-way over any public bridge or causeway;

(b) The footway attached to any such road, public bridge or causeway; and (c) The drains attached to any such road, public bridge or causeway, and the land whether covered or not by any pavement, verandah or other structure which lies on either side of the road-way upto the boundaries of the adjacent property whether the property is private property or property belonging to the State or Central government.

(emphasis added)

15. It is further relevant to examine Section 169 of the Act, which reads as follows:

“169.Vesting of Public roads in village panchayats. - (1) Notwithstanding anything contained in the Kerala Land Conservancy Act 1957 (8 of 1958), or in any other law for the time being in force, all public roads other than those classified by the government, National Highway, State Highway or major district roads, bridges, culverts, ditches, dykes, fences on or beside the same protective devices and all adjacent land, not being private property appertaining thereto, within the panchayat area, i.e.-

(a) in the District Panchayats – All district roads other than major district road within the area of more than one block panchayat;

(b) in the Block Panchayats – District roads and village roads other than major district roads within the area of more than one village panchayat comprised in a Block Panchayat;

(c) in the village Panchayats – other village roads, paths and lanes within the Village Panchayat area.

Together with all pavements, stones and other materials and other things installed therein, all drains culverts made along side or under such roads and all works, materials and things appertaining thereto may be deemed as transferred to and vested absolutely in the Panchayat area.

(2) Subject to the provisions of this Act, all rights and liabilities of the Government in relation to the public roads and other properties, materials and things vested in the

Panchayat under sub-section (1) or sub-section (4) shall, from the date of such vesting, be the rights and liabilities of the Panchayat.]

(3) Notwithstanding anything contained in sub-section (1) or sub-sections (2) the Government may at any time by notification in the Gazette, exclude from the operation of this Act any such public road, sewer, drain, drainage work, tunnel or culvert and may also modify or cancel such notification and thereupon they shall revert in Government.

Provided that, before issuing such a notification the Government shall consult the village panchayat concerned and give due regard to the objections, if any.

(4) The government may, by notification in the Gazette, order the transfer to and vesting in, a village panchayat, of any public road or class of public roads in the village panchayat and thereupon such road or roads shall notwithstanding anything contained in sub-section (1), but subject to the other provisions of this Act, stand transferred to and vest in, such village panchayat.

(5) It shall not be lawful for any persons to occupy any land which is transferred to and vested in a [] panchayat under sub-section (1) or sub-section (4), whether a puramboke or not, without prior permission from the 101 [] panchayat concerned.

Explanation. - For the removal of doubts its is clear by declared that in the erection of any wall, fence or building or the putting up of any over hanging structure of projection (whether on a temporary or permanent basis) on or any land aforesaid shall be deemed to be occupation such land.”

16. From the above statutory scheme, it is evident that 'public road' as defined under clause (xxxv) of Section 2 of the Act is quite expansive. Any street, road, square, court, alley, passage, cart-track, foot-path or riding path, over which the public have a right of way, even if it is not a thoroughfare, is a public road. Further, Section 169 of the Panchayat Raj Act, 1994, begins with a non-obstante clause. The expression 'not being private property appertaining thereto' in Sub-section (1) of Section 169 is very significant. It only exempts private property adjacent to any public road, but not the very road, which always has an element of public utility attached to it—be it private or public. Further, the roads need not be thoroughfares. It is also pertinent to

observe that clause (c) of sub-section (1) of Section 169, dealing with the village Panchayats, species 'other village roads, paths and lanes within the Village Panchayat area' as vesting in the Grama Panchayat. The expression used is 'village roads, paths and lanes'; it does not specify whether they are private or public.

17. Sweeping as the above observation may be, I hasten to draw a distinction between private property pure and simple and private property with an element of public character. Tom Bingham, in his book 'The Rule of Law' (P.75, Penguin, 2011), has observed thus:

“[H]istorically, it was robust in asserting the inviolability of a person's home. Thus Sir Edward Coke, perhaps the most influential English jurist of all time, famously declared that 'a man's house is his castle', and the Earl of Chatham scarcely less famously said:

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail – its roof may shake – the wind may blow through it – the storm may enter – the rain may enter – but the King of England

cannot enter – all his forces dare not cross the threshold of the ruined tenement!”

18. If a pathway is within the confines of a house, however sprawling it may be, whatever lies therein may be private in character and private in use. Once it is meant to connect somebody else's, thus becoming part of a network of roads or paths, however short or insignificant its extent and reach may be, it is to sub-serve the public purpose of providing access to and fro.

19. Since much emphasis has been laid on the Kerala Land Relinquishment Act, 1958, it is apposite to refer to the same as well. As the long cause title of the Act suggests, it is an act to make provision for the relinquishment of lands in the State of Kerala in favour of the Government. Section 2(a) of the Act defines the “registered holder” thus:

“[I]n relation to any land as a person whose name is registered in the revenue records as the proprietor of the land.”

(emphasis added)

20. Further, the very act of relinquishment is defined in clause (b) of Section 2 as follows:

“(b) “relinquishment” means, in the case of any land in the possession of registered holder the unconditional surrender by the registered holder of all his rights over the land, and, in the case of any land in the possession of a cultivating tenant, the unconditional surrender jointly by the registered holder, the cultivating tenant and the intermediaries, if any, of all their rights over the land.”

21. In the first place land ought to have been registered in the revenue records. The question of 'having registered in the revenue record' arises only in the case of agriculture lands. And the relinquishment ought to be in favour of the Government. In this regard, it pays to examine Section 3 of the Act, which reads thus:

3. Relinquishment of land.- [7][1] A registered holder may relinquish in favour of the Government the whole or any position of any land entered in his name in the revenue records, provided that such land or portion of land is in his possession and free of encumbrances.

(2) Where any land is in the possession of a cultivating tenant, the registered holder, the cultivating tenant and the intermediaries, if any, of such land may jointly relinquish the same or any portion thereof in favour of the Government, provided that such land or portion of land is free of encumbrances."

(emphasis added)

22. As has been observed earlier, the long cause title declares that it is a relinquishment in favour of the Government; so does Section 3 of the Act, which is a substantive provision. It gets further fortified, if we examine Section 4C, which declares that once an application for relinquishment of any land is accepted in consequence of any order passed by the Revenue Divisional Officer under Section 4, or the Collector under Section 4A, or the Board of Revenue under Section 4B, such land together with all right, title and interest of the registered holder or, as the case may be, the cultivating tenant and the intermediaries, if any, in such land, shall vest in the Government free of all encumbrances.

23. It is evident from the above statutory scheme that the Kerala Land Acquisition Act, 1958, essentially deals with agricultural lands. The whole mechanism provided therein is amply indicative of the fact that it does not have any application to residential properties. Further, it only governs any relinquishment in favour of the Government. The very act has not defined the expression 'Government'; even if we look at the provisions of the General Clauses Act, the lexical provision, Section 3(23), does not include a local self-government, such as the respondent Grama Panchayat, to be Government, though the provision is inclusive rather than definitive. The scheme of the enactment is, thus, amply indicative that it is a legislation meant to subserve the agrarian reforms.

24. Once a property assumes the character, say, a road or a path, having the potential of being a public utility, it ceases to have any exclusivity, for the individual interest

is to yield to the common good. John Donne declares: No man is an island entire of itself; every man is a piece of the continent, a part of the main. The legislative wisdom has ensured that there should not be private fiefdoms and zones of exclusivity shutting out access to the general public.

25. Viewed from another angle, it is axiomatic that if a piece of land is to be plotted out, it is statutorily mandatory that proper roads and other amenities are shown. Just because the whole of the property once was private, it could not be said that it would bear the same character forever. The logical fallacy is very evident if we examine the fact that, by the same token, if roads in a layout are to be treated as the private property of the purchasers, the other statutory lung spaces and spaces for public utility are also required to be treated as private properties. If every layout has only private roads barring access to the general public, we will end up with a series of

private estates without a connecting thread of roads, forcing the people to jump and hop from place to place—ludicrous as it sounds.

26. I have also examined the Circular No.58608/D.B.2/2009 LSGD, dated 13.01.2010, which deals with the rectification of mistakes in the Asset Register and inclusion of new assets in the said register. But I do not find anything adverse therein to conclude that the road in question should not be treated as one vesting in the respondent Panchayat.

In the facts and circumstances, the writ petition is dismissed. All interim orders, if any, in force, stand vacated. No order as to costs.

Dama Seshadri Naidu, Judge

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