

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WP(C).No. 6392 of 2015 (Y)

PETITIONER(S):

**MULLAN SULAIMAN,
PALAPPATTA HOUSE, PULIYAKODU MELMURI,
KUZHIMANNA P.O., MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.SASIKUMAR
SRI.S.ARAVIND
SRI.R.ROHITH
SRI.K.JANARDHANA SHENOY
SRI.V.K.PRASAD**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY THE
PRINCIPAL SECRETARY, LOCAL SELF GOVERNMENT (DB),
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. DISTRICT COLLECTOR, UPHILL P.O.,
MALAPPURAM DISTRICT - 673 001.**
- 3. KUZHIMANNA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, KUZHIMANNA P.O.,
MALAPPURAM DISTRICT - 673 641.**
- 4. K.P.ALAVIKKUTTY, S/O.KAMMAD,
PENGATTUCHALIL HOUSE, AKKAPPRAMBA (P.O.), KUZHIMANNA,
MALAPPURAM DISTRICT, PIN-673 641.**
- 5. KUNHIKANNAN,
ANAPPATTATHU SCHEDULED CASTE COLONY,
AKKAPPRAMBU (P.O.), KUZHIMANNA, MALAPPURAM DISTRICT,
PIN-673 641.**

R1 & R2 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

R3 BY ADVS. SRI.BABU S. NAIR

SRI.K.RAKESH

R4 BY ADV. SRI.P.VENUGOPAL

R5 BY ADVS. SRI.P.SAMSUDIN

SRI.JITHIN LUKOSE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:A TRUE COPY OF THE RESOLUTION NO.3/2013 DATED 09.05.2013 OF KUZHIMANNA GRAMA PANCHAYAT.

EXT.P1(A):A TRUE ENGLISH TRANSLATION OF EXT.P1.

EXT.P2:A TRUE COPY OF THE LETTER DATED 15.05.2013 FORWARDED BY THE SECRETARY KUZHIMANNA GRAMA PANCHAYAT TO THE DISTRICT COLLECTOR THROUGH THE DISTRICT MEDICAL OFFICER.

EXT.P2(A):A TRUE ENGLISH TRANSLATION OF EXT.P2.

EXT.P3:A TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 19.06.2013 ISSUED BY THE DISTRICT MEDICAL OFFICER (HEALTH) MALAPPURAM.

EXT.P3(A):A TRUE ENGLISH TRANSLATION OF EXT.P3.

EXT.P4:A TRUE COPY OF THE JUDGMENT DATED 05.09.2013 IN WP(C)NO.21692/2013 AND THE CONNECTED CASE.

EXT.P5:A TRUE COPY OF THE PROCEEDINGS DATED 04.11.2013 ISSUED BY THE 3RD RESPONDENT PANCHAYAT.

EXT.P5(A):A TRUE ENGLISH TRANSLATION OF EXT.P5.

EXT.P6:A TRUE COPY OF THE REPORT DATED 30.11.2013 FORWARDED BY THE DISTRICT MEDICAL OFFICER, MALAPPURAM TO THE DISTRICT COLLECTOR, MALAPPURAM.

EXT.P6(A):A TRUE ENGLISH TRANSLATION OF EXT.P6.

EXT.P7:A TRUE COPY OF THE REPORT DATED 16.12.2013 FORWARDED BY THE SUB COLLECTOR, PERINTALMANNA TO THE DISTRICT COLLECTOR, MALAPPURAM.

EXT.P7(A):A TRUE ENGLISH TRANSLATION OF EXT.P7.

EXT.P8:A TRUE COPY OF THE REPORT DATED 14.02.2014 FORWARDED BY THE REVENUE DIVISION OFFICER, TIRUR.

EXT.P8(A):A TRUE ENGLISH TRANSLATION OF EXT.P8.

EXT.P9:A TRUE COPY OF THE INFORMATION DATED 22.11.2013 FURNISHED BY THE VILLAGE OFFICER, KUZHIMANNA.

EXT.P9(A):A TRUE ENGLISH TRANSLATION OF EXT.P9.

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EXT.P10:A TRUE COPY OF THE ORDER DATED 04.06.2014 PASSED BY THE
2ND RESPONDENT DISTRICT COLLECTOR, MALAPPURAM.

EXT.P10(A):A TRUE ENGLISH TRANSLATION OF EXT.P10.

EXT.P11:A TRUE COPY OF THE APPEAL MEMORANDUM DATED 28.06.2014
SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P11(A):A TRUE ENGLISH TRANSLATION OF EXT.P11.

EXT.P12:A TRUE COPY OF THE GOVERNMENT LETTER DATED 16.01.2015
FORWARDED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P12(A):A TRUE ENGLISH TRANSLATION OF EXT.P12.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms v/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 6392 of 2015

Dated this the 23rd day of June, 2015.

JUDGMENT

The petitioner has come up before this Court alleging that though he has submitted Ext.P11 appeal before the Government, even without issuing notice and affording an opportunity of being heard, Ext.P12 order has been passed.

2. The petitioner submitted an application for licence to open a private burial ground in his property in Sy.No.291/1 of Kuzhimanna Village in Malappuram District to be used by the members of his Muslim communion attached to Mazjith Mohammed Abdulla Sulamy and Sunni Education Centre. This application was resolved to be forwarded to the District Collector through the District Medical Officer by resolution dated 9.5.2013 of the third respondent panchayat. On receipt of the application, the District Medical Officer conducted the inspection of the property and found that it is at an unobjectionable place and issued his Ext.P3 No Objection

Certificate on 19.6.2013 and forwarded the whole documents to the District Collector. Subsequently, on the ground that the panchayat received some objections, the panchayat passed a resolution on 11.7.2013 to cancel the earlier resolution deciding to forward the application to the District Collector through the District Medical Officer. The petitioner therefore approached the second respondent District Collector and since he did not consider the same, he approached this court and obtained Ext.P4 judgment dated 5.9.2013 in W.P.(C) No.21692 of 2013 directing the District Collector to pass orders on the same. However, the second respondent without considering the no objection certificate and another positive report forwarded by the Sub Collector, Perinthalthana recommending permission, rejected the application by Ext.P10 order relying on yet another report he brought through the Revenue Divisional Officer, Tirur. The statutory appeal preferred by the petitioner by Ext.P11 to the Government is now rejected by Ext.P12 Government letter.

3. I have heard the learned counsel for the petitioner, the learned Government Pleader, the Standing Counsel for the respondent panchayat and the counsel for the party respondent in the matter.

4. It appears from Ext.P12 that the same has passed without applying mind and without affording the petitioner an opportunity of being heard.

Therefore, Ext.P12 is quashed and the writ is disposed of directing the first respondent to consider and pass fresh orders on Ext.P11 appeal, after affording the petitioner and the affected parties. This shall be done within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.