

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 6809 of 2015 (A)

PETITIONER:

**THAZHEPARAMBAN MUHAMMED HAJI AGED 67 YEARS
S/O.MOIDEENKUTTY, THAZHATHIYIL HOUSE, MONGAM P.O
MALAPPURAM DISTRICT , PIN 673 641**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI**

RESPONDENTS:

- 1. THE ASSISTANT EXECUTIVE ENGINEER
P.W.D NATIONAL HIGHWAY SUB DIVISION, PERINTHALMANNA
MALAPPURAM DISTRICT, PIN 679 322**
- 2. THE EXECUTIVE ENGINEER,
P.W.D NATIONAL HIGHWAY SUB DIVISION, PERINTHALMANNA
MALAPPURAM DISTRICT, PIN 679 322**
- 3. THE DISTRICT COLLECTOR,
MALAPPURAM DISTRICT, PIN 676 505**

BY GOVERNMENT PLEADER SRI. MANOJ P. KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE TAX RECEIPT DATED 13-05-2014 ISSUED BY THE VILLAGE OFFICER,MORAYUR**
- EXHIBIT P2 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER'S SON T.P ABDULLATHEEF BEFORE THE RESPONDENTS AND OTHERS**
- EXHIBIT P3 TRUE COPY OF THE SAID NOTICE ISSUED BY THE 1ST RESPONDENT DATED 18-02-2015**
- EXHIBIT P4 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO 909/14 OF KONDOTTY POLICE STATION**
- EXHIBIT P5 TRUE COPY OF THE OBJECTION DATED 25-02-2015 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT THROUGH THE 1ST RESPONDENT**
- EXHIBIT P6 TRUE COPY OF THE RELINGUISHMENT FORM DATED 7-10-2013**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R1(A) NOTIFICATION NO.S.O.76(E) DATED 20.01.2005**
- EXHIBIT R1(B) TRUE COPY OF S.R.O. NO.791/74**

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 6809 of 2015 (A)

Dated this the 10th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the alleged encroachment of National Highway 213 is sought to be evicted by Ext.P3, which according to him is not by a competent officer as provided under the Control of National Highways (Land and Traffic) Act, 2002 (for brevity 'Act of 2002').

2. The petitioner contends that the respondent authorities had trespassed into his property when he was hospitalised and his son had given Ext.P2 objection before the authorities. Even without considering the same, when the respondent authorities attempted to enter the property, there was a scuffle and the petitioner was constrained to register Ext.P4 F.I.R., which eventually led to the allegation of encroachment, is the contention. It is also specifically contended that Ext.P3 has been issued without any jurisdiction.

3. The Act of 2002, by Section 3(1) contemplates the establishment of a body or authority consisting of one or more officers of the Central Government or the State Government to be known as the Highway Administration to exercise powers and discharge functions conferred on it under the said Act. A notification has been produced as Ext.R1(a), which is issued under subsection (1) of Section 3 of the Act of 2002, wherein for the area within Malapuram, the Executive Engineer, National Highway Division, Malapuram, the 2nd respondent; has been notified as the authority. Ext.P3 has been issued by the Assistant Executive Engineer, PWD N.H. Subdivision, Perinthamanna, the 1st respondent; an officer subordinate to the officer notified in Ext.R1(a).

4. The learned Government Pleader also specifically refers to Section 26(2) of the Act of 2002, wherein it is specifically provided that even an officer so authorised by the Highway Administration, would also be entitled to take proceedings for eviction.

5. In the present case, the counter affidavit filed by the respondent itself shows, that there was a survey conducted by the Taluk Surveyor of Kondoty Taluk on 7.8.2014, wherein the encroachment of the petitioner was found between kilometres 36/800 and 37/500 of National Highway 213. Probably, this survey had led to the registration of the F.I.R., since the same is seen registered on 21.8.2014.

6. In any event, the survey having found the encroachment, the petitioner was issued with notice as per Ext.P3. This Court does not find any infirmity in Ext.P3 on the ground of lack of competence of the Assistant Executive Engineer, as has been detailed above. However, subsection (3) of Section 26 indicates that the notice under subsection (2) shall specify therein the highway land in respect of which such notice is issued, which is found to be in unauthorised occupation. A reading of Ext.P3 would

indicate that between Kilometre 37/000 and 37/500 there is an encroachment on the left side of the National Highway. The same is as vague as possible and does not comply with the specific provision in subsection (3). Hence, if a survey has been conducted, it is mandatory that the survey sketch showing the encroachment also be issued to the petitioner before the encroachment is sought to be evicted.

7. In such circumstance, Ext.P3, not being specific as to the area which is sought to be evicted, shall stand set aside for that reason alone. The 1st respondent or the 2nd respondent would be entitled to proceed for eviction after issuing a proper notice specifying the area from which the petitioner is sought to be evicted. The petitioner has a contention that the Panchayath has built a waiting shed in the land surrendered by the petitioner to the Panchayath; which is of no consequence; if the land is vested with the National Highway.

Writ petition would stand disposed of with the above observation. The petitioner shall be afforded hearing before the encroachment is sought to be evicted.

Sd/-
K.VINOD CHANDRAN,
JUDGE