

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C) .No. 7972 of 2015 (V)

PETITIONER(S) :

M.M.JOHN @ BENNY,
PALATHINKAL HOUSE, THAMARACHAL PURAM KARA,
KIZHAKKAMBALAM P.O., KUNNATHUNADU TALUK,
ERNAKULAM - 683 562.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL.

RESPONDENT(S) :

THE ASSISTANT EXECUTIVE ENGINEER (NC) ,
O/O THE ASSISTANT EXECUTIVE ENGINEER (NC) ,
PVIP SECTION 1/4, ALUVA, ERNAKULAM - 683 108.

BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: TRUE COPY OF THE DOCUMENT NO. 2830/1989 OF SUB REGISTRAR OFFICE, PUTHENCROUZ DATED 16/08/1989.
- EXT.P2: TRUE COPY OF THE JUDGMENT IN OS 455 OF 1995 OF MUNSIFF'S COURT, PERUMBAVOOR DATED 30/11/1995.
- EXT.P3: TRUE COPY OF THE DECREE IN OS 455 OF 1995 OF MUNSIFF'S COURT, PERUMBAVOOR DATED 30/11/1995.
- EXT.P4: TRUE COPY OF THE JUDGMENT IN WPC 14083 OF 2010 OF THIS HON'BLE COURT DATED 13/07/2010.
- EXT.P5: TRUE COPY OF THE ORDER IN IA 1177 OF 2009 IN OS 157 OF 2009 OF SUB COURT, PERUMBAVOOR DATED 04/11/2009.
- EXT.P6: TRUE COPY OF THE NOTICE VIDE NO S3-09/2014 ISSUED BY THE RESPONDENT TO THE PETITIONER DATED 05/03/2015.
- EXT.P7: TRUE COPY OF THE EXPLANATION DATED 11/03/2015 SUBMITTED BY THE PETITIONER TO EXHIBIT P5.
- EXT.P8: TRUE COPY OF THE RECEIPT ISSUED BY THE RESPONDENT DATED 11/03/2015.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No. 7972 OF 2015
.....

Dated this the 24th March, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

i) issue a writ of certiorari calling for the records leading to Exhibit P6 and quash the same;

ii) declare that the respondent has no jurisdiction to issue Exhibit P7 and if any encroachment is there on the Periyar Valley Canal Puramboke property, it can be attempted to be evicted only through the provisions of the Land Conservancy Act and the rules framed thereunder;

iii) issue a writ of mandamus appropriate writs directions or orders directing the respondent to conduct a fresh measurement of the property of the petitioner and the nearby property with the relevant survey records and with the assistance of the Taluk Surveyor before taking any action against the petitioner on the ground that there is encroachment.

iv. Render such other orders as are deemed fit and proper in the circumstanes of the case."

2. Heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

3. It is seen that the petitioner had approached this Court earlier by filing W.P.(C)No.14083 of 2010, which was disposed of as per Ext. P4 judgment dated 13.07.2010 by a Division Bench of this Court , wherein the main grievance was with regard to granting of police protection to life and property of the petitioner and members of his family. The reliefs were moulded with reference to the decree passed by the Munsiff's Court in O.S. 455 OF 1995. The present grievance of the petitioner is with reference to the alleged encroachment into the Government Puramboke (*Periyar Valley Canal Puramboke*) by the petitioner. According to the petitioner, the property, which is being enjoyed by him is well guarded by a compound wall.

4. According to the respondents, the compound wall was constructed encroaching into the canal puramboke. It is stated that the measurement was conducted on 07.12.2013 and as per Ext.P6, the petitioner was required to demolish a portion of the compound wall.

5. On receipt of Ext.P6, the petitioner submitted a

detailed objection by way of Ext.P7. The petitioner is aggrieved of the coercive proceedings being taken in the meanwhile, without considering Ext.P7. Hence the writ petition.

6. The learned Government Pleader points out with reference to the contents of Ext.P6 that the encroachment of the property was substantiated through measurement of the property conducted and that when the measurement reached the premises of the petitioner, he went out driving his car, which version is sought to be rebutted by the learned Counsel for the petitioner. It is seen from Ext.P6 that the portion of the building/compound wall/car porch, which was to be demolished was made clear to the petitioner and members of his family then and there.

7. The learned Counsel for the petitioner submits that no encroachment has been effected by the petitioner and no proper notice was ever issued to the petitioner and further that the petitioner is ready to co-operate with the proceedings of the respondent/Asst. Executive Engineer.

8. In the above circumstance, there will be a direction to the respondent/Asst. Executive Engineer to finalise the

proceedings forming the subject matter of Ext.P7. If any encroachment is there, the same has to be identified, conducting the measurement at the expense of the petitioner herein and with proper notice. It shall be for the petitioner to co-operate with the proceedings as above. If at all any encroachment is there, it shall be for the respondent to issue **proper notice under Section 12 of the Land Conservancy Act, 1957** and further proceedings shall be pursued accordingly, in terms of the relevant provisions of law, so as to abate the encroachment.

The writ petition is disposed of.

P.R.RAMACHANDRA MENON
JUDGE

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