

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 11940 of 2008 (U)

PETITIONER:

**GEORGE JOSEPH, MUNDIKUDIYIL HOUSE,
KOZHIPPILLY P.O., KOTHAMANGALAM,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR**

RESPONDENT(S):

- 1. STATE OF KERALA, REP. BY ITS SECRETARY
TO IRRIGATION DEPARTMENT,
GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. DISTRICT COLLECTOR, COLLECTORATE,
ERNAKULAM.**
- 3. EXECUTIVE ENGINEER, IRRIGATION DIVISION,
ERNAKULAM, KAKKANAD.**
- 4. ASSISTANT EXECUTIVE ENGINEER,
IRRIGATION SUB DIVISION, ERNAKULAM.**
- 5. RAJU MATHEW, PRESIDENT OF ACTION COUNCIL
AND MEMBER OF VARAPETTY PANCHAYAT,
VARAPETTY, ERNAKULAM DISTRICT.**

R1 TO R4 BY SENIOR GOVT. PLEADER SRI.K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-11-2015, THE COURT ON 12-11-2015 DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 11940 of 2008 (U)

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE JUDGMENT IN O.P.NO.33868 OF 2001(F) IN THE
HIGH COURT OF KERALA AT ERNAKULAM DATED 19TH FEB. 2007.
- EXT. P2 : TRUE COPY OF THE PROCEEDINGS NO.L5-61570/05 DATED 16.10.2007.
- EXT. P3 : TRUE COPY OF THE ORDER NO.A3-401/94 DATED 28.3.96.
- EXT. P4 : TRUE COPY OF THE LETTER NO.A3-2999/2004 DATED 27.2.2008.
- EXT.P4(A) : TRUE COPY OF THE LETTER OF CREDIT DATED 27.2.2008.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.11940 of 2008

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Dated this the 12th day of November, 2015

JUDGMENT

Aggrieved by the inaction on the part of the respondents in complying with the directions issued in Ext.P2, the petitioner has come up before this Court.

2. The petitioner is the power of attorney holder of Mr. Able K. Kakoor who had undertaken execution of a work to protect the side of Kothamangalam river in Sy. No.(381) 3-5 and 3-6 of Varapetty village as per a contract entered into between respondents 1 to 4 and himself. The petitioner alleges that the work was completed in all respects on 6.7.1996 under the supervision and control of various officials of the first respondent.

3. The petitioner further alleges that subsequent to the completion of the work, directions were issued in O.P No.12233/96 to the second respondent to consider the complaint of the fifth

respondent in respect of the execution of the work carried on by the petitioner. However, the authorities concerned did not make any payments due on the completion. Thereupon the second respondent issued directions not only to evict the encroachment if any on the river puramboke. It was also ordered that no amount be paid by the Irrigation Department for the execution of the work.

4. Therefore, the petitioner filed representation before the first respondent against the decision of the second respondent to stop payment in respect of the work. As there was no response, he filed O.P No.32044/2000 before this Court and and this Court directed speedy disposal of the representation made against the decision of the District Collector prohibiting payment in respect of the work actually carried out on the basis of the concluded contract. However, the first respondent rejected the representation without considering the propriety of the decision of the second respondent also though the Chief Engineer, Irrigation Department was directed to fix the

responsibility on the then Executive Engineer and Assistant Executive Engineer concerned for their lapses. Thereafter, Ext.P2 order was issued by the District Collector directing respondents 3 and 4 to pay the amounts specified in Ext.P3 rejecting the claims for the additional work. However, no action was taken by the respondents.

5. In the counter affidavit filed by the third respondent, it was contended as follows:

The petitioner has executed agreement dated 28.3.1996 for the work "Protecting the side of Kothamangalam river" in Sy. No.1381/3-5, 3-6 of Varapetty village. The site was handed over to the contractor on 3.5.1996. The contention of the petitioner that he completed the work on 6.7.96 is not true. The petitioner/contractor had not turned to start the work even after repeated letters/reminder to the petitioner from the department side.

It was further stated that meanwhile the departmental authorities have found out the unauthorised construction in the site.

The Government land was found encroached by the petitioner during inspection by the departmental officers and notice was served to the encroachers from the Division Office on 14.8.96. Meanwhile, OP No.12233/96 was seen filed by Mr.Pathrose Varkey requesting to demolish the existing retaining wall and to replace it at the edge of the river leaving back the puramboke land. In that OP, the petitioner was the fifth respondent.

It was further stated that in compliance of the judgment in O.P No.12233/96, the District Collector has disposed the representation of the petitioner vide order dated 6.12.96 and ordered to evict the encroachment and also directed not to pay any amount to the contractor for the execution of the construction of retaining wall and further stated that the Chief Engineer, Irrigation and Administration, Thiruvananthapuram would be addressed to fix the responsibility for the misuse of public money to encroach upon a public property and to initiate disciplinary action against the

responsible as such disciplinary action was initiated against the concerned officer in the department.

It was further contended that the first respondent as per the direction of this Court in judgment dated 15.11.2000 in O.P No.32044/2000 rejected of the representation by order dated 3.8.01 based on relevant records and also after conducting a personal hearing of the parties concerned to the said original petition. All the relevant points concerned to the case were examined and as such, the petitioner has no eligibility to get any amount from the department. Therefore, they prayed for a dismissal of the writ petition.

6. Arguments have been heard.

7. The petitioner's claim was denied by the respondents for the reason that he has executed the work without the knowledge of the departmental officers and the argument that the 'kadavu' was constructed as per the direction of the department officer is baseless. According to the learned Government Pleader, the measurement of

the work was taken by the Assistant Engineer on 27.10.2007, as per the directions of the District Collector, in the presence of the petitioner and Sri.Able K. Kakkoor. According to them, the measurements recorded were admitted by the contractor and the payment was made for the measurement.

8. The work awarded to the contractor is for protecting the side of Kothamangalam river in Sy. No.1381/3-5, 3/6 of Varapetty village. The argument advanced by the learned Government Pleader that this work is meant for protecting the side of the river bank and not the 'kulikkadavu' cannot be countenanced. In Ext.P2 proceedings of the District Collector, it is admitted that more than 200 people are using the 'kulikkadavu'. Therefore, if the retaining wall is constructed without providing any river stairs, the same would cause inconvenience to the public. No protective retaining wall could be constructed leaving any portion of the 'kadavu' as such and the procedure would render the entire efforts made by the State useless.

9. As it is evident that the construction of 'kulikkadavu' is part and parcel of the retaining wall, this Court is of the view that the petitioner is entitled to get the full amount of the value of the work done, since it is part and parcel of the same work.

In the result, the writ petition is allowed. Respondents 3 and 4 are directed to pay the entire amount specified in Ext.P3, less the payments made as per Ext.P4(a), within a period of two months from the date of receipt of a copy of this judgment failing which the respondents shall be liable to pay interest @ 12% per annum on the entire amount mentioned in Ext.P3 and for the amount due for the additional work of 'kulikkadavu' with effect from 6.7.1996.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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//true copy// P.A to Judge