

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU**

**WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936**

**WP(C).No. 8852 of 2014 (F)**  
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**PETITIONER:**  
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**A.DINESAN, AGED 51 YEARS,  
S/O.RAMAN, ATTOOR HOUSE, VETOM VILLAGE,  
TIRUR TALUK, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.SIRAJ KAROLY  
SMT.A.SEENA**

**RESPONDENT(S):**  
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- 1. VETOM GRAMA PANCHAYATH,  
REPRESENTED BY ITS SECRETARY,  
VETOM GRAMA PANCHAYATH OFFICE, P.O.VETOM,  
(VIA) TIRUR, MALAPPURAM DISTRICT, PIN - 674 439.**
- 2. THE REVENUE DIVISIONAL OFFICER,  
(SUB DIVISIONAL MAGISTRATE) TIRUR,  
REVENUE DIVISIONAL OFFICE, TIRUR,  
MALAPPURAM DISTRICT, PIN - 674 439.**
- 3. SUB INSPECTOR OF POLICE,  
TIRUR, MALAPPURAM DISTRICT, PIN - 674 435.**
- 4. VETOM BHAGAVATHY TEMPLE,  
REPRESENTED BY ITS SECRETARY,  
NEELAKANDAN NAMBEESAN @ UNNI,  
S/O.NARAYANAN, VETTATHPALLY NAMBI, P.O.VETOM,  
TIRUR,TALUK, MALAPPURAM DISTRICT, PIN - 674 435.**
- 5. SRI. P.K. MANAVIKRAMA RAJA (SAMOOTHIRI RAJA),  
MANAGING TRUSTEE, VETTATHUKAVU DEVASWOM,  
THIRUVANNOOR NADA P.O., KOZHIKODE - 673 029.**
- 6. THE TAHSILDAR, TIRUR TALUK, TIRUR,  
MALAPPURAM DISTRICT, PIN - 673 543.**
- 7. THE DISTRICT SUPERINTENDENT OF POLICE MALAPPURAM,  
MALAPPURAM DISTRICT, PIN - 673 543.**

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8. THE DISTRICT COLLECTOR MALAPPURAM,  
MALAPPURAM DISTRICT, PIN - 673 543.

R1 BY ADV. SRI.C.M.MOHAMMED IQUABAL  
R2, R3 & R6 TO R8 BY GOVT. PLEADER SRI.JUSTIN JACOB  
R4 & R5 BY SRI.M.P.SREEKRISHNAN, SC  
ADV. SMT.M.H.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 06-03-2015, THE COURT ON 11-03-2015 DELIVERED THE  
FOLLOWING:

mbr/

**APPENDIX**

**PETITIONER(S)' EXHIBITS:**  
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- EXHIBIT P1 :** TRUE COPY OF THE PHOTOGRAPHS SHOWING THE ILLEGAL CONSTRUCTION, THE LOCATION OF THE TEMPLE AND ITS SURROUNDINGS.
- EXHIBIT P2 :** THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 16.03.2014.
- EXHIBIT P3 :** TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

**RESPONDENT(S)' EXHIBITS:**  
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- EXT.R1(A) :** TRUE COPY OF THE STOP MEMO DATED 22.3.2014 ISSUED BY THE PANCHAYATH.
- EXT.R1(B) :** TRUE COPY OF THE REPRESENTATION FILED BY THE EXECUTIVE OFFICER, VETTATHKAVU DEVASWOM DATED 28.3.014.
- EXT.R1(C) :** TRUE COPY OF THE REPRESENTATION FILED BY THE PANCHAYATH BEFORE THE VETTOM VILLAGE OFFICER DATED 28.3.2014.
- EXT.R1(D) :** TRUE COPY OF THE ASSET REGISTER OF THE ROADS OF THE VETTOM GRAMA PANCHAYATH.
- EXT.R1(E) :** A TRUE COPY OF THE SKETCH OF THE DISPUTED ROAD.
- EXT.R5(A) :** A TRUE COPY OF THE PHOTOGRAPH OF THE ARCH CONSTRUCTED.
- EXT.R5(B) :** A TRUE COPY OF THE PHOTOGRAPH OF THE ALTHARA WHICH WAS CONSTRUCTED IN 1963.
- EXT.R5(C) :** A SKETCH OF THE PROPERTY INCLUDING THE PLACE OF THE TEMPLE AND THE ROAD LEADING TO THE TEMPLE PREPARED BY HR & CE DEPARTMENT.
- EXT.R5(D) :** A TRUE COPY OF THE COMMUNICATION DATED 25.4.2006.

/TRUE COPY/

P.A. TO JUDGE

mbr/

**C.R.**

**DAMA SESHADRI NAIDU, J.**

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**W.P.(c) No. 8852 of 2014**  
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Dated this the 11<sup>th</sup> day of March, 2015

**JUDGMENT**

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The issue raised in this writ petition is whether the road leading to the fourth respondent Temple, passing by the house of the petitioner, belongs to the fourth respondent Temple or the Grama Panchayat. Secondly, can the arch put up by the fourth and fifth respondents on the road, assuming the road to belong to the temple, be justified in the absence of any valid building permission from the Grama Panchayat or from the District Collector, if the structure has any religious relevance?

2. The petitioner, a resident of the first respondent Grama Panchayat, is a person, according to the learned counsel for the petitioner, professing faith in the Hindu religion. In front of his house, beginning at the junction of the public road leading up to the Temple and beyond, with a width of six meters on an average and 0.47 Kms up to the

Temple, is a public road, which vests in the first respondent Grama Panchayat. The grievance of the petitioner is that without any manner of right or justification, the fourth and fifth respondents began raising an arch constricting the passage to four meters from eight meters, as seen from Exhibit P1 set of photographs.

3. Alarmed at the developments, the petitioner and others of the area are said to have submitted Exhibit P2 complaint, dated 16.03.2014, to the first respondent, who in turn, acting on the said complaint, issued Exhibit R1(a) stop memo. Despite the same, when the respondents 4 and 5 continued with the construction, the petitioner is also said to have submitted Exhibit P3 complaint before the second respondent on 20.03.2014. Eventually, he filed the present writ petition.

4. The learned counsel for the petitioner has essentially raised a question of ownership. He has contended that the property, being a public road, is vested with the Grama Panchayat, for it stood reflected in Exhibit R1(d), the Asset Register maintained by the first respondent Grama Panchayat. In furtherance of his submissions, the learned

counsel would contend that clause (m) and clause (cc) of Rule 2 of Kerala Panchayat Raj Building Rules ('the Rules' for brevity) define 'building' and 'road' respectively in very expansive terms. According to him, even a structure in the nature of a hoarding can be treated as a building requiring compliance with the statutory regulations. In support of his submissions, the learned counsel has placed reliance on **Vimal Arakkal v. Corporation of Cochin** [2005 (1) KLT 121] and **Sugil v. Sadanandan** [2005 (4) KLT 220].

5. The learned counsel has further contended that random and unauthorized construction of religious structures leading to societal disharmony has been deprecated by the Apex Court. In support of the said submission, the learned counsel has placed reliance on **Union of India v. State of Gujarat and Others** [(2011) 14 SCC 62].

6. According to the learned counsel, even from Exhibit P1 photograph visible is the culvert, which was built by the Grama Panchayat. In the light of constriction of road, with its reduction to four meters, the commuters are facing difficulty. The learned counsel has stressed that in the event of any natural calamity, such as fire in the vicinity, the constriction

of the road may prove disastrous for free passage. The structure being put up by the respondents 4 & 5, according to the learned counsel, is deleterious to public interest.

7. In the alternative, the learned counsel has further contended that, for whatever reason if one has to come to a conclusion that the property belongs to the fourth and fifth respondents, still they could not have been permitted to raise structures without any building permit. Referring to Rule 134 of the Rules, with a specific emphasis on the proviso thereof, the learned counsel would contend that regularization could be effected only when the structures are otherwise legal. In support of his submissions, the learned counsel has placed reliance on **Lazer Robert v. Mohammed Sheriff** [2009 (1) KLT SN 12].

8. The learned counsel has also persisted with his submission that despite filing of the writ petition, only after service of notice, did the respondents 4 and 5 go ahead and complete the construction, disregarding the stop memo issued by the respondent Grama Panchayat. Summing up his submissions, the learned counsel has submitted that there shall be a mandamus directing the respondent Grama

Panchayat to remove the structures illegally put up by the fourth and fifth respondents.

9. The learned counsel for the first respondent Grama Panchayat has submitted that, initially, based on Exhibit P2 complaint made by the petitioner and others, the Grama Panchayat conducted a preliminary enquiry and issued Exhibit R1(a) stop memo. According to him, the stop memo was issued owing to the failure of the fifth respondent to submit any proof in support of its claim that the property belongs to the Temple. He has also further submitted that the Grama Panchayat, unable to determine who the property belongs to, also filed an application in Exhibit R1(c) before the Village Officer, to identify the property and submit a report.

10. In sum and substance the submission of the learned counsel for the Grama Panchayat is that once the report is made available by the Village Officer, the respondent Grama Panchayat will take further action.

11. The learned counsel for the fourth and fifth respondents has strenuously opposed the claims and contentions of the petitioner. Making specific reference to

Exhibit R5(d), a report by the Special Officer, Hindu Religious and Charitable Endowments (Administration) Department, and Exhibits R5(d2) and (d3), sketches annexed thereto, he has contended that the property actually belongs to the fourth and fifth respondents. According to the learned counsel, once the property is private in nature, the owner thereof is at liberty to make best use of it.

12. The learned counsel for the fourth and fifth respondents has drawn my attention to Exhibit R1(b), the explanation said to have been submitted by the fifth respondent in response to the initial notice issued by the respondent Grama Panchayat. Eventually, the learned counsel contends that if for whatever reason the fifth respondent is required to take prior permission from the respondent Grama Panchayat, Exhibit R1(b) can be treated as an application for the purpose of regularization and the respondent Grama Panchayat can pass appropriate orders thereon.

13. The learned Government Pleader has, on his part, submitted that, responding to the application submitted by the respondent Grama Panchayat, the Village Officer did

conduct a survey and find out that the property up to 200mts from Temple to the Arch belongs to the temple. Though no specific report has been filed before the Court, the learned Government Pleader has shown the vernacular report of the Village Officer. In fact, all the learned counsel representing the respective parties have the advantage of going through the said report. None of them has contested the statement made by the learned Government Pleader, though the learned counsel for the petitioner has strong reservations about the correctness of the findings in that report.

14. In reply, the learned counsel for the petitioner has strenuously contended that the report prepared by the Village Officer only speaks of distance to an extent of 200mts, whereas the road is much beyond, leading at one end to the junction and at the other, to the Temple and beyond. He has also further contended that in terms of Rules 6 and 7 of the Rules, it is only the District Collector, who can regularize. He has however submitted that in the present instance, there cannot be any regularization inasmuch as the structures have been raised constricting the

road causing inconvenience to the public. Accordingly, he has urged this Court to allow the writ petition.

15. Heard the learned counsel for the petitioner, the learned counsel and the learned Standing Counsel for the respondents, as well as the learned Government Pleader, apart from perusing the record.

16. I have already indicated prefatorily the scope of the writ petition and the issues to be determined.

17. Without much ado, I can safely conclude that, so long as the report of the Village Officer remains unchallenged, the property at least from the Temple to the Arch covering 200 mts belongs to the Temple.

18. Given the expansive definition under clause (m) and clause (cc) of Rule 2 of the Rules, the structure put up by the respondent Temple as is seen from Exhibit P1 and Exhibit R5(a) set of photographs can be called a building. Indeed, on that count the fourth and fifth respondents are statutorily mandated to get the necessary permission. Admittedly, they did not have any permission to raise the structure in question.

19. Before moving further, I may have to observe that once the road is found not to be a thorough fare vesting in the Grama Panchayat, it is difficult, nay legally impossible, to sustain the plea of the petitioner that either the petitioner or any other commuter of the locality has any indefeasible right over the pathway. At the same time, it is not in dispute that even on private properties, if any structures are put up, they require the necessary permission from the civic authorities.

20. Taking note of the expansive definition of building and road under the Rules, a learned Division Bench of this Court in **Vimal Arakkal** (supra) has held that a hoarding put up even on a private land would fall within the definition of the building under Rule 2(1) of the Building Rules, and that the local authority has got the right to seek removal of the structure if erected without their permission. It has thus in the end ruled that, before erecting the hoarding, permission has to be obtained from the competent authority. So is the proposition in **Sugil** (supra), a judgment of another learned Division Bench of this Court.

21. In **T. Lazer Robert** (supra) another learned Division Bench, taking into account the facts of the said case,

has interpreted Rule 134 of the Rules, holding that there can be no regularisation of an unauthorised construction, which under normal circumstances could never have come into existence, but for the fraud played on the Corporation. Fruits of fraud shall never be allowed to be enjoyed even if they are sweet and precious to the owner of the grove. I wonder whether the ratio of the judgment obtained under the peculiar facts of the said case has any relevance in the present instance.

22. The second question that falls for consideration is whether the fifth respondent can apply for regularization; and, if he can, who the authority that determines the application should be.

23. Indeed, there are a great deal of rival submissions on this aspect. Nevertheless, I am of the considered opinion that the issues regarding the regularisation of the structures and who the competent authority for the said purpose is, keeping in view the nature of structure in terms of the Rule 7 (8) of the Rules, do not fall for consideration now. They are in fact beyond the purview of the present writ petition.

24. In the facts and circumstances, having regard to the respective submissions of the learned counsel for all the parties concerned in the writ petition, I hold that the petitioner cannot have any objection with regard to the alleged constriction of a passage in a private property. I, therefore, leave it open for the fourth and fifth respondents to make necessary application, if they choose to, before the authority concerned seeking regularization of the structure.

With the above observations, the writ petition stands dismissed. No order as to costs.

**DAMA SESHADRI NAIDU**  
**JUDGE**

DMR/-