

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 8862 of 2015 (G)

PETITIONER:

JOSE THOMAS, AGED 46 YEARS, S/O THOMAS,
ENNAMPLASSERIL HOUSE, UZHAVOOR VILLAGE,
MEENACHIL TALUK, KOTTAYAM.

BY ADVS. SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENTS:

1. DIRECTOR OF PANCHAYATHS, OFFICE OF THE
PANCHAYATH DIRECTORATE, PUBLIC OFFICE
BUILDING, MUSEUM (PO),
THIRUVANANTHAPURAM-596 001.
2. UZHAVOOR GRAMA PANCHAYATH REP. BY ITS
SECRETARY, UZHAVOOR- 686 634.
3. ANNAMMA GEORGE, W/O GEORGE,
THERUVAKKATT HOUSE, THURUTHIPARAMBIL
BHAGAM, NEEZHOOR VILLAGE, VIKOM TALUM,
686 141.

R1 BY GOVERNMENT PLEADER SMT.C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 8862/2015

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE PLAINT IN OS 356/2014

EXT. P1(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P1

EXT. P2 TRUE COPY OF THE ORDER IN IA 2231/2014 IN OS 356/2014 DATED 19.11.2014

EXT. P2(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P2

EXT. P3 TRUE COPY OF THE REPORT SUBMITTED BY THE ADV. COMMISSIONER DATED 20.11.2014

EXT.P3(a) TRUE COPY OF THE ENGLISH OF EXT. P3

EXT. P4 TRUE COPY OF THE PROCEEDINGS DATED 25.2.15

EXT. P4(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P4

EXT. P5 TRUE COPY OF THE PROCEEDINGS DATED 4.3.2015

EXT. P5(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P5

EXT.P6 TRUE COPY OF THE COMPLAINT BEFORE THE SECRETARY DATED 19.1.2015

EXT.P6(a) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P6

EXT. P7 TRUE COPY OF THE RECEIPT

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.8862 of 2015 G

Dated this the 20th day of March, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader for the first respondent, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, a resident of the respondent Grama Panchayat, has a grievance that the third respondent has been constructing a new building by encroaching on the Panchayat road. Despite various complaints made by the petitioner when the respondent Grama Panchayat, having initially issued a stop memo and later withdrawing it, had not addressed the problem, the petitioner filed O.S.No.356/2014 on the file of the Munsiff Court, Pala.

3. In fact, the civil court issued an ad interim injunction in I.A.No.2231/2014 on 19.11.2014 restraining the third respondent from making any construction in her property without setting apart the required set backs as per the Building Rules.

4. When the third respondent continued her efforts to raise structures by encroaching on the public road unabated, 'Janakeeyavedi', an organisation, is said to have submitted representations to not only the respondent Grama Panchayat but also the first respondent. As can be seen from the record, the first respondent, acting on the representations submitted by Janakeeyavedi, issued Exhibit P4 direction to the respondent Grama Panchayat to conduct a detailed enquiry and take necessary action in that regard. That apart, the said authority has also directed the Senior Superintendent, PAU, Meenachil, to enquire into the complaint personally and submit a report urgently.

5. The petitioner has also gone on record submitting that when he made an oral submission before the civil court concerning the violation of the ad interim injunction, the learned Trial Judge is said to have advised the petitioner to approach the police. Under these circumstances, the petitioner has filed the present writ petition.

6. It is not in dispute that the civil court, through Exhibit P2, did issue an ad interim injunction against the third respondent. On the other hand, the first respondent, acting on the complaints made by certain public spirited persons, has also issued necessary directions to the respondent Grama Panchayat and another authority through Exhibits P4 and P5 to take remedial steps. Though the learned counsel for the petitioner has submitted that based on the oral instructions of the learned Trial Judge, he has approached the police complaining against the violation of the ad interim injunction granted by the civil court, he could

not place any material on record in support thereof.

7. The fact, however, remains that there is an ad interim injunction and an allegation that it has been violated. The contention of the petitioner is further bolstered by the directives of the first respondent in Exhibits P4 and P5.

8. At any rate, the petitioner has initially chosen, in my view correctly, to approach the civil court seeking a judicial redressal to the problem of encroachment on public property by his neighbour. Since it involves disputed questions of fact, public law remedy under Article 226 of the Constitution of India may not be efficacious.

9. Once an injunction issued under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure is violated, the petitioner is not remedy less, nor is the civil court power less in that regard. Keeping aside the submission of the learned counsel for the petitioner that he has made oral

request before the civil court, I may have to observe that the petitioner has to make an application under Order XXXIX Rule 3A of the Code, apart from making an application under Section 151 Cr.P.C. for the purpose of seeking police aid, if necessary.

10. If the situation warrants, he could as well seek demolition of the illegal structures, if any, on the public property, even as an interim measure under Order XXXIX Rules 1 and 2. Under these circumstances, splitting the cause of action and approaching a different forum, in the present instance this Court, is impermissible.

11. However laudable the objectives behind the efforts of the petitioner in ensuring that the public properties remain unobstructed, in the light of his previous approach to a particular forum, the petitioner is estopped from raising an issue, which is only consequential to the proceedings he has initiated, before the civil court.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Government Pleader, this Court, disposes of the writ petition leaving it open for the petitioner to approach the civil court in the manner indicated above and seek further redressal. No order as to costs.

It is, however, made clear that it is entirely lies in the discretion of the civil court to exercise its power and consider the issue on merits, uninfluenced by the observations made herein.

Dama Seshadri Naidu, Judge

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