

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 13294 of 2010 (J)

PETITIONER:

**C. MOLLY,
AGED 42 YEARS, KARIVILA VEEDU,
TC 52/593, INDUSTRIAL ESTATE P.O,
PAPPANAMCODE, THIRUVANANTHAPURAM.**

BY ADV. SRI.C.K.MOHANAN

RESPONDENTS:

- 1. THE TAHSILDAR, THIRUVANANTHAPURAM.**
- 2. THE VILLAGE OFFICER,
NEMOM, THIRUVANANTHAPURAM.**
- 3. THE R.D.O, THIRUVANANTHAPURAM.**
- 4. THE DISTRICT COLLECTOR,
COLLECTORATE, THIRUVANANTHAPURAM.**
- 5. STATE OF KERALA,
REP.BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 6. THE COMMISSIONER,
LAND REVENUE, THIRUVANANTHAPURAM.**
- 7. CORPORATION OF THIRUVANANTHAPURAM,
REP.BY THE SECRETARY, THIRUVANANTHAPURAM.**
- *8. SASIDHARAN NADAR
S/O.SREEDHARAN NADAR,
AGED 58 YEARS, RESIDING AT KARUVILA VEEDU, TC 52/595,
KOLIYACODE ESTATE (PO), THIRUVANANTHAPURAM- 695018.**

R1 TO R6 BY GOVERNMENT PLEADER SRI. SOJAN JAMES

R8 BY ADVS. SRI.RAM MOHAN.G.

SRI.G.P.SHINOD

R7 BY ADVS. SRI.N.NANDAKUMARA MENON (SR.)

SRI.P.K.MANOJKUMAR

***[R8 IS IMPEADED AS PER ORDER DATED 02-11-2012 IN IA No.13106/2012]**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
AMG**

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE ORDER No.LRJ-3/2326/2006 OF THE
6TH RESPONDENT DATED 18-01-2006.
- EXT- P2- TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT
DATED 17-07-2009.
- EXT- P3- TRUE COPY OF THE ORDER OF THE 6TH RESPONDENT
DATED 27-02-2010.
- EXT- P4- TRUE COPY OF THE ORDER AND NOTICE OF THE 1ST RESPONDENT
DATED 26-03-2010 & 27 03-2010.

RESPONDENTS' EXHIBITS

- EXT- R8 (a) - TRUE COPY OF THE LETTER No.TP6/ZN/66481/06 DATED 26-08-2008
ISSUED BY THE 7TH RESPONDENT TO THE 5TH RESPONDENT.

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No.13294 OF 2010-J

DATED THIS THE 17th DAY OF MARCH, 2015.

J U D G M E N T

The petitioner is a widow having two children, residing in 9 cents of puramboke land (Road Puramboke) comprised in Re-Sy. No.748 of Block No.26 in Nemom Village in Thiruvananthapuram Taluk. Residential house of the petitioner is assigned with building number by the 7th respondent Corporation, as TC 52/593. According to the petitioner, the land in question was in the occupation of her predecessors in interest, since time immemorial. During the year 2004, the Assistant Engineer, PWD, Neyyattinkara had requested the RDO, Thiruvananthapuram to evict the encroachment in the land in question. The petitioner thereupon approached the RDO, Thiruvananthapuram in an appeal. The said appeal was considered by the RDO after conducting a personal inspection, in which it was found that, for completing the drainage works started by the PWD the encroachment need to be evicted. Therefore the appeal was dismissed through an order dated 23-09-2004. The petitioner preferred a revision petition against the said

order of the 3rd respondent before the 6th respondent. The said revision petition was disposed of by the 6th respondent through Ext.P1 order. The 6th respondent found that the land in question is a puramboke land and the petitioner had no title over the same. Construction of the house in a Government land is not a ground for claiming the property and therefore the petitioner is liable to be evicted. However, the 6th respondent found that the petitioner being a poor widow should not be thrown out from her only shelter, along with the little children, without there being an alternate house site provided. Hence it was ordered that she can be evicted only after the municipal corporation provides her a house site. But, the additional 8th respondent along with another person have filed a revision against Ext.P1 order before the Government. The Government have rejected the revision petition confirming Ext.P1 order. Consequently the 4th respondent had addressed the 7th respondent corporation to provide an alternate accommodation to the petitioner. The 7th respondent corporation in their letter dated 25-11-2008 had informed

the 4th respondent that the petitioner was included in the list of beneficiaries of a scheme namely, "Prathyasha Bhavana Padhathi" formulated under the 'Development of Kerala Programme'. But she could not provide the requisite documents for the same. Therefore it is informed that, the petitioner was intimated to give application under another programme named, "Construction of house for the landless", as and when applications are called for under the said scheme. Subsequently the 8th respondent and another person again approached the Government in a petition on 29-12-2008, requesting to take steps to evict the encroachment. The Government issued a further direction to the 4th respondent to hear the parties and to find out a solution. The 4th respondent again instructed the 7th respondent to issue one more notice to the petitioner directing to produce the requisite documents before the 7th respondent corporation. While things remained like that, the Government send a Fax Message to the 4th respondent on 02-07-2009 to evict the encroachers from the puramboke land in question. Therefore the 4th respondent issued

direction to the 1st respondent to evict the encroachment within 15 days. Aggrieved by such action the petitioner again filed an appeal before the 6th respondent. The appeal was considered by the 6th respondent and Ext.P3 order was issued. The 6th respondent referred to his earlier decision in Ext.P1 which is confirmed by the Government. But it is observed in Ext.P3 order that; "The present petition filed by Smt. Molly is against the Assistant Engineer (PWD) and the Village Officer, Nemom. This is not an appeal. In the circumstances the petition is dismissed."

2. Pursuant to Ext.P3 order, presumably on the basis of the earlier direction issued by the Collector based on the Fax Message received from the Government, the 1st respondent had issued Ext.P4 order, purportedly under provisions of the Land Conservancy Act, after issuing a notice as contemplated under Section 12 of the Act. Through Ext.P4 the 1st respondent ordered eviction of the petitioner under Rule 11 of the Land Conservancy Rule and issued a notice of eviction in the form prescribed under Rule 11, as per Ext.P4 (a). It is challenging the order passed

by the 1st respondent and the notices issued, this writ petition is filed.

3. Contention of the petitioner is that the land in question is in occupation of her predecessors in interest, since the last more than 100 years. It is stated that the petitioner had put up a house, which is numbered by the corporation, and the petitioner along with her children are staying in the said house since the last so many years. It is contended that the petitioner has no other landed property or house to stay. It is pointed out that the 6th respondent as well as the Government had repeatedly taken decisions to the effect that the petitioner shall not be evicted without providing an alternate accommodation. That being so, the subsequent steps taken by the 4th respondent and the impugned notices issued by the 1st respondent are unsustainable. It is contended that the petitioner could not produce any documents before the 7th respondent corporation certifying that she has no residence of her own, because the house which is situated within the puramboke land wherein the petitioner is staying along with her family

is a house which is numbered by the 7th respondent corporation. It is contended that the property in question is liable to be assigned in favour of the petitioner. However, it is conceded that the petitioner is ready and willing to surrender any portion abutting to the PWD Road, for the purpose of construction of the drainage, if required.

4. In the counter affidavit filed on behalf of the 1st respondent it is mentioned that, the proceedings impugned herein are initiated only based on a direction issued by the 4th respondent, who in turn was directed by the Government through a Fax Message, dated 02-07-2009 to evict the encroachers. Eventhough notice was issued under the Land Conservancy Act, the petitioner had failed to produce any documents to prove her right and title over the property. Hence it is contended that the notice is legal and is in order.

5. The additional 8th respondent, who got himself impleaded in the writ petition, had filed a counter affidavit stating that, pursuant to Ext.P1 order the 7th respondent had provided various opportunities to the petitioner to provide an alternate site, under different schemes. But the

petitioner had not responded to repeated requests. Case of the 8th respondent is that the property occupied by the petitioner is having only an extent of 2½ cents and that the petitioner is occupying the said property only for the last about 12 years. It is alleged that the construction being effected in the road puramboke had curtailed free ingress and egress to the property of the 8th respondent. Exhibit R8 (a) produced along with the counter affidavit is letter issued by the Secretary of the 7th respondent corporation to the Government intimating that the petitioner had failed to submit application to include her name in the beneficiary list of the housing scheme provided for landless and houseless people. It is contended that the occupation of the puramboke land by the petitioner is causing obstruction to the road widening and the construction of drainage. Hence she is liable to be evicted.

6. While considering the rival contentions, this court is taking note of the fact that the petitioner is an illegal occupier of the road puramboke. But on considering the fact that the petitioner is residing in a house situated within the

puramboke land, the 6th respondent had found that she could not be evicted without providing alternate accommodation. The view taken in this regard was reiterated and confirmed by the Government, while dismissing the revision petition filed by the 8th respondent. But it is evident that the 8th respondent and another had approached the Government again and the Government have directed the 4th respondent to resolve the issue. Such a direction can only be presumed as a follow up action of the earlier decision to provide an alternate accommodation to the petitioner. But when the matter was pending consideration before the 4th respondent a Fax Message was issued by the Government on 02-07-2009, directing the 4th respondent to evict encroachment. Such an action on the part of the Government cannot be justifiable in any manner. Once the State Government have taken a decision that evicting of the petitioner without providing an alternate accommodation cannot be permitted, it is the duty of the Government or the Revenue authorities to find out proper means to implement such decision. It seems that the 6th

respondent had issued Ext.P1 order in a manner directing the 7th respondent corporation to provide the petitioner with a house site. Learned Standing counsel appearing for the 7th respondent contended that the 6th respondent had no jurisdiction to issue any such direction. However it is submitted that the petitioner failed to furnish requisite documents to include her in the erstwhile scheme of "Prathyasha Bhavana Padhathi". According to learned counsel for the petitioner, no document certifying that the petitioner had no house could be submitted before the corporation because she is staying in a house situated in the puramboke land in question and that the house stands already numbered by the corporation. Learned Standing counsel submitted that as such there is no existing scheme for providing housing to the petitioner

7. Learned counsel for the petitioner contended that, eviction of the petitioner from the entire land which is in her occupation is not required for the purpose of the construction of drainage or for widening of the public road in question. It is expressed that the petitioner is willing to

shift her house to the remaining portion, if the same is assigned to the petitioner. However, this court is of the view that in accordance with the decision already taken by the Government, it is the lookout of the Government to provide alternate accommodation to the petitioner, who was found to be a poor widow living with her two small children. Therefore this court is of the opinion that the 4th respondent can be issued with appropriate directions to take necessary steps to assign the petitioner with the minimum extent of land required for construction of a house, either at the very same site itself or at any puramboke land available within the same village or in the nearby areas in other villages. It is necessary to take steps in this regard for assignment of the minimum extent of land for the above said purpose, without any further delay. If any such assignment is made it is left open to the petitioner to approach the 7th respondent corporation seeking assistance for constructing a house building therein or she can find out her own sources for completing such construction. It is only after providing an alternate facility as directed above, the respondents shall

evict the petitioner from the property in question, in view of the decision already taken in this regard by the Land Revenue Commissioner as well as by the Government.

8. Hence this writ petition is disposed of by directing the 4th respondent to take immediate steps to comply with the above stated directions. Till such time the direction contained herein above are implemented, the petitioner shall not be evicted forcefully, based on Ext.P4 proceedings and the notices issued.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge