

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 9821 of 2014 (C)

PETITIONER(S):

- * SAMUEL CHACKO,
KATTOOR KALEECKAL VEEDU, VETTIKKODE, PALLICKAL P.O.,
MAVELIKKARA TALUK. (AMENDED)**
- * [THE PETITIONER IS PERMITTED TO CONTINUE THE
CASE THROUGH POWER OF ATTORNEY HOLDER,
'AJI THANKACHAN, CHIRACKAL HOUSE, VETTICODE MURI,
KATTANAM VILLAGE, ALAPPUZHA DISTRICT.
AS PER ORDER DATED 06.07.2015 IN IA 8899/15.]**

**BY ADVS.SRI.K.SASIKUMAR
SRI.R.ROHITH**

RESPONDENT(S):

- 1. SUB INSPECTOR OF POLICE,
KURATHIKKADU POLICE STATION, KURATHIKKADU,
MAVELIKKARA-690 504.**
- 2. CIRCLE INSPECTOR OF POLICE,
MAVELIKKARA-690 101.**
- 3. DISTRICT POLICE CHIEF,
ALAPPUZHA-688 001.**
- 4. THE EXECUTIVE ENGINEER,
(ROADS AND BRIDGES) PUBLIC WORKS DEPARTMENT,
ALAPPUZHA-688 001.**
- 5. BHARANICKAVU GRAMA PACHAYATH,
REP BY ITS SECRETARY, BHARANICKAVU, PALLCKAL P.O.,
MAVELIKKARA TALUK-690 503.**
- 6. DISTRICT COLLECTOR,
ALAPPUZHA, (CHAIRMAN,
REGIONAL TRANSPORT AUTHORITY, ALAPPUZHA DIST.) 688 001.**

msv/

WP(C).No. 9821 of 2014 (C)

**7. JOINT REGIONAL TRANSPORT OFFICER,
MAVELIKKARA-690 101.**

**8. H.M.S DRIVERS UNION,
KATTANAM, REP. BY ITS SECRETARY, K.C. MATHEW-690 503.**

R5 BY ADV. SRI.N.UNNIKRISHNAN

R8 BY ADVS. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

SRI.A.R.DILEEP

SRI.MANU SEBASTIAN

R1-R4, R6 & R7 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-08-2015 THE COURT ON 04-11-2015, DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 9821 of 2014 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1:-A TRUE COPY OF BUILDING PERMIT DTD 19/5/2011 ISSUED BY THE
5TH RESPONDENT.**

**P2:-A TRUE COPY OF THE OWNERSHIP CERTIFICATE DTD 11/10/2013 ISSUED BY THE
5TH RESPONDENT.**

**P3:-A TRUE PHOTOGRAPH SHOWING THE PARKING OF TAXI CARS IN FRONT OF THE
BUILDING OF THE PETITIONER.**

**P4:-A TRUE COPY OF THE COMPLAINT DTD 27/2/2014 SUBMITTED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT.**

**P5:- TRUE PHOTOGRAPHS SHOWING THE FRONTAGE OF THE PETITIONER'S
COMPLETED BUILDING AND THE PARKING OF THE TAXIS IN FRONT OF THE
SAME.**

RESPONDENT(S)' EXHIBITS:

EXT.R8(a): A TRUE COPY OF RESOLUTION DTD.9.1.2009 OF THE 5TH RESPONDENT.

**EXT.R8(b): A TRUE COPY OF SETTLEMENT AWARD OF LOK ADALAT MAVELIKARA IN
PLP III/2011 AND CONNECTED MATTERS.**

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J.

=====

W.P(C) No.9821 of 2014

=====

Dated this the 4th day of November, 2015

JUDGMENT

The petitioner is in the ownership, possession and enjoyment of 4.08 Ares of property comprised in Sy. Nos.238/1-2 and 238/2-2 of Kattanam village in Mavelikkara taluk. The petitioner alleges that he purchased the property with the resources he earned from his employment abroad and after purchasing the property, he has constructed a building in 3 floors containing shopping complex and residential apartments therein after obtaining necessary permission from the local authorities. He further alleges that the building is now numbered as V/615A to 615F.

2. The petitioner further alleges that the building is facing Kayamkulam-Punalur public road which is a State Highway and the building is located at the east of Kattanam junction. The construction of the building was completed in October, 2013. The ground and first

floors of the building are shop rooms. The 2nd floor is used for the petitioner's residence. The petitioner further alleges that the rooms are built in such a way that they are fit for accommodating banking institutions. The petitioner further alleges that because of the acts of the 8th respondent, he is not in a position to rent out the rooms.

3. The grievance of the petitioner is that the taxi cars at Kattanam run by the drivers belonging to the 8th respondent are being parked in front of his building unauthorisedly, causing hindrance to the ingress and egress of the building. The whole road margin in front of the building is thus occupied by the four wheelers parked in front of the building which has a frontage of 18 metres. The petitioner points out that as a consequence of this, the ground floor shops are in fact invisible and there is absolutely no space left for the customers to reach the shops. Therefore, he preferred Ext.P4 complaint before the respondents 1 to 3 and 5. However, no action has been taken by them to remove the unauthorised parking of the

vehicles in front of his building. It is with this background, the petitioner has approached this Court.

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

There is no obstruction, as could be seen on personal inspection, to the ingress or egress of the petitioner to his property from the public road. His property is covered by compound wall and earlier, due to traffic congestion, an understanding was reached that taxis be allowed to park quite a distance away from Kattanam junction. Accordingly, the taxis are allowed to park in the places between the road line and the compound wall without disturbing the traffic or public as well as the ingress and egress of the petitioner. They have no alternative. Parking of taxis are done in such a way that sufficient space is left between one taxi and another so that no difficulties are caused to anyone. No one has even complained about this. Since the taxis are parked outside the compound wall, there cannot be any grievances for the petitioner.

5. Later, an additional counter affidavit has been filed by the 5th respondent contending as follows:

It was also clarified from the former Secretary, who demitted his office, that building permit and compound wall permit were given on application made by the petitioner bearing No.A2-10094/2010. The word used 'compound wall' actually means a wire fencing with Angle Iron separating the property from the puramboke land available between the road line and the margin of the petitioner's property as is evident in the photographs produced by him. It is also clear that sufficient space is left from the building to the margin of the property meant for parking of vehicles of his customers. This can also be seen from the photographs. It also shows a gate. The vehicles parked between the compound of the petitioner and the road margin have left sufficient space for ingress and egress. At present, the shop rooms are not occupied.

It was further contended that these vehicles were being parked in that area even before constructing the building. They have been directed not to cause any inconvenience for the ingress or egress of the

petitioner to his property. It is understood that shifting of taxis were done on the basis of the decision taken in a joint meeting where all the authorities like Joint Regional Transport Officer, Panchayat President and Secretary, representatives of Taxi Drivers' union, public leaders and others, especially under the drive "Controlling of road Accidents Project".

6. The 8th respondent has filed a counter affidavit contending as follows:

The parking of taxis is done without causing any obstruction to the ingress and egress of the petitioner's property. There is a compound wall in front of the petitioner's property and the taxis are parked by the side of the compound wall. There have been no single instance of taxi drivers threatening the people coming to the petitioner's property.

It was further stated that the parking of taxi cars are on the strength of Exts.P8(a) and R8(b). Therefore, such parking is legal and authorised. The parking of taxi cars would not cause any prejudice to the petitioner. The challenge raised by the petitioner is unsustainable when statutory bodies permitting taxi parking are in force. It was further stated

that the taxi parking area is a puramboke land which is solely vested with the 5th respondent panchayat and the taxi parking area does not form part of the road margin. The 5th respondent is entitled to make use of such puramboke land as parking stands. It is re-iterated that the taxi parking is done in the said area on the strength of the statutory orders passed by the competent authorities and the petitioner cannot seek any relief without assailing the validity of such orders.

7. The petitioner has filed a detailed reply affidavit to the counter affidavit of the respondent panchayat.

8. Arguments have been heard.

9. The contention raised by the respondents is that by the parking of the vehicles in front of the petitioner's building, there is no obstruction to the ingress and egress from the road. Their contention is that there was an understanding regarding the parking of taxis at that place. According to them, the taxis were permitted to park in the places between the road line and the compound wall without

disturbing the petitioner's access to the property. They have a further case that parking of taxis would not cause any difficulties to anyone and no one has filed a complaint about this parking.

10. Admittedly, the petitioner's building opens to the public road. The ground floor contains shop rooms as evident from Ext.P3 photographs and these establishments open to the public road. No compound wall is seen between the building and the public road. In fact, there cannot be any such compound wall as the same would certainly be an obstruction to the shop rooms in the ground floor which opens to the public road. The access of the public to the petitioner's building and to the shop rooms within the same can be only through its frontage opening to the public road. Ext.P3 photographs reveal that the space in front of the building is completely occupied by taxis. According to the petitioner, the same is still continuing as such and the authorities have not taken any action for removing the blockade being suffered by the petitioner.

11. Section 227 of the Kerala Panchayat Raj Act mandates that previous sanction of the Regional Transport Authority is to be obtained before any stand or halting place for motor vehicles is opened. Almost identical provisions are there in Rule 344 of the Kerala Motor Vehicles Rules also. The respondents have no case that such a consultation has been effected in this matter. It is for the local authority to provide adequate parking facilities for taxis, including four wheelers and three wheelers within the local limits. However, while doing so, the same shall not cause obstruction to the ingress and egress of the owners of the land on either side of the road.

12. This Court in **Chandran v. District Collector** [2013 (3) KLT 449] has observed a minimum of 1.5 meters beyond tarred margin of road is to be left for pedestrian traffic throughout State. In **Joseph v. District Magistrate** [1996 (2) KLT 490] this Court has observed that a person owning land adjoining a highway has a right of access to the highway at any point. Therefore, under any

eventuality parking as done at present cannot be countenanced and it is the duty of the respondent panchayat to see that the unauthorised parking is removed.

Therefore, the writ petition is allowed. Respondents 1 to 7 are directed to ensure that no commercial vehicles like taxi cars or other public carriers are parked on the road side in front of the petitioner's building blocking the frontage and ingress and egress to their shop. It shall be open to the respondents to provide particular parking space for taxi cars and other vehicles at some other place. The present obstruction caused by the parking of the vehicles should be removed, within a period of one month from the date of receipt of a copy of this judgment, by finding an alternate site without fail.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj