

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 13509 of 2008 (S)

PETITIONER(S):

**ADIMAKUTTY, S/O.AMMU,
AGED 54 YEARS, ANJUMURI VEETIL, VAZHAKKALA VILLAGE
KAKKANAD WEST P.O., ERNAKULAM DISTRICT.**

**BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.**

RESPONDENT(S):

- 1. THRIKKAKARA GRAMA PANCHAYATH,
KAKKANAD P.O., REPRESENTED BY ITS, SECRETARY.**
- 2. ASSISTANT ENGINEER,
L.S.G.D.SECTION, THRIKKAKARA GRAMA PANCHAYATH
KAKKANAD, KOCHI-30.**
- 3. THE SECRETARY,
THRIKKAKARA GRAMA PANCHAYATH, KAKKANAD P.O.
ERNAKULAM DISTRICT.**
- 4. DISTRICT COLLECTOR, ERNAKULAM.**

**R1 & 3 BY ADV. SRI.S.SHANAVAS KHAN
BY SR GOVERNMENT PLEADER SRI.P.IDAVIS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WPC NO.13509/08

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE JUDGMENT MADE IN WPC NO.7442/2005 DT 23.5.2006.

EXT.P2: TRUE COPY OF THE JUDGMENT IN CON.CASE (C) NO.322/2007 DATED 10.7.2007.

EXT.P3: TRUE COPY OF THE COMPLAINT FILED UNDER SECTION 133 OF THE CR.P.C. BEFORE THE SUB DIVISIONAL MAGISTRATE COURT, FORT KOCHI ON 7/12/2007.

EXT.P4: TRUE COPY OF THE ORDER DT 25.3.2008 ISSUED BY THE SUB DIVISIONAL MAGISTRATE FORT COCHIN.

EXT.P5: TRUE COPY OF THE ESTIMATE ISSUED BY THE ASSISTANT ENGINEER, THRIKKAKARA GRAMA PANCHAYAT.

//True Copy//

PS to Judge

Rp

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.P. (C) No. 13509 of 2008

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Dated this, the 31st day of August, 2015

J U D G M E N T

Shaffique, J.

This writ petition is filed seeking for a direction to respondents 1 to 3 to implement removal of encroachment in Mooleppadam-Vazhakkala from ward No.11, 17, 18 and 19 and to restrain the respondents from proceeding with Ext.P5 estimated civil work without commencing cleaning operation of Mooleppadam-Vazhakkala Thodu.

2. The factual issues involved in the above writ petition disclose that the petitioner had earlier filed a Public Interest Litigation as WP(C) No.7442/2005. The said writ petition was disposed of directing the District Collector and the Revenue Divisional Officer, Fort Kochi to ensure that the survey is completed within the specified time. It is stated by the petitioner that despite such directions being issued, no action was taken in the matter and the encroachment still remained by the side of the

thodu.

3. An affidavit is filed by the 1st respondent *inter alia* stating that after the directions had been issued by this Court in WP(C) No.7442/2005, in which direction was issued to remove the encroachments made by different parties, appropriate steps had been taken by the Panchayat to remove the encroachments. The Panchayat has later been elevated as the Municipality and all necessary steps in that regard had been taken. It is further stated that survey of the encroached area is required and the Municipality had already approached the Taluk Surveyor to provide necessary particulars. The Municipality is awaiting report of the Taluk Surveyor to initiate further action in the matter.

4. Having regard to the aforesaid factual situation, we are of the view that if there is any encroachment into the thodu portion, necessarily it is the obligation of the Municipality to remove the encroachments after taking appropriate steps in accordance with law. We only direct the Thrikkakkara Municipality

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-:3:-

to ensure that the encroachments into the thodu portion is removed after getting necessary particulars from the Taluk Surveyor as expeditiously as possible.

Writ petition is disposed of as above.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge