

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 10048 of 2015 (E)

PETITIONER:

**CHERIYAN K.A., AGED 66 YEARS,
S/O. ABRAHAM K.S., KAKKANATTUPARAMBIL, KIZHAKOMBU,
KOOHATTUKULAM, ERNAKULAM -686 662.**

**BY ADVS. SRI.BIJU ABRAHAM
SRI.K.C.GINEEB**

RESPONDENT(S):

**1. THE KOOHATTUKULAM GRAMA PANCHAYAT,
KOOHATTUKULAM, ERNAKULAM - 686 662
REPRESENTED BY ITS SECRETARY.**

**2. THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, THRIKKAKARA,
ERNAKULAM - 682 028.**

**R1 BY ADV. SRI. K.M.JAMALUDHEEN
R2 BY GOVERNMENT PLEADER SRI. SAIDALAVI. K.K.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1:** A TRUE COPY OF THE STOP MEMO DATED 29.01.2015 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.
- EXT.P-1(a):** A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P1.
- EXT.P-2:** A TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER TO THE IST RESPONDENT DATED 31.01.2015.
- EXT.P-2(b):** A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P2.
- EXT.P-3:** A TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE KOOTHATTUKULAM VILLAGE OFFICER IN RESPECT OF THE LANDED PROPERTY OF THE PETITIONER DATED 29.01.2015.
- EXT.P-3(a):** A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P3.
- EXT.P-4:** A TRUE COPY OF THE LAND TAX PAID RECEIPT OF PETITIONER'S PROPERTY ISSUED BY THE KOOTHATTUKULAM VILLAGE OFFICER DATED 29.05.2014.
- EXT.P-4(a):** A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P4.
- EXT.P-5:** A TRUE COPY OF THE SURVEY SKETCH OF THE PROPERTY OF THE PETITIONER.
- EXT.P-6:** A TRUE COPY OF THE LETTER DATED 05.03.2015 ISSUED BY THE IST RESPONDENT.
- EXT.P-6(a):** A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P6.

RESPONDENT(S)' EXHIBITS - **NIL**

//TRUE COPY//

P.A. TO JUDGE

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 10048 of 2015

Dated this the 28th day of July, 2015

JUDGMENT

The petitioner approached this Court seeking the following reliefs:

A] A Writ of certiorari or any other appropriate writ, order or direction quashing Exhibits P1 & P6 holding that 1st respondent is having no right or authority over the land in which the abandoned bore well is situated and by declaring that the said property is absolutely belongs to the petitioner.

B] A writ of mandamus or any other appropriate writ, order or direction commanding the respondents to fill up the abandoned bore well by restoring the land into its original position by fixing an outer time limit for doing so by the respondents.

C] Any other appropriate writ, order or directions as this Hon'ble court deem fit on the fact and in the circumstances of the case and allow this petition with cost.

2. The petitioner is the owner in possession of a piece of land comprised of Sy. No. 699/8A and 8B of the 1st respondent Panchayath. The petitioner points out that in the year 1983, there was an attempt by the respondent Panchayath to dig a bore well in his property. According to the petitioner, he had given consent on the understanding that the 1st respondent would permit the petitioner to share the water from the proposed bore well along with the local inhabitants. However, the project was abandoned, as it was found not feasible on account of the scarcity of water in that area. The petitioner points out that the well so dug is now kept unattended and it was never filled by the Panchayath.

3. The present grievance of the petitioner is that when the petitioner started to construct a boundary wall to his property, he was restrained by the respondent Panchayath as per Ext.P1 stop memo. He submitted his

objection (Ext.P2). In Ext.P2, he has stated the facts and circumstances under which the bore well was dug in his property and the undertaking said to have been given by the respondent Panchayath while permission was granted to dig the bore well. The definite case of the petitioner is that, after abandoning the project in the year 1983, the respondent Panchayath had not taken any steps to acquire the land to fill up the abandoned bore well. The petitioner was, under such circumstances, intended to construct a compound wall. The petitioner also points out that there was a direction by the Apex Court in '**Measures for Prevention of Fatal Accidents of Small Children due to the Falling into Abandoned Bore wells and Tube wells in Re: v. Union of India and others**'[2010 (15) SCC 224] wherein guidelines were given by the Apex Court in such cases.

4. The petitioner's property is on the side of

Vadakara-Chakkalapara Road and on account of the present stop memo issued by the respondent Panchayath he is not in a position to construct the boundary wall. It is with this background, the petitioner has come up before this Court.

5. Though the respondent entered appearance, no counter affidavit has been filed. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Panchayath.

6. Opposing the writ petition, the learned standing counsel for respondent Panchayath would submit that the petitioner has not submitted a proper application before the Panchayath for the construction of the boundary wall and if a proper application is submitted, the Panchayath is ready to consider the same. It was also submitted that the Panchayath has not abandoned the project of commissioning the borewell.

7. The argument that the Panchayath had abandoned the project can not be countenanced in the light of the fact that the Panchayath has no case that they have taken any steps after 1983 in the matter.

8. The learned counsel for the petitioner would point out that the inaction on the part of the respondent Panchayath in filling the borewell would invite dangers and in order to prevent that situation, he had decided to construct a compound wall and that too is stalled by the respondent Panchayath by Exts.P1 and P6.

9. As rightly submitted by the learned counsel for the petitioner, the Apex Court has laid down guidelines to be followed by the State in the case of abandoned bore well in the decision referred to above and it is clear that the respondent Panchayath had not taken any steps to comply with the direction in the matter.

10. It was pointed out by the learned counsel for the

petitioner, unless positive directions are given to the respondent, there is no chance for dismantling and filling up the abandoned bore well by restoring the land to its original position. As the respondent Panchayath has a case that the application submitted by petitioner is not in order, it could be rectified by providing the petitioner an opportunity of correcting the same.

Therefore, the writ petition is disposed of permitting the petitioner to submit a proper application before the respondent Panchayath for the construction of the boundary wall. It shall be considered by the respondent and appropriate orders shall be passed within a period of 2 weeks from the date of receipt of a copy of this judgment. The abandoned borewell now left unattended in the property of the petitioner shall be filled up by the respondent Panchayath at its expense within a period of one month and if the respondent Panchayath fails to fill it

up, it shall be open to the petitioner to close the same and get the amount expended for the same recovered from the respondent Panchayath.

Sd/-

A.V. RAMAKRISHNA PILLAI
JUDGE

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