

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

W.P.(C)No.14029 of 2010 (C)

PETITIONER(S):-

SREE NARAYANA DHARMA SEVA SANGHAM,
REG.NO.121/84, AYIRAMTHENGU, ALUMPEEDIKA.P.O-690 547,
REPRESENTED BY ITS SECRETARY SRI.PAMTHRAN,
S/O.LATE BALAKRISHNAN, RESIDING AT ALUMPEEDIKA,
KLAPANA PANCHAYATH, KARUNAGAPPALLY.

BY ADV. SMT.R.RANJINI.

RESPONDENT(S):-

1. THE DISTRICT COLLECTOR, COLLECTORATE, KOLLAM.
2. THE TAHSILDAR, KARUNAGAPPALLY TALUK, KARUNAGAPPALLY.
3. ASST.EXECUTIVE ENGINEER (P.W.D) BRIDGE'S SECTION,
KARUNAGAPPALLY.
4. ALAPPAD PANCHAYATH ALAPPAD,
KARUNAGAPPALLY, REP. BY ITS SECRETARY.
5. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

* ADDL.R6. THE VILLAGE OFFICER, ALAPPAD, KARUNAGAPPALLY.

* [THE ADDITIONAL 6TH RESPONDENT IS IMPEADED AS PER ORDER
ON I.A.NO.6907 OF 2010 DATED 03.06.2010]

R1 TO R3, R5 & R6 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN.
R4 BY ADVS. SRI.P.K.VIJAYAMOHANAN
SRI.ALAN PAPALI
SRI.GILBERT GEORGE CORREYA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1: TRUE PHOTOCOPY OF THE MINUTES OF THE MEETING
HELD ON 01.08.2007.
- EXHIBIT P2: TRUE PHOTOCOPY OF THE MINUTES OF THE MEETING
HELD ON 20.09.2007.
- EXHIBIT P3: TRUE PHOTOCOPY OF THE NEWS ITEM PUBLISHED IN KERALA
KAUMUDI DATED 6.3.2010.
- EXHIBIT P4: TRUE PHOTOCOPY OF REPRESENTATION SUBMITTED BEFORE
THE 1ST RESPONDENT.
- EXHIBIT P5: TRUE PHOTOCOPY OF REPRESENTATION SUBMITTED BEFORE
THE 2ND RESPONDENT.
- EXHIBIT P6: TRUE PHOTO COPY OF THE REPRESENTATION SUBMITTED
BEFORE THE MINISTER.
- EXHIBIT P7: THE PHOTOCOPY OF THE NOTICE ISSUED BY THE
6TH RESPONDENT.
- EXHIBIT P8: THE PHOTOCOPY OF THE NOTICE ISSUED BY THE
4TH RESPONDENT.
- EXHIBIT P9: THE PHOTOCOPY OF THE NOTICE DATED 9.7.2012.

RESPONDENT(S)' EXHIBITS:-

- EXT.R4(a): TRUE COPY OF THE COMMUNICATION DATED 13.08.2012 FROM
THE PETITIONER TO THE SECRETARY, ALAPPAD GRAMA
PANCHAYAT, INFORMING THE CHANGE OF THE OFFICE
BEARERS OF THE SANGHAM.
- EXT.R4(b): TRUE COPY OF THE COMMUNICATION DATED 13.08.2012 FROM
THE PRESIDENT OF THE SANGHAM TO THE SECRETARY,
ALAPPAD GRAMA PANCHAYAT THAT HE HAS PARTICIPATED IN
THE AUCTION WAS ON BEHALF OF THE SANGHAM.
- EXT.R4(c): PHOTOGRAPH SHOWING ORIGINAL SITE OF THE GURU
MANDIRAM IN BETWEEN THE NURSERY SCHOOL BUILDING AND
THE 'AALTHARA'.

- EXT.R4(d) PHOTOGRAPH OF THE PERMANENT NURSERY SCHOOL BUILDING, 'MULAVANAPADEETTATHIL RATHNAMMA GOPINATH MEMORIAL'.
- EXT.R4(e) PHOTOGRAPH OF THE TEMPORARY SHED WHERE THE NURSERY SCHOOL IS PRESENTLY FUNCTIONING.
- EXT.R4(f) PHOTOGRAPH SHOWING THE ENCROACHMENT AND FENCING OF THE AREA AGAINST THE PROHIBITION UNDER EXTS.P7 AND P8.
- EXT.R4(g) PHOTOGRAPH SHOWING THE ENCROACHMENT AND FENCING OF THE AREA AGAINST THE PROHIBITION UNDER EXTS.P7 AND P8.
- EXT.R4(h) TRUE COPY OF THE COMPLAINT DATED 03.06.2015 OF RAJIV GANDHI CULTURAL FORUM.
- EXT.R4(i) TRUE COPY OF THE MASS COMPLAINT FROM THE FISHERMEN OF KLAPPANA, KULASEKHARAPURAM AND DEVIKULANGARA.

VKU/-

[TRUE COPY]

K. Vinod Chandran, J

W.P.(C).No.14029 of 2010-C

Dated this the 01st day of July, 2015

JUDGMENT

The petitioner-Society seeks satisfaction of the obligation as per Exhibits P1 and P2.

2. The petitioner was in occupation and possession of a property, wherein was situated a Guru Mandiram, with a Nursery School, Vayanasala and a godown. When a project for construction of a bridge between Aazhikal - Ayiramthengu, crossing the Kayamkulam backwaters, was approved by the Government, the community members obstructed the construction work, insofar as there was an apprehension that it would destroy the Guru Mandiram and render useless the property itself. In such circumstances, considering the religious feelings of the community members, a Committee was formed by the District Collector on the instruction of the Government, chaired by the Tahsildar, Karunagappilly. Certain decisions were arrived at in the said meeting, which are evident at Exhibits P1 and P2. The petitioner seeks implementation of the same and asserts that, in

fact, the petitioner should be assigned with 15 cents of land somewhere in the locality, so as to re-construct Guru Mandiram, Nursery School, Vayanasala and godown.

3. A reading of Exhibits P1 and P2 would indicate that a decision was taken to shift the Guru Mandiram temporarily while the construction is going on. The Nursery school too was to be shifted temporarily to a private property. The Vayanasala and godown continued in the premises. Subsequently, on withdrawal of consent to carry on the Nursery school, in the private property, the petitioner sought to build a temporary shed near the place where the Guru Mandiram was temporarily re-located, which led to the issuance of a stop memo, Exhibit P7, which is assailed herein. The petitioner filed the above writ petition and on the basis of the interim order, the Nursery school also is said to have been continuing in the temporary site. The Guru Mandiram is now situated in the property on the western side of the property in re-survey No.60/7 of Alappad Village, wherein a shopping complex of the Panchayat is said to be situated. This is only a temporary arrangement.

4. The issue now raised is with respect to the assignment of land at any place in the locality. The learned Government Pleader, on the basis of Exhibit P1, would submit that an application has to be made through the Tahsildar, which the petitioner has not till date done.

5. The petitioner is found to be still occupying the property under the bridge. The petitioner is causing obstruction to the general public by fencing the property, as is evident from Exhibit R4(f) and R4(g). There were many complaints received by the Panchayat, as the fencing was causing obstruction to the fishermen, who had to carry their net and fishing equipments to the nearby jetty. The Panchayat opposes the said obstruction and also seeks vacation of the property belonging to them, near their shopping complex, which admittedly was a temporary arrangement.

6. Essentially it is to be noticed that the petitioner was never promised on outright assignment. By Exhibits P1 and P2 the petitioner was promised that if the property under the bridge is rendered useless, then a land would be identified and the

petitioner permitted to re-locate the Guru Mandiram as also the Nursery school to such land. Before assignment, hence, it should be found that the property over which the petitioner has title is rendered useless, and re-location of the Guru Mandiram and school is not possible. The same has to be done on an inspection of the property over which the petitioner has title and then a proper application for land assignment should be made on the strength of Exhibits P1 and P2. The petitioner could definitely make such an application through the appropriate authority under the Land Assignment Act. The petitioner would also be entitled to produce Exhibits P1 and P2 and rely on the same. In the meanwhile, the petitioner would remove the fence erected in the property under the bridge and also would undertake before the appropriate authority that, in the event of the assignment of land, the petitioner would not raise any dispute regarding possession of the property where, earlier the Guru Mandiram, Nursery school, Vayanasala and godown were being carried on. In any event, since the Guru Mandiram and Nursery school are re-located to a temporary site, the petitioner shall remove the fencing under the

bridge. The Government shall, if an application is made as directed herein, get the original property inspected in the presence of the petitioner and the Panchayat and take a decision as expeditiously as possible. On being assigned with an alternate property, the petitioner shall not raise a claim to the property under the bridge.

The writ petition is disposed of as above. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]