

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 11553 of 2015 (T)

PETITIONER(S):

**T.K.REJI, AGED 45 YEARS,
S/O. KURIAKOSE, RESIDING AT THENUMKUTTIYIL HOUSE,
THIRUVANIYAR, VARIKOLI P.O., CHEMMANADU KARA,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT - 682 308.**

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT(S):

- 1. STATE OF KERALA,
DEPARTMENT OF REVENUE DEPARTMENT,
REPRESENTED BY ITS SECRETARY,
GOVERNMENT SECRETARIT ANNEX,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DISTRICT COLLECTOR,
ERNAKULAM, COLLECTORATE, CIVIL STATION,
KAKKANAD, COCHIN - 682 030.**
- 3. REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA, MINI CIVIL STATION, ERNAKULAM DISTRICT,
PIN - 686 673.**
- 4. VILLAGE OFFICER,
VILLAGE OFFICE, THIRUVANIYUR, ERNAKULAM,
PIN - 682 307.**
- 5. DISTRICT BLOCK PANCHAYATH,
KAKKANAD, REPRESENTED BY ITS SECRETARY, ERNAKULAM,
COCHIN - 682 030.**
- 6. THIRUVANIYUR GRAMA PANCHAYATH,
THIRUVANIYUR, REPRESENTED BY ITS SECRETARY,
ERNAKULAM DISTRICT, PIN - 682 307.**

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**7. CIRCLE INSPECTOR OF POLICE,
PUTHENCRUZ POLICE STATION, ERNAKULAM DISTRICT,
PIN - 682 311.**

**8. THANAL ART AND CULTURAL VEDI,
HAVING REGISTRATION NO. EKM/PC/195/2015,
REPRESENTED BY ITS PRESIDENT, MANAMATHADAM.**

**R1-4 & 7 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R6 BY ADV. SRI.T.K.AJITHKUMAR (VALATH)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE PHOTOGRAPH SHOWING THE ILLEGAL CONSTRUCTION BEING CARRIED OUT BY THE 8TH RESPONDENT TRESPASSING INTO THE PUBLIC ROAD THAT TOO WITHOUT OBTAINING THE REQUIRED LICENCES AND PERMISSION FROM THE PANCHAYATH AND OTHER CONCERNED AUTHORITIES.**
- EXHIBIT-P2- TRUE COPY OF THE REPRESENTATION DATED 09/03/2015 SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT ALONG WITH ENGLISH TRANSLATION.**
- EXHIBIT-P3- TRUE COPY OF THE RECEIPT NO. 1925 DATED 09/03/2015 SHOWING DUE RECEIPT OF REPRESENTATION SUBMITTED BY THE PETITIONER ISSUED BY THE 6TH RESPONDENT OFFICE ALONG WITH ENGLISH TRANSLATION.**
- EXHIBIT-P4- TRUE COPY OF THE REPRESENTATION DATED 16/03/2015 SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR, ERNAKULAM.**
- EXHIBIT-P5- TRUE COPY OF THE RECEIPT DATED 16/03/2015 ISSUED BY THE OFFICE OF THE DISTRICT COLLECTOR, ERNAKULAM TO THE PETITIONER ALONG WITH ENGLISH TRANSLATION.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.11553 of 2015

Dated this the 14th day of July, 2015

JUDGMENT

The petitioner has approached this Court for a direction to the respondents 2 to 7 to take immediate steps to stop the alleged illegal construction being carried out by the 8th respondent on the western side of the Manamthadam-Vennikkulam Public Road in Ward No.5 of the 6th respondent Panchayat.

2. The petitioner is a resident of 6th respondent Panchayat. The petitioner's property and his tharavadu house are situated on the eastern side of Mananthadam-Vennikkulam road in Ward No.5 of the 6th respondent Panchayat. This public road is vested with the 6th respondent Panchayat and is maintained by the 5th respondent District Block Panchayat. This road is having a width of 12 metres and the owners having property on either side of the road have demarcated their properties from the road area.

3. According to the petitioner, the 8th respondent is a group of gangsters formed themselves into an association and now, they are attempting to construct a building trespassing into the Manamthadam-Vennikkulam Road in Ward No.5 of the 6th respondent Panchayat. The 8th respondent and their men are doing illegal construction after trespassing into the road using their muscle power and political influence. The construction of the building in the Panchayat area cannot be commenced or carried out without getting prior approval from the Panchayat. The 8th respondent is carrying the construction without obtaining any building permit from the 6th respondent Panchayat. The said illegal construction is being carried out in blatant violation of all the laws prevailing on land and also depriving the petitioner's right to have access to the public road from any point of his property; it is alleged. The petitioner also points out that this Court in the judgment reported in 1996 KHC 346 (**MP Joseph v District Magistrate**) has held that the owner of the

property on the side of the National Highway has a private right of access subject to the public right of passage which is a higher right to be enjoyed by public including the persons like the petitioner. In other words, a private right of access to the Highway may co-exist with the public right of way, though it does not necessarily merge with the public right.

4. The 6th respondent has filed a counter affidavit in which it is stated that the petitioner submitted Ext.P2 representation before the 6th respondent alleging illegal construction made by the 8th respondent. Thereafter on verification, the 6th respondent found that the 8th respondent has made illegal constructions without obtaining any building permit from the 6th respondent by trespassing up on the road puramboke vested with the 6th respondent. Therefore, the 6th respondent issued a notice dated 20.3.2015 to the 8th respondent demanding to demolish the illegal structure. True copy of the notice dated 20.3.2015 is produced and marked as Ext.R6(a).

After receipt of Ext.R6(a) notice, the 8th respondent issued a reply dated 26.3.2015 to the 6th respondent. True copy of the reply dated 26.3.2015 is produced and marked as Ext.R6(b). Thereafter on 29.4.2015, the 6th respondent issued another notice to the 8th respondent demanding demolition of the building. True copy of the notice dated 29.4.2015 is produced and marked as Ext.R6(c). The 8th respondent again issued similar reply as Ext.R6(b) to the 6th respondent. Thereafter the 6th respondent issued another notice dated 22.5.2015 for the eviction of unauthorised occupation of the road puramboke to the 8th respondent. True copy of the notice dated 22.5.2015 is produced and marked as Ext.R6(d). In spite of the receipt of Ext.R6(d), the 8th respondent has not so far vacated the puramboke land and therefore, the 6th respondent is proceeding further against the 8th respondent. When the illegal construction by the 8th respondent was brought to the notice of the 6th respondent, prompt and lawful action was taken by the 6th respondent.

5. Today when the matter came up for hearing, the learned counsel for the petitioner would submit that though the respondent Panchayat stated that they are in the process of initiating action against the eighth respondent, they have not done anything so far.

6. In answer to the submission, the learned counsel for the respondent Panchayat would submit that the decision was taken only one week back and therefore, they would implement the decision taken by them without delay.

Recording the said submission, this writ petition is disposed of directing the respondent Panchayat to complete the process of removal of alleged illegal encroachment within a period of one month from the date of receipt of a copy of this judgment.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE