

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 14855 of 2013 (F)

PETITIONER(S):

1. K.K.ABDUL SAGEER,S/O KADER,
KARIYATHIPPILLY HOUSE, MANJALLY MATTUPURAM,
KARUMALLUR VILLAGE, P.O, MANNAM (VIA),
N. PARUR, ERNAKULAM DISTRICT.
2. FAZEELA, W/O K.K. ABDUL SAGEER,
KARIYATHIPPILLY HOUSE,
MANJALLY MATTUPURAM, KARUMALLUR VILLAGE,
P.O.MANNAM (VIA), N. PARUR, ERNAKULAM DISTRICT.

**BY ADVS.SRI.C.CHANDRASEKHARAN
SRI.P.VISWANATHA MENON**

RESPONDENT(S):

1. PREMADAS @ PREMAN,
S/O N.A NARAYANAN, NAISSERI HOUSE,
KARUMALLUR VILLAGE P.O, MANNAM (VIA), N. PARUR,
ERNAKULAM DISTRICT- 683 513
2. LISHA PREMADAS,W/O PREMADAS,
NAISSERI HOUSE, KARUMALLUR VILLAGE P.O.,
MANNAM, (VIA), N. PARUR,
ERNAKULAM DISTRICT -683 513
3. THE SECRETARY,
KARUMALLUR GRAMA PANCHAYATH,
KARUMALLUR VILLAGE, P.O. MANNAM, (VIA), N. PARUR,
ERNAKULAM DISTRICT.PIN-683 513

R1 & R2 BY ADV. SRI.MANSOOR.B.H.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-03-2015, ALONG WITH WPC.NO. 16309/2013, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

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WP(C).No. 14855 of 2013 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE JUDGMENT DATED 08-11-2011 IN WPC NO. 22705/2011 OF THE HON'BLE HIGH COURT OF KERALA
- EXHIBIT P2** TRUE COPY OF THE ORDER DATED 09-05-2012 PASSED BY THE RESPONDENT NO.3
- EXHIBIT P3** TRUE COPY OF THE JUDGMENT DATED 24-09-2012 IN WPC NO. 11450/2012 OF THE HON'BLE HIGH COURT OF KERALA
- EXHIBIT P4** TRUE COPY OF THE M2-32445/2012 DATED 18-12-2012 OF THE DISTRICT COLLECTOR, ERNAKULAM
- EXHIBIT P5** TRUE COPY OF THE REPRESENTATION DATED 07-03-2013 SUBMITTED BY THE PETITIONERS BEFORE THE DISTRICT COLLECTOR AGAINST THE RESPONDENTS 1 AND 2
- EXHIBIT P6** TRUE COPY OF THE ACKNOWLEDGEMENT CARD DATED 11-03-2013 BY THE 3RD RESPONDENT FOR THE RECEIPT OF THE EXT P5
- EXHIBIT P7** REPRESENTATION DATED 27-03-2013 SUBMITTED BY THE PETITIONERS BEFORE THE DISTRICT COLLECTOR AGAINST RESPONDENTS 1 AND 2

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.14855 & 16309 of 2013

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Dated this the 23rd day of March, 2015

JUDGMENT

The issue in these writ petitions relates to a toilet constructed by the petitioner in W.P(C) No.16309 of 2013 (2nd respondent in W.P(C) No.14855 of 2013).

2. The petitioners in W.P(C) No.14855 of 2013 seek a direction against the third respondent panchayat to remove the toilet of the respondents 1 and 2 in that case. The petitioners point out that based on Ext.P1 judgment, the third respondent directed respondents 1 and 2 to remove the toilet. However, the respondents 1 and 2 filed an appeal before the District Collector. The petitioner filed W.P(C) No.11450 of 2012 before this Court. As per Ext.P3 judgment, this Court directed the District Collector to dispose of the appeal. After hearing, the District Collector dismissed the appeal filed by respondents 1 and 2 as per Ext.P4. The petitioner points out that the 3rd respondent has not taken any steps for removal of the toilet.

3. In W.P(C) No.16309 of 2013, the petitioner is challenging the decision of the District Collector (Ext.P8 in that writ petition) on the ground that it was passed without considering the suggestions made by the petitioner. It is also pointed out that on the basis of the said order, the 3rd respondent panchayat had issued Ext.P9 communication directing the petitioner to comply with the order and report the matter urgently.

4. Arguments have been heard.

5. For convenience of discussion, the parties can be referred to as they are arrayed in W.P(C) No.14855 of 2013.

6. The learned counsel for the petitioners in W.P(C) No.14855 of 2013 submits that though the respondent panchayat was convinced that the construction of the toilet by respondents 1 and 2 is unauthorised, the panchayat has not taken any action. It is also submitted that later there was a mediation in which respondents 1 and 2 have agreed that they would construct a compound wall around their property so as to abate nuisance.

7. It was submitted by the learned counsel for the petitioners that since the panchayat has taken a decision respondents 1 and 2, the respondent panchayat is bound to implement the same so long

as it is not challenged by respondents 1 and 2 before the Tribunal for Local Self Government.

8. The learned counsel for respondents 1 and 2, *per contra*, would submit that these respondents have constructed the compound wall and at present there is no nuisance. This is refuted by the learned counsel for the petitioner.

9. As there are rival submissions regarding the abatement of nuisance, this Court feels that it is only just and proper to direct the respondent panchayat to conduct a local inspection, to ascertain whether the nuisance continues to exist. In case it is found that if there is nuisance, it is open to the respondent panchayat to direct respondents 1 and 2 to abate the nuisance by proper methods even by removing the toilet.

Therefore the writ petitions are disposed of directing the Secretary of the respondent panchayat to make a local inspection of the site within a period of one month from today, to ascertain whether the nuisance as alleged in W.P(C) No.14855 of 2013 continues to exist. If the Secretary of the respondent panchayat on inspection is convinced that the nuisance has not been abated, he shall pass orders directing to abate the nuisance by removing the

toilet within a time frame. This exercise shall be completed within one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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