

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 12715 of 2015 (L)

PETITIONER:

SALIMOL KOSHY AGED 33 YEARS
D/O.A.V.KOSHY, ALAPPAT HOUSE, MELUKAVU
MELUKAVU PO KOTTAYAM DIST, PIN.686 652.

BY ADV. SRI.A.G.BASIL

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF RURAL DEVELOPMENT
GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM-695 001.

2. THE NODAL OFFICER
THE KERALA STATE RURAL ROAD DEVELOPMENT AGENCY
3RD FLOOR, CSI BUILDING, PULIMOOD JUNCTION
THIRUVANANTHAPURAM-695 001.

3. EXECUTIVE ENGINEER
PROGRAMME IMPLEMENTATION UNIT
PRADHANMANTRI GRAM SADAK YOJANA (PMGSY)
DISTRICT PANCHAYATH, KOTTAYAM 686001.

4. DISTRICT COLLECTOR, KOTTAYAM
CIVIL STATION, KOTTAYAM, PIN-686 001.

5. THE MELUKAVU GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, MELUKAVU
KOTTAYAM DISTRICT, PIN.686 652.

R3 BY ADV. GOVERNMENT PLEADER
R5 BY ADV. SRI.SAJU JOHN
R5 BY ADV. SRI.JELSON J.EDAMPADAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 - TRUE COPY OF THE LAND TAX CERTIFICATE NO.5471406 (BOOK NO.54715) DATED 13.06.2013 FOR THE YEAR 2013-14 ISSUED BY THE MELUKAVU VILLAGE.

EXT.P2 - TRUE COPY OF THE PARTITION DEED NO.412/2013 DATED 08.03.2013 OF SRO ERATTUPETTAH

EXT.P3 - A PHOTOGRAPH SHOWING THE CRIMINAL ENCROACHMENT OF THE PETITIONER'S PROPERTY BY THE 3RD RESPONDENT

EXT.P4 - TRUE COPY OF THE INTERIM ORDER DATED 16.09.2014 IN WPC.NO.23704/2014

EXTS.AS PER IA.NO.8538/2015

EXT.P4 - TRUE COPY OF THE SITE PLAN IN RESPECT OF THE PROPERTY

EXT.P5 - TRUE COPY OF CERTIFICATE OF ENCUMBRANCE OF PROPERTY 30.4.2015 ISSUED BY THE SUB REGISTRAR'S OFFICE, ERATTUPETTAH

EXT.P6 - TRUE COPY OF THE POSSESSION CERTIFICATE NO.266/2015 DATED 27.4.2015 ISSUED BY THE MELUKAVU VILLAGE.

EXTS. AS PER IA. NO.8656 OF 2015

EXT.P7 - TRUE COPY OF THE PLAN/SKETCH OF THE PETITIONER'S PROPERTY SHOWING, SHOWING THE ENCROACHMENT MADE THEREON FOR THE FORMATION OF THE ROAD UNDER PRADHAN MANTHRI GRAMEEN SADAK YOJANA (PMGSY) SCHEME.

EXT.P8 - A PHOTOGRAPH SHOWING THE ENCROACHMENT ON THE PETITIONER'S PROPERTY.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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W.P.(C) No.12715 of 2015
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Dated this the 27th day of July, 2015

JUDGMENT

The grievance of the petitioner is that 9.5 cents of her property in Melukavu Grama Panchayat has been encroached for construction of a road without her consent or without taking any proceedings for acquisition. The prayer in the writ petition is for a direction to respondents not to proceed with any further construction of the road through her property; for a declaration that construction of road through her property is unlawful; for a direction to respondents to pay her a sum of ₹5,00,000/- towards compensation. According to her, 9.5 cents of land in Sy.No.209/7 in Melukavu Village in Meenachil Taluk in Kottayam District is her only property and she wanted to construct a residential building there. The writ petition was filed when steps were taken for construction and widening of road under Pradhanmanthri Grama Sadak Yojana (PMGSY) Scheme of the Central Government for the purpose of better road facilities in rural areas.

2. The 3rd respondent has filed a counter affidavit saying that there is no encroachment into the petitioner's property. However it is stated that her property is lying on northern side of Mechal - Peringali road and construction was carried out on the southern side of the existing Jeep Track by utilizing the land available on the other side of the road without touching her property. According to the 3rd respondent, construction is made under the Pradhanmanthri Grama Sadak Yojana Scheme and the responsibility to hand over the land for road construction is of the Panchayat. The District Collector is the implementing Officer. The proposed road of 4979 meters starts from Moonnilavu Grama Panchayat and passes through Melukavu Panchayat.

3. In the counter affidavit it is stated that the respondents do not have any intention to encroach the land of petitioner. In view of the interim order passed by this Court, in this writ petition, the construction work is stopped and the work has to be completed at the earliest. It is pointed out that all other owners of the properties on the side of the road have already surrendered their land free of cost and the petitioner is the only

person who is not co-operating with the construction of the road. It is pointed out that the interim order is seriously affecting the construction work which may result in lapse of Central Government fund under the Pradhanmanthi Grama Sadak Yojana Scheme.

4. In view of the circumstances wherein the petitioner claims that her land is encroached and she is not willing to surrender the land, it is only appropriate that the authorities in charge of the construction of the road make an attempt for a settlement after convening a meeting of all concerned i.e with Nodal Officer-2nd respondent, Executive Engineer-3rd respondent, District Collector-4th respondent as well as 5th respondent-Panchayat and the petitioner and to resolve the matter at the earliest. The petitioner will submit a representation pointing out her claim.

5. In the above circumstances, the writ petition is disposed of, directing the petitioner to submit a representation pointing out her grievances/claims before the District Collector, within two weeks. The District Collector shall thereupon consider the

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same after convening a meeting with respondents 2, 3, 4 and 5 as well as the petitioner in order to resolve the issue, and to pass orders thereon after hearing the petitioner. The same shall be completed within a period of three months.

The interim order passed by this Court will continue till a decision is taken in the meeting. It is made clear that in case the petitioner does not file the representation as directed, the interim order will cease to operate.

The writ petition is disposed of accordingly.

Sd/-

**P.V.ASHA,
JUDGE.**

rkc