

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C) .No. 16196 of 2013 (Y)

PETITIONER(S) :

1. ABRAHAM THOMAS,
S/O.LATE K.A.THOMAS, G-80, PANAMPILLY NAGAR,
KOCHI-682 036, REPRESENTED BY POWER OF ATTORNEY
MATHEW VETTIEDAN, 13/938, KURUVELIPADY EAST,
THOPPUMPADY POST, COCHIN-682 005.
2. MATHEW THOMAS,
S/O.LATE K.A.THOMAS, 'CHRIST BHAVAN', CHUNMATHARA P.O.,
PATHANAMTHITTA DISTRICT, KERALA, PIN-689 103,
REPRESENTED BY POA, MATHEW VETTIEDAN, 13/938,
KURUVELIPADY EAST, THOPPUMPADY POST, COCHIN-682 005.

BY ADVS.SRI.P.MARTIN JOSE
SRI.S.VAIDYANATHAN
SRI.THOMAS P.KURUVILLA

RESPONDENT(S) :

1. THE REVENUE DIVISIONAL OFFICER,
THIRUVALLA - 695 027.
2. THE THIRUVALLA MUNICIPALITY,
PIN - 695 027, REPRESENTED BY ITS SECRETARY.
3. THE STATION HOUSE OFFICER,
THIRUVALLA POLICE STATION, THIRUVALLA - 695 027.

*R4 to R15 ARE IMPEADED

- R4. MADHAVAN,
S/O.THEVAN, AGED 65, PONGANARIL HOUSE,
CHUMATHRA.P.O., KUTTUPUZHA VILLAGE, THIRUVALLA TALUK,
PIN -689 103.
- R5. PAPPAN,
S/O.DANIAL, AGED 68, KULATHUMKARA HOUSE,
CHUMATHRA.P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK, PIN -689 103.
- R6. BABU,
S/O.KUNJAPPAN, AGED 52, PUTHUPARAMBIL HOUSE,
CHUMATHRA.P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK, PIN -689 103.
- R7. THANKAMANI KUNJACHAN,
W/O.KUNJACHAN, AGED 46, KULATHUKARA HOUSE,
CHUMATHRA P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK PIN -689 103.

- R8. USHA,
W/O.RAJAN, AGED 52, KULATHUMKARA HOUSE,
CHUMATHRA P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK, PIN -689 103.
- R9. MINIMOL,
W/O.KUNJUKUNJU, AGED 51, VAZHAPARAMBIL HOUSE,
CHUMATHRA P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK, PIN -689 103.
- R10. KUNJUMOL,
W/O.KUNJUMON, KULATHUMKARA HOUSE, CHUMATHRA P.O.,
KUTTUPUZHA VILLAGE, THIRUVALLA TALUK, PIN -689 103.
- R11. ANCYMOL,
W/O.SABU @ KOCHUMON, VAZHAPARAMBIL HOUSE,
CHUMATHRA P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK, PIN -689 103.
- R12. AMMINI,
W/O.PAPPAN, KULATHINKARA HOUSE, CHUMATHRA.P.O.
KUTTUPUZHA VILLAGE, THIRUVALLA TALUK PIN -689 103.
- R13. SAROJINI,
(FATHER'S NAME, AGE AND FAMILY NAME NOT KNOWN TO THE PETITIONER)
CHUMATHRA P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK, PIN -689 103.
(THE NAME AND ADDRESS OF R13 IS CORRECTED AS SULOCHANA,
W/O.VISWAMBHARAN, KOTTITHARA HOUSE, CHUMATHARA P.O.,
KUTTUPUZHA VILLAGE, THIRUVALLA TALUK,
PIN -689 103.
- (*ADDL. R13 IS CORRECTED AS PER ORDER DATED 19.11.2013 IN IA 15284/2013)
- R14. JOY MATHEW,
(FATHER'S NAME AND AGE NOT KNOWN TO THE PETITIONER)
MUNDIYALIL HOUSE, CHUMATHRA P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK, PIN -689 103.
- R15. MARIYAPPAN,
(FATHER'S NAME, AGE NOT KNOWN TO THE PETITIONER)
CHARUMOOTIL HOUSE, CHUMATHRA P.O., KUTTUPUZHA VILLAGE,
THIRUVALLA TALUK, PIN -689 103.

(*ADDL. R4 TO R15 ARE IMPEADED AS PER ORDER DATED 15.07.2013 IN IA
NO.9322/2013 IN WPC)

R1,R2 BY ADV. SRI.S.SUBHASH CHAND, SC, THIRUVALLA MUNICIPALITY.
R4-R10,R12,R15 BY ADV. SRI.P.S.ANISHAD
BY GOVERNMENT PLEADER SRI.RAFEEQUE V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1- TRUE COPY OF BASIC REGISTER.
- EXT. P2- PHOTOGRAPHS.
- EXT. P3- TRUE COPY OF REPRESENTATION DATED 3.9.2012 SUBMITTED BY THE IST PETITIONER BEFORE THE RDO.
- EXT. P4- TRUE COPY OF REPORT OF THE VILLAGE OFFICER, KUTTIPOZHA.
- EXT. P5- TRUE COPY OF REPRESENTATION DATED 26.11.2012 SUBMITTED BY THE IST PETITIONER BEFORE THE DISTRICT COLLECTOR.
- EXT. P6- TRUE COPY OF COMPLAINT TO THE MUNICIPAL SECRETARY DATED 26.11.2012.
- EXT. P7- TRUE COPY OF REPORT OF THE VILLAGE OFFICER DATED 5.12.2012.
- EXT. P8- TRUE COPY OF DIRECTION ISSUED BY THE IST RESPONDENT DATED 6.12.2012.
- EXT. P9- TRUE COPY OF DIRECTION DATED 24.12.2012 OF THE IST RESPONDENT.
- EXT. P10- TRUE COPY OF LETTER DATED 15.1.2013 OF ADDL. THAHASILDAR.
- EXT. P11- TRUE COPY OF LETTER DATED 15.01.2013 ISSUED BY THE 2ND RESPONDENT.
- EXT. P12- TRUE COPY OF LETTER DATED 19.2.2013 OF IST RESPONDENT.
- EXT. P13- TRUE COPY OF REPORT DATED 23.2.2013 OF ADDL. TAHASILDAR.
- EXT. P14- TRUE COPY OF THE LETTER DATED 11.3.2013 ISSUED BY THE IST RESPONDENT TO THE 2ND RESPONDENT.
- EXT. P15- TRUE COPY OF LETTER DATED 14.3.2013 OF IST RESPONDENT TO THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

- ANNEXURE 1- TRUE COPY OF THE REPORT PREPARED BY THE SECRETARY OF THE MUNICIPALITY.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.16196 of 2013

Dated this the 12th day of October, 2015

JUDGMENT

This writ petition is filed against the alleged illegal encroachment of a 200 meter long and 13 ft. wide public road by certain individuals with the connivance of political parties by constructing huts and thereby obstructing the traffic through the said road.

2. According to the petitioners, the respondents, though duty bound to protect and preserve public road, have turned a blind eye towards the aforesaid illegal encroachment despite repeated complaints and representations. Pursuant to Ext.P5 representation, the Village Officer, by Ext.P7 reported about the encroachment which was confirmed later by other reports as well. By Ext.P15 the second respondent was directed to remove encroachment, but no action was taken till date to remove encroachments. It is with this background, the

petitioners have come up before this Court.

3. In the statement filed by the respondent Municipality it was contended that the Secretary has verified the available records of the Municipality and found that the property in question does not belong to the Municipality and therefore, the same does not vest with the Municipality under Section 207 of the Kerala Municipalities Act. Report submitted by the Municipality is produced as Annexure-I along with the statement.

4. Arguments have been heard.

5. The petitioners allege that the first petitioner filed Ext.P3 representation on 3.9.2012 before the RDO, Thiruvalla to remove the encroachers and to restore the road in a motorable condition. According to them, on 5.11.2012, the village officer, Kuttipuzha submitted a report to the first respondent stating that the said land is part of survey No.96/6 and is recorded as road in the BT register and is not a road puramboke. It is also reported that as days pass by, more huts would be constructed there, though nothing is known about the motive of these

persons. It was also reported by the village officer that proceedings would be taken under the Municipalities Act, if it is found that the said road is included in the road register. Ext.P4 is the report of the Village Officer. Again on 26.11.2012, the first petitioner submitted Ext.P5 representation before the District Collector stating that the residents of the huts are involved in anti-social activities and are destroying the adjacent properties by throwing garbage. On the same day, the first petitioner also wrote Ext.P6 letter to the second respondent about the anti-social activities. The petitioners further allege that in Ext.P7 report submitted by the village officer on 5.12.2012 also, it is stated that the property in dispute was included as road in the re-survey records and it is having an extent of 13.60 Ares comprised in Resy.No.96/6 of Block-8 of Kuttipuzha village. On the basis of Ext.P7, the first respondent issued a direction to the second respondent (the Additional Tahsildar) and the third respondent to submit an action taken report immediately on Ext.P8. However, on 15.1.2013, the Additional

Tahsildar gave Ext.P10 letter to the first respondent that pursuant to the first respondent's telephonic message, request was made to the Municipal Secretary to make available the service of the Taluk Surveyor. On 15.1.2013, the second respondent gave Ext.P11 letter to the Tahsildar, Thiruvalla that the Engineering Department of the Municipality on conducting site inspection reported that the said road is not included in the Municipality road register. Again, the first respondent on 19.2.2013 addressed the second respondent through Ext.P12 to take further action on the request to make available the service of the Taluk Surveyor to remove the unauthorised occupation. However, on 23.2.2012, the Additional Tahsildar as per Ext.P13 reported to the first respondent that the said land is not revenue puramboke and since the duty to protect the land is vested in the Municipal authorities, the second respondent has to take action. Though the first respondent as per Ext.P14 dated 11.3.2013 directed the second respondent to take immediate steps to remove illegal encroachment, no

concrete action was taken by the respondents.

6. As it could be discerned from the reports of the revenue authorities that the property in dispute is a road puramboke which vests with the Municipality, the mere fact that the said property is not included in the road register is not a justifiable reason for refraining from initiating action against the encroachers. If the encroachers are causing nuisance to the adjacent owners, being the local authority, it is the duty of the second respondent to see that such nuisance is abated.

As long as the property is a public property, the same cannot be allowed to be encroached upon. If the encroachers are landless people, the respondent Municipality may take appropriate action to rehabilitate them. However, so long as it is found that the occupants at present are illegal encroachers as could be seen from the reports of the revenue authorities, the respondent Municipality will have to take a decision in the matter.

Therefore, the writ petition is disposed of directing the respondent Municipality to have a discussion with the

revenue authorities, the councillors of the ward and the representative of the occupiers and shall take a final decision, so that the problem could be settled for ever.

The entire exercise shall be completed within a period of six months from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE