

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 17085 of 2013 (I)

PETITIONER(S) :

1. AJI S.R.M. ,
SAJI NIVAS, VADASSERIKONAM P.O. ,
VARKALA,
THIRUVANANTHAPURAM DISTRICT.
2. P.K. VIDHYADHARAN,
AMURTHAM, SREENIVASAPURAM P.O. ,
VARKALA,
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.V.PREMCHAND
SRI.V.TEKCHAND.

RESPONDENT(S) :

1. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE SECRETARY,
PUBLIC WORKS DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM - 695 001.
3. THE SUPERINTNDING ENGINEER,
PUBLIC WORKS DEPARTMENT (ROADS & BRIDGES) ,
SOUTH CIRCLE, THIRUVANANTHAPURAM - 695 001.
4. THE DIRECTOR,
VIGILANCE AND ANTI CORRUPTION BUREAU, NEAR PMG,
THIRUVANANTHAPURAM - 695 003.

BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT-P1- TRUE COPY OF THE PHOTOGRAPH.
EXHIBIT-P2- TRUE COPY OF THE PHOTOGRAPH.
EXHIBIT-P3- TRUE COPY OF THE PHOTOGRAPH.
EXHIBIT-P4- TRUE COPY OF THE PHOTOGRAPH.
EXHIBIT-P5- TRUE COPY OF THE NEWS ITEM WHICH APPEARED IN THE
DESABHIMANI DAILY DATED 16/06/2013.
EXHIBIT-P6- TRUE COPY OF THE NEWS ITEM WHICH APPEARED IN THE
JANAYUGAM DAILY DATED 14/06/2013.
EXHIBIT-P7- TRUE COPY OF THE NEWS ITEM WHICH APPEARED IN THRE
MATHRUBHOOMI DAILY DATED 14/06/2013.

RESPONDENT(S) ' EXHIBITS :

EXHIBIT-R3(A - TRUE COPY OF THE PHOTOGRAPHS SHOWING THE EXISTING
CONDITION OF RETAINING WALL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.17085 of 2013

Dated this the 18th day of February, 2015

JUDGMENT

The grievance of the petitioners in this writ petition is with regard to the condition of the retaining wall constructed just opposite to the Sivagiri Mutt and Pilgrimage Centre, Varkala.

2. The first petitioner is the convenor of Sree Narayana Dharma Paripalana Union (SNDP), Sivagiri Unit, Varkala. The second petitioner is the Chairman of the Varkala Development Council, an association formed for the development of Varkala Town and Sivagiri Pilgrimage Centre. Both of them are residents of Varkala. They point out that Varkala-Sivagiri road starts from Varkala and goes up to Sivagiri Mutt and Pilgrimage Centre. According to them, every year, thousands of devotees from all over Kerala come to Sivagiri Mutt and Pilgrimage

Centre for worship and for offering prayers. Road located by the side of the Sivagiri Mutt is a busy road. It is lying very close to a canal. The petitioners allege that to the surprise of the petitioners and local people, cracks developed in the retaining wall and several portions of the wall fell down to the canal. According to the petitioners, the clay used to fill up the portion had gone down and as a result cracks developed in various portions of the retaining wall. Hence, the petitioners have come up before this Court for appropriate direction.

3. In the detailed counter affidavit filed by the respondents, it was contended that the retaining wall constructed is intact and it is not correct that certain portions of the retaining wall have fallen down to the adjacent T.S. Canal. It is contended that the retaining wall is not in a dangerous situation and it will not cause any danger to the public and devotees who park the vehicles adjoining the retaining wall. It is also stated that the petitioners

have never given any complaint to the department concerned regarding the matter.

4. Arguments have been heard.

5. According to the petitioners, the retaining wall is in the verge of falling down to the TS Canal which is located about 100 ft. below the road in question. According to the petitioners, this dangerous situation has arisen solely due to the negligent and callous attitude of the respondents who are duty bound to protect the public money and safety of public at large. According to them, the retaining wall fell down only because of the use of substandard materials. The petitioners point out that instead of using river sand, it appears that they have used quarry waste powder and other substandard materials for the construction. The petitioners relied on Exts.P1 to P4 photographs to show the present condition of the retaining wall. According to the petitioners, the retaining wall and the road widening works were carried out by spending ₹1.5 crores from

the state exchequer. According to the State, the PWD authorities have thoroughly inspected the retaining wall on 17.7.2013 during the rainy season and found the structure intact and there is no sign of instability in the retaining wall. Five photographs which were taken during the rainy season were produced and marked as Ext.R3(a). It is an admitted fact that every year thousands of people are visiting the Sivagiri Mutt and Pilgrimage Centre and their vehicles will have to be parked on the side of the road which is now being protected by a retaining wall.

6. As different versions are there regarding the condition of the retaining wall, this writ petition is disposed of directing the third respondent Superintending Engineer, PWD (Roads & Bridges), Thiruvananthapuram to make a local inspection of the retaining wall made mention of in the petition in the presence of the petitioners within a period of one month from the date of receipt of a copy of this

judgment. The date of inspection shall be intimated to the petitioners. If on inspection it is satisfied that immediate repairs to the retaining wall is required, steps shall be taken to get the retaining wall repaired without much delay.

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

CSS/

true copy

P.S.TO JUDGE