

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 14593 of 2015 (Y)

PETITIONER :

K.P.BABY, AGED 46 YEARS,
S/O. K.L.POULOSE, KALLELY HOUSE,
KANNAMPUZHA TEMPLE ROAD, CHALAKUDY P.O.,
PIN-680 307.

BY ADVS.SRI.M.H.HANIL KUMAR
SRI.P.A.ROY

RESPONDENT(S):

1. THE DISTRICT COLLECTOR,
THRISSUR, AYYANTHOLE, THRISSUR-680 003.
2. THE ASSISTANT EXECUTIVE ENGINEER,
PUBLIC WORK DEPARTMENT, ROADS SUBDIVISION,
IRINJALAKUDA, THRISSUR-680 121.
3. ASSISTANT ENGINEER, PUBLIC WORK DEPARTMENT,
ROADS SUB DIVISION, CHALAKUDY, THRISSUR-680 370.

***ADDL.R4 IMPEADED**

*Addl.R4. P.L.JACOB, S/O.LATE LONAPPAN,AGED 52 YEARS,
RESIDING AT PADINJAREKKARA KUTTIKADU,
KOORKAMATTOM, KUTTICHIRA, CHALAKKUDY.

*ADDL.R4 IS IMPEADED AS PER ORDER DATED 14.10.2015 IN IA.NO.14763/15.

R1 TO R3 BY SR GOVERNMENT PLEADER SMT. C.K.SHERIN
ADDL-R4 BY ADV. SRI.P.M.HABEEB
SRI.M.H.HANILKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : A COPY OF THE PHOTOGRAPHS SHOWING THE SHOP OF THE PETITIONER.
- P2 : A COPY OF THE TITLE DEED DTD. 20.5.1989 BEARING NO.1870/89.
- P3 : A COPY OF THE TITLE DEED DTD. 25.7.1985 BEARING NO.3522/1985.
- P4 : A COPY OF THE DEMAND NOTICE ISSUED BY KERALA WATER AUTHORITY,
DTD. 11.4.2015.
- P5 : A COPY OF THE RECEIPT ISSUED BY KERALA STATE ELECTRICITY BOARD,
DTD. 13.4.2015.
- P6 : A COPY OF THE RECEIPT ISSUED BY THE CHALAKUDY MUNICIPALITY
BEARING NO.39053.
- P7 : A COPY OF THE RECEIPT ISSUED FROM THE CHALAKUDY MUNICIPALITY
DTD. 18.2.2015.
- P8 : A COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER,
DTD. 14.5.2015.
- P9 : A COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DTD. 5.5.2015 TO
THE PETITIONER ALONG WITH TYPED COPY.
- P10 : A COPY OF THE OBJECTION DTD. 6.5.2015 SUBMITTED BY THE PETITIONER
BEFORE THE SECOND RESPONDENT.
- P11: A COPY OF THE PROCEEDINGS OF THE CHIEF TOWN PLANNER,
DTD. 14.2.1994.

RESPONDENT(S)' EXHIBITS

- R3(A): TRUE COPY OF THE SKETCH AND LETTER.
- R4(A): COPY OF THE JUDGMENT IN WP(C).NO.20345/2012 DATED 24/07/2014
- R4(B): COPY OF THE JUDGMENT IN WRIT APPEAL NO.1277/2014 DATED 12/03/2015
- R4(C): COPY OF THE JUDGMENT IN WP(C).NO.27050/2015 DATED 08/09/2015.

/TRUE COPY/

P.A.TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 14593 of 2015

Dated this the 26th day of October, 2015

J U D G M E N T

The petitioner has approached this Court aggrieved by Ext.P9 notice issued under the Kerala Land Conservancy Rules. The petitioner has been directed to evict the encroached area within 48 hours. This notice has been issued on 5.5.2015. The case of the petitioner is that he was not given sufficient opportunity in this matter and notice is issued without taking into account whether there is an encroachment or not.

2. In this matter, a third party got impleaded as additional 4th respondent. The additional 4th respondent would submit that he has approached this Court in W.P.(C) 20345 and connected matters. Pursuant to the direction in the above judgment, encroachers have been ordered to be removed. It is also submitted that the above judgment has been affirmed in W.A. No.163/2014 filed by the petitioner.

3. A counter affidavit has been filed by the 3rd respondent. Paragraph 5 of the counter affidavit reads thus:

“As per the sketch issued by the revenue authorities vide

letter No.R6/17401/2012 dated 20.03.2015, therein clearly identified that Sri.K.P.Baby S/K.L. Paulose Kallely House Chalakudy has encroached PWD land and made unauthorized construction in the above road. The encroachment is clearly marked as F in the given sketch and vide letter dated 19.06.2015 it is clearly stated that the encroachment is made by Joy & Baby Kallely house Chalakkudy. True copy of the sketch and letter are produced herewith and marked as Ext.R3(a). As such the Assistant Executive Engineer, Roads Subdivision, Irinjalakuda has been issued notice as per the Kerala Land Conservancy Rule 13 A to remove the unauthorized construction and free from the encroachment of PWD land. All encroachment point out in the sketch has been evicted except the petitioner.”

3. It appears that determination of boundary was done without giving notice to the petitioner. This Court is of the view that treating Ext.P9 as a provisional order, the petitioner shall raise his objection against Ext.P9 order within two weeks from the date of receipt of a copy of this judgment. Thereafter, after hearing the objection to be raised by the petitioner, appropriate decision shall be taken by the Assistant Executive Engineer within a further period of two weeks after hearing the petitioner and the 4th respondent. Till a final decision is taken by the respondent, no coercive steps shall be taken against the

petitioner.

The writ petition is disposed of as above.

Sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/