

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937H

WP(C).No. 14981 of 2014 (W)

PETITIONER:

ARIFA BEEVI AGED 63 YEARS
W/O.ABDUL AZEEZ, "CHETHANA", MUNDAIKONAM
NAGARoor P.O., THIRUVANANTHAPURAM.

BY ADVS.SRI.M.ZIYAD
SRI.SANU.S.PANICKER
SRI.T.A.PRAKASH

RESPONDENTS:

1. NAGARoor GRAMA PANCHAYAT
OFFICE OF NAGARoor GRAMA PANCHAYAT, KILIMANoor
THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY
695001.

2. THE PANCHAYAT COMMITTEE
NAGARoor GRAMA PANCHAYAT
OFFICE OF NAGARoor GRAMA PANCHAYAT, NAGARoor P.O.
KILIMANoor, THIRUVANANTHAPURAM
REPRESENTED BY ITS PRESIDENT, 695001.

3. SHAIJA BEEGAM
D/O.MUHAMMED HANEEFA, SANUJA MANZIL, VATIYAKADU
NAGARoor P.O., KILIMANoor, THIRUVANANTHAPURAM-695001.

4. SUBAIR
S/O.MUHAMMED KUNJU, CHARUVILA PUTHEN VEEDU
NAGARoor P.O., KILIMANoor, THIRUVANANTHAPURAM-695001.

Addl.R5. REVENUE DIVISIONAL OFFICER
THIRUVANANTHAPURAM - 695 001.

(ADDL.R5 IMPEADED AS PER ORDER DATED 14.11.2014 IN IA 13221/14)

R1 & 2 BY ADV. SRI.M.DINESH
R BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-
08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

WP(C).No. 14981 of 2014 (W)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE COMPLAINT DATED 26.6.2013 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT-P2: TRUE COPY OF THE ACKNOWLEDGMENT CARD DATED 26.6.2013 EVIDENCING THE ACCEPTANCE OF EXHIBIT-P1 BY THE 1ST RESPONDENT.

EXHIBIT-P3: TRUE COPY OF THE COMPLAINT DATED 10.12.2013 SUBMITTED BY THE PETITIONER BEFORE THE REVENUE DIVISIONAL OFFICER.

EXHIBIT-P4: TRUE COPY OF THE REPORT DATED 10.02.2014 SUBMITTED BY THE VILLAGE OFFICER, NAGAROOR TO THE REVENUE DIVISIONAL OFFICER, THIRUVANANTHAPURAM.

RESPONDENT(S) ' EXHIBITS ;NIL

TRUE COPY

P.S TO JUDGE

AL/-

ANU SIVARAMAN, J.

W.P.(C) .No.14981 of 2014

Dated this the 21st day of August 2015

JUDGMENT

This writ petition is filed seeking directions to the respondent to remove branches of trees which are slanting over the petitioner's house and Well from the property of respondents 3 and 4. Petitioner alleges that trees such as rubber, coconut and jack fruit which are standing in the property of respondents 3 and 4 are slanting in to the petitioner's property which is at a much lower level and are a threat to life and property apart from causing pollution to the well water. Petitioner has been preferring repeated complaints before the Panchayat as well as the R.D.O. But no orders are being passed to mitigate his grievances, it is submitted.

2. Heard Sri.M.Ziyad, learned counsel appearing for the petitioner, Sri.M.Dinesh, learned counsel appearing for the first and second respondents and Sri. Abhijith Leslie, learned Government Pleader appearing for the additional 5th respondent.

3. It is seen that pursuant to Ext P3 complaint preferred by the petitioner, Ext.P4 report has been submitted by the Village Officer to the additional 5th respondent stating that the facts stated by the

petitioner in her complaints are substantially true. Though respondents 3 and 4 have been served with notice in this writ petition, they have not chosen to enter appearance or file any pleadings in this court.

4. Section 238 of the Kerala Panchayat Raj Act provides as follows:

"238. Precautions in case of dangerous trees and pruning of hedges and trees.-- *If any tree or any branch or portion of a tree or the fruits of any tree be deemed by the Village Panchayat to be likely to fall and thereby endanger any person or any structure or any cultivation, the Village Panchayat may by notice require the owner of the said tree to secure, lop, or cut down the said tree or remove the fruits thereof so as to prevent any danger therefrom.*

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(c) If any tree or the branch thereof in the opinion of the Village Panchayat, causes pollution to the drinking water of a well or tank, the Village Panchayat may, by notice, require the owner of such tree to cut down and remove such tree or branch thereof".

5. In this case, the the Village Officer has submitted Ext.P4 report to the R.D.O stating that the facts urged by the petitioner are substantially correct. It is submitted by the learned counsel for the Panchayat that the Panchayat has already issued notice to the neighbouring land owners (respondents 3 and 4) with regard to the removal of the trees and branches causing threat to life and pollution to

W.P.(C) .No.14981 of 2014 :3:

the petitioner. Fifth respondent who also been addressed by the petitioner also has the power under Section 133 of Criminal Procedure Code to remove obstructions or nuisance if the ingredients of that section are present in a given case. In any view of the matter, since the Panchayat has already initiated action as provided under Section 238 of the Kerala Panchayat Raj Act, 1994, I am of the opinion that the grievance of the petitioner will be redressed if the Panchayat is directed to take appropriate action in accordance with law under the said section after hearing the neighbouring land owners also as provided and take action as provided under Section 238 of the Act.

The writ petition is therefore disposed of directing the first respondent to take appropriate action in pursuance to the notice issued by it in terms of Section 238 of the Kerala Panchayat Raj Act. The contentions of the petitioner and respondents 3 and 4 will be considered and action as directed above shall be taken within two weeks from the date of receipt of a copy of this judgment in accordance with law.

Sd/-

**ANU SIVARAMAN
(JUDGE)**

al/-

True copy

P.S to Judge

W.P.(C) .No.14981 of 2014 :4:

correct one .

W.P.(C) .No.14981 of 2014 :5: