

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C) .No. 14765 of 2015 (U)

PETITIONER(S) :

SAMYUKTHA PURUSHA SWAYAM SAHAYA SANGAM,
ARACKAL, PULLAMKODU, EDAYAM P.O.,
KOTTARAKKARA, KOLLAM REPRESENTED BY ITS SECRETARY,
ANILKUMAR T., AGED 47 YEARS, S/O.THANKAPPAN PILLAI, SREE SABARI,
ARACKAL VILLAGE, KOLLAM DISTRICT.

BY ADVS.SRI.K.SIJU
SRI.A.MUHAMMED RAFFI
SMT.S.SEETHA

RESPONDENT(S) :

1. THE STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY TO THE
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. DEPUTY DIRECTOR OF PANCHAYAT,
PANCHAYAT DEPUTY DIRECTOR OFFICE, KOLLAM-691 001.
3. EDAMULAKKAL GRAMA PANCHAYATH,
EDAMULAKKAL P.O.,
KOLLAM DISTRICT-691 321, REPRESENTED BY ITS SECRETARY.
4. ANCHAL BLOCK PANCHAYATH,
ANCHAL P.O.
KOLLAM DISTRICT, REPRESENTED BY ITS SECRETARY.

*ADDL.R5 & R6 ARE IMPEADED

R5. STATE ELECTION COMMISSION,
KERALA, REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE COMPLEX, L.M.S. JUNCTION,
THIRUVANANTHAPURAM - 695 033.

R6. KERALA STATE DELIMITATION COMMISSION,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM.

(*ADDL. R5 IS IMPEADED AS PER ORDER DATED 27/05/2015 IN IA 6863/15
AND ADDL. R6 IS SUO MOTO IMPEADED AS PER ORDER DATED 27/05/2015.)

*ADDL. R7 IMPEADED

R7. ADV.KETTIDATHIL SULAIMAN,
AGED 60 YEARS, S/O. SRI.MEERA SAHIB,
RESIDING AT KETTIDATHIL HOUSE,
THADIKKAD P.O., ANCHAL, KOLLAM DISTRICT - 691 306.

(*ADDITIONAL R7 IS IMPEADED AS PER ORDER DATED 08/07/2015 IN
IA NO.7524/2015.)

R ADDL. BY ADV. SRI.MURALI PURUSHOTHAMAN, SC, K.S.E.C.
R3,R 4 BY ADV. SRI.N.UNNIKRISHNAN
BY GOVERNMENT PLEADER SRI.BOBY JOHN PULIKKAPARAMBIL.
R5 BY ADV. SRI.TPM.IBRAHIM KHAN (SR.)
R5 BY ADV. SRI.K.M.ABDUL MAJEED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/07/2015,
ALONG WITH WPC. 15157/2015, THE COURT ON 01-09-2015 DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1 : TRUE COPY OF THE REPORT SUBMITTED BY R2 BEFORE R1 DT.9-12-2014.
- EXT. P2 : TRUE COPY OF THE ROUGH SKETCH AND THE DETAILS OF THE PROPOSED AREA OF ARACKAL GRAMA PANCHAYAT.
- EXT. P3 : TRUE COPY OF THE EXTRACT OF THE RESOLUTION PASSED BY R3 PANCHAYAT BY VIDE DECISION NO.1 DT.27-11-2014.
- EXT. P4 : TRUE COPY OF THE LETTER ISSUED BY THE ANCHAL BLOCK PANCHAYAT TO THE R1 DT.22-1-2015.
- EXT. P5 : TRUE COPY OF THE RELEVANT OF GAZETTE NOTIFICATION DT.25-1-2015.
- EXT. P6 : TRUE COPY OF THE NEWSPAPER REPORTS DT.15-3-2015 IN THE MALAYALA MANORAMA DAILY.
- EXT. P7 : TRUE COPY OF THE OBJECTION DT.28-1-2015 SUBMITTED BY THE PETITIONER AGAINST THE DRAFT PUBLICATION.
- EXT. P8 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER ON 20-3-15.
- EXT. P9 : TRUE COPY OF THE GO 140/2015 LSGD DT.25-4-2015.

RESPONDENT(S) ' EXHIBITS :

- EXT. R2 (A) : TRUE COPY OF THE GO (RT) NO.1465/2014/LSGD DATED 10/06/2014.
- EXT. R2 (B) : TRUE COPY OF THE GO (RT) NO.3113/2014/LSGD DATED 27/11/2014.
- EXT. R2 (C) : TRUE COPY OF THE REPORT OF THE COMMITTEE DATED 29/12/2014.
- EXT. R3 (A) : TRUE COPY OF LETTER NO.E6-4555/2014 DATED 28/11/2014.
- EXT. R3 (B) : A MAP SHOWING EDAMULAKKAL GRAMA PANCHAYAT (AFTER DIVISION).
- EXT. R3 (C) : A MAP SHOWING ARAKKAL GRAMA PANCHAYAT (AFTER DIVISION).
- EXT. R3 (D) : TRUE COPY OF THE DECISION NO.1 DATED 27/11/2014 OF EDAMULAKKAL GRAMA PANCHAYAT.
- EXT. R7 (A) : TRUE COPY OF THE SKETCH AND PLAN SHOWING THE LOCATION OF ENTIRE EDAMULACKAL GRAMA PANCHAYAT.

/TRUE COPY/

RVS.

P.A.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J.

= = = = =

W.P(C) Nos.14765 & 15157 of 2015

= = = = =

Dated this the 1st day of September, 2015

JUDGMENT

These writ petitions relate to the decision of the Government fixing the headquarters of proposed Arakkal Grama Panchayat which is formed bifurcating Edamulakkal Grama Panchayat.

2. The petitioner in W.P(C) No.14765 of 2015 alleges that the Government published Ext.P5 draft publication to constitute a new grama panchayat bifurcating the existing Edamkulakkal Grama Panchayat. The proposal was for constituting Arakkal grama Panchayat by including the portions of Arakkal village. The petitioner society and 27 other organisations/individuals submitted objections against the draft publication against the proposal to station the headquarters of the panchayat at Thadikkadu. The petitioner further alleges that all the public, the grama panchayat, the block panchayat, and the elected members requested the first respondent to fix the headquarters at Arakkal and the first respondent in total disregard of the resolutions, objections and Will of the people had fixed its headquarters as Thadikkadu in Ext.P9. The petitioner points out that the final notification was published without conducting the mandatory consultation required under

Section 4(2) of the Panchayat Raj Act as held by this Court in **Saji Joseph v. State of Kerala** [2010 (3) KLT 672].

3. WP(C) No.15157 of 2015 is filed for setting aside Ext.P7 to the extent it fixed Thadikkadu as the headquarters of the proposed Arakkal Grama Panchayat. The petitioner in this writ petition is a resident of Ward No.18 of Edamulakkal Grama Panchayat in Kollam district. The respondents 1 and 2 have decided to form a new panchayat bifurcating Edamulakkal Grama Panchayat and to give the name 'Arakkal' to the proposed grama panchayat. By Ext.P1, the committee of the Edamulakkal Grama Panchayat had requested the Government to fix Arakkal as the headquarters of the proposed grama panchayat. The first respondent by Ext.P4 issued a notification for the formation of new grama panchayats in the State with the details of the proposed grama panchayat. It is specifically stated in Ext.P4 that if any individual or grama panchayat has got any objection to the proposals in the notification, those objections and proposals can be submitted and the same would be considered by the second respondent. In Ext.P4, the headquarters of the proposed Arakkal Grama Panchayat was shown as Thadikkadu.

4. The petitioner and various organisations/individuals filed objections against the tentative decision to make Thadikkadu as the

headquarters of the proposed grama panchayat. Ext.P5 was the objection filed by the petitioner. The hearing was conducted and without adverting to the objections, and without considering the previous notification and requests made by the petitioner and other concerned parties, the first respondent has passed Ext.P7 order in which it has been decided to fix Thadikkadu as the headquarters of the proposed Arakkal Grama Panchayat. The petitioner alleges that Ext.P7 was passed without considering and adverting to Exts.P5 and 29 similar objections filed in pursuant of Ext.P4 order.

5. The petitioner alleges that the decision to form Arakkal Grama panchayat was made on the basis of the requests made by various organisations and individuals and all those who have made such request had specifically prayed that the headquarters of the proposed grama panchayat should be at Arakkal. The grama panchayat committee had also made a request. The police officers concerned reported that Thadikkadu area is not having conducive law and order situation to be the headquarters of the grama panchayat. Geographically, Arakkal is the ideal place to house the office of the grama panchayat since it is the centre of the grama panchayat. A lot of people had voluntarily expressed their desire to dedicate their immovable property free of costs in case Arakkal is

fixed as the headquarters of the proposed grama panchayat.

6. Subsequent to the filing of these writ petitions, the Kerala State Election Commission and Delimitation Commission were impleaded as additional respondents 5 and 6.

7. The respondent State has filed a detailed counter affidavit justifying the decision taken by the Government in fixing the headquarters of proposed Arakkal Grama Panchayat. The additional 7th respondent in W.P(C) No.14765 of 2015, who was subsequently impleaded has filed a counter affidavit supporting the stand taken by the Government.

8. I have heard the learned counsel for the petitioners, the learned Advocate General, ably assisted by the learned Special Government Pleader, the learned standing counsel for Kerala State Election Commission and the Delimitation Commission, and the learned counsel for the 7th respondent in W.P(C) No.14765 of 2015.

9. The notification by which the respondent State had decided to form new panchayat carving out of portions of the existing villages was set aside as per judgment in W.P(C) No.15524 of 2015 and connected cases.

As the very substratum which forms a new panchayat has been lost on account of the aforesaid judgment, the writ

petitions are closed in the light of the ratio laid down by this Court in the aforesaid writ petition. However, it shall be open to the petitioners to bring their grievance to the notice of the Government in the event of proper formation of a new panchayat in future.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj