

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 17746 of 2013 (P)

PETITIONER:

E. X. XAVIER
EDEZHATHU HOUSE, NEAR SNDP, KUMBALANGHI
ERNAKULAM DISTRICT.

BY ADVS. SRI. T. MADHU
SRI. B. S. SURAJ KRISHNA

RESPONDENT(S):

1. THE KUMBALANGI GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, KUMBALANGI
ERNAKULAM DISTRICT - 682 007.
2. K. D. XAVIER, S/O. DEVASSY
KATTIKKATTU HOUSE
EDEZHATHU BISHOP ROAD KUMBALANGHI SOUTH P.O.
PIN-682 007.

ADDL. R3 IS SUO MOTO IMPEADED:

THE SUPERINTENDENT OF SURVEY AND LAND RECORDS/
DISTRICT SURVEYOR,
COLLECTORATE, KAKKANAD,
ERNAKULAM

(ADDF. R3 IS SUO MOTO IMPEADED AS PER JUDGMENT DATED 23.11.2015 IN W.P.(C)
No. 17746/13)

R1 BY ADV. SRI. S. SHANAVAS KHAN
R2 BY ADV. SRI. MURALI PURUSHOTHAMAN
R2 BY ADV. SRI. DEEPU LAL MOHAN
R2 BY ADV. SMT. S. LEENA
ADDL. R3 BY GOVT. PLEADER SRI P. K. ABDUL RAHIMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER(S)' EXHIBITS

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- EXT.P1 - TRUE COPY OF THE REPRESENTATION DATED 19-10-2009 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXT.P2 - TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD EVIDENCING THE RECEIPT OF EXT.P1 REPRESENTATION BY THE 1ST RESPONDENT.
- EXT.P3 - TRUE COPY OF THE JUDGMENT DATED 5-1-2010 IN WPC.NO.165/2010 ON THE FILE OF THIS COURT.
- EXT.P4 - TRUE COPY OF THE JUDGMENT DATED 4-3-2011 IN CCC NO.930/2010 ON THE FILE OF THIS COURT.
- EXT.P5 - TRUE COPY OF THE NOTICE DATED 12-11-2012 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXT.P6 - TRUE COPY OF THE NOTICE DATED 18-12-2012 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

- EXT.R2(A): COPY OF APPLICATION DT.22.11.2012 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE PUBLIC INFORMATION OFFICER IN THE 1ST RESPONDENT PANCHAYAT.
- EXT.R2(B): COPY OF RECEIPT NO.B-8178/2012 DT.22.11.2012 ISSUED TO THE 2ND RESPONDENT BY THE 1ST RESPONDENT PANCHAYAT IN ACKNOWLEDGEMENT OF RECEIPT OF EXT.R2(A) APPLICATION.
- EXT.R2(C): COPY OF REPRESENTATION DT.22.12.2012 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.
- EXT.R2(D): COPY OF APPLICATION DT.26.11.2012 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE TAHSILDAR, FORT KOCHI.
- EXT.R2(E): PHOTOCOPY OF REPRESENTATION DT.27.11.2012 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.
- EXT.R2(F): COPY OF RECEIPT NO.NIL DT.27.11.2012 ISSUED TO THE 2ND RESPONDENT BY THE 1ST RESPONDENT PANCHAYAT IN ACKNOWLEDGEMENT OF RECEIPT OF EXT.R2(E) APPLICATION.
- EXT.R2(G): COPY OF REPRESENTATION DT.24.12.2012 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.
- EXT.R2(H): COPY OF RECEIPT No.9559/12 DT.24.12.2012 ISSUED TO THE 2ND RESPONDENT BY THE 1ST RESPONDENT PANCHAYAT IN ACKNOWLEDGEMENT OF RECEIPT OF EXT.R2(G) REPRESENTATION.
- EXT.R2(I): COPY OF RESOLUTION No.VII(2) DT.12.2.2013 OF THE PANCHAYAT COMMITTEE OF THE 1ST RESPONDENT PANCHAYAT.
- EXT.R2(J): COPY OF LETTER NO.E-1186 DT.16.2.13 FORWARDED BY THE 1ST RESPONDENT PANCHAYAT TO THE DISTRICT SURVEY SUPERINTENDENT, ERNAKULAM.
- EXT.R2(K): COPY OF LETTER NO.E-1186/12 DT.28.2.13 FORWARDED BY THE 1ST RESPONDENT PANCHAYAT TO THE DISTRICT SURVEY SUPERINTENDENT, ERNAKULAM.
- EXT.R2(L): COPY OF LETTER No.E-1186/10 DT.3.4.13 FORWARDED BY THE 1ST RESPONDENT PANCHAYAT TO THE DISTRICT SURVEY SUPERINTENDENT, ERNAKULAM.
- EXT.R2(M): COPY OF LETTER No.E-1186/10 DT.16.7.13 FORWARDED BY THE 1ST RESPONDENT PANCHAYAT TO THE DISTRICT SURVEY SUPERINTENDENT, ERNAKULAM.

TRUE COPY

P.S.TO JUDGE

ANIL K.NARENDRA, J

W.P.(C.)No.17746 Of 2013

DATED THIS THE 23rd DAY OF NOVEMBER, 2015

JUDGMENT

The petitioner and the 2nd respondent are residents of Ward No.6 of Kumbalangi Grama Panchayat. The 2nd respondent is the owner in possession of a property in Sy.No.1592/1 of Kumbalangi Village. The petitioner would contend that the eastern side of the property of the 2nd respondent is a 'poramboke thodu' comprised in Sy.No.1592/3 of Kumbalangi Village and that the aforesaid 'thodu' running south to north is vested with the 1st respondent Grama Panchayat. The grievance of the petitioner is that, though the 1st respondent by Ext.P5 notice dated 12.11.2012 required the 2nd respondent to remove the alleged encroachment within 15 days of date of notice, which was followed by Ext.P6 notice dated 18.12.2012, no effective steps have been taken to implement the aforesaid decisions. It is in such circumstances, the petitioner has approached this Court in this Writ Petition seeking a writ of mandamus commanding the 1st respondent to take further action based on Exts.P5 and P6 notices and to ensure compliance of the

same within a time frame that may be fixed by this Court.

2. A counter affidavit has been filed by the 2nd respondent in which it is contended, inter alia, that the 'poramboke thodu' referred to in the Revenue records of Sy.No.1592/31 of Kumbalangi Village is at present a pathway which is being used by the petitioner, the 2nd respondent and other residents in the locality. The learned counsel would also point out that, based on the objection raised by the 2nd respondent in Ext.R2(g) objection dated 24.12.2012, the Panchayat Committee vide Ext.R2(i) resolution decided to keep in abeyance all proceedings pursuant to Exts.P5 and P6 till the property in question is surveyed with the assistance of District Surveyor. With reference to Ext.R2(g) objection, the learned counsel would also point out that, there is some discrepancy with regard to the sketch appended to Ext.P5 notice and it was specifically brought to the notice of the 1st respondent Grama Panchayat in Ext.R2(g) and it was in such circumstances, the Panchayat Committee has taken such a decision in Ext.R2(i).

3. I heard arguments of the learned counsel for the petitioner, the learned Standing Counsel for the 1st respondent-

Grama Panchayat and also the learned counsel appearing for the 2nd respondent.

4. The grievance of the petitioner in this Writ Petition is that in spite of Exts.P5 and P6 notices issued by the 1st respondent Grama Panchayat, in exercise of the powers under the Kerala Panchayat Raj (Removal of Encroachment and Imposition and Recovery of Penalty for Unauthorised Occupation) Rules, 1996 (hereinafter referred to as 'the rules'), no effective steps have been taken to finalise the proceedings initiated against the 2nd respondent. However, as borne out from the materials on record, subsequent to Ext.P5 notice, the 2nd respondent submitted Ext.R2(g) objection raising certain objections and it was after considering the same, the Panchayat Committee in Ext.R2(i) decided to survey the disputed land with the assistance of District Surveyor and to keep in abeyance further proceedings pursuant to Exts.P5 and P6.

5. The learned Standing Counsel for the Panchayat would submit that in spite of repeated reminders, which is evident from Exts.R2(j), R2(k) and R2(m), the District Surveyor has not taken any steps to conduct survey of the land in question and submit a

report.

6. In view of the aforesaid submission made by the learned Standing Counsel for the 1st respondent Grama Panchayat, the Superintendent of Survey and Land Records/District Surveyor, Collectorate, Kakkanad, Ernakulam is suo moto impleaded as additional 3rd respondent in the Writ Petition. Learned Government Pleader takes notice for the additional 3rd respondent. Service complete.

7. Since a final decision on Exts.P5 and P6 notices can be finalised only on the basis of a survey being conducted by the additional 3rd respondent, this Writ Petition is disposed of with the following directions:

(i) Within one month from the date of receipt of a certified copy of this judgment, the additional 3rd respondent shall conduct a survey of the property in question as requested by the 1st respondent Grama Panchayat in Exts.R2(j), R2(k) and R2(m) and submit a report to the Secretary of the 1st respondent Grama Panchayat.

(ii) On receipt of such report, the Panchayat shall

serve a copy of the survey report to the petitioner and also to the 2nd respondent and provide them an opportunity to file their objections, if any.

(iii) On receipt of such objections, the Secretary of the Grama Panchayat shall consider the same as contemplated under Rule 5 of the Rules and a final decision on Exts.P5 and P6 shall be taken within a further period of three months, after affording a reasonable opportunity of being heard to the petitioner and also to the 2nd respondent.

It is made clear that this Court has not expressed anything on the merits of the rival contentions raised by the parties and it is for the 1st respondent to take an appropriate decision in the matter based on the report submitted by the additional 3rd respondent and after considering the objections filed by the petitioner and the 2nd respondent.

Sd/-

ANIL K.NARENDRA, JUDGE

dsn

True copy

P.S. to Judge