

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 19321 of 2012 (M)

PETITIONER(S):

**THOMAS DEVASSIA, S/O.THOMAS,
KANJIRAMTHANATHU HOUSE, KARIPPAI ROAD,
KALAMASSERY NORTH, ERNAKULAM DISTRICT.**

BY ADV. SMT.G.VIDYA.

RESPONDENT(S):

**1. THE KALAMASSERY MUNICIPALITY,
REP.BY THE SECRETARY, MUNICIPAL OFFICE,
KALAMASSERY, ERNAKULAM DISTRICT, PIN- 686 664.**

*** ADDL. R2 IMPEADED**

**2. RABIA. K.M., THETTAYIL VEEDU,
KALAMASSERY, ERNAKULAM DISTRICT, PIN - 683 104.**

*** ADDL. R2 IS IMPEADED AS PER ORDER DATED 09.01.2013
IN IA. NO.15812/2012.**

**R1 BY ADV. SRI.M.K.ABOOBACKER.
ADDL. R2 BY ADVS. SRI.DINESH R.SHENOY,
SRI.G.HARIKRISHNAN (TRIPUNITHURA).**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE LOCATION MAP OF THE NON-TARRING ROAD IN FRONT OF THE PETITIONER'S PROPERTY.
- EXT.P2 COPY OF THE INTIMATION GIVEN BY THE PUBLIC INFORMATION OFFICER DATED 05/05/2008.
- EXT.P3 COPY OF THE INTIMATION GIVEN BY THE PUBLIC INFORMATION OFFICER DATED 12/12/2011.

RESPONDENT'S EXHIBITS:-

- EXT.R2A COPY OF THE PLAINT DATED 12/06/2003 IN O.S. NO.828/2003, MUNSIFF COURT, ERNAKULAM.
- EXT.R2B COPY OF THE INTERIM ORDER DATED 13/06/2003 IN I.A. NO.3834/2003 IN O.S. NO.828/2003, MUNSIFF COURT, ERNAKULAM.
- EXT.R2C COPY OF THE REPORT OF ADVOCATE COMMISSIONER, P.LATHA DATED10/2003 IN I.A. NO.3832/2003 IN O.S. NO.828/2003, MUNSIFF COURT, ERNAKULAM TOGETHER WITH ROUGH SKETCH.
- EXT.R2D COPY OF THE REPORT DATED 21/01/2006 SUBMITTED BY ADVOCATE P.LATHA TOGETHER WITH SURVEY SKETCH IN I.A. NO.4938/2004 IN O.S. NO.828/2003, MUNSIFF COURT, ERNAKULAM.
- EXT.R2E COPY OF THE PLAINT DATED 16/01/2014 IN O.S. NO.61/2014, MUNSIFF COURT, ERNAKULAM.
- EXT.R2F COPY OF THE INTER ORDER DATED 20/01/2014 IN I.A. NO.547/2014 IN O.S. NO.61/2014, MUNSIFF COURT, ERNAKULAM.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.M. SHAFFIQUE, J.

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W.P. (C) No. 19321 of 2012

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Dated this, the 12th day of November, 2015

J U D G M E N T

Petitioner has approached this Court seeking the following relief;

“(i) Issue a writ of mandamus or any other appropriate writ or order directing the respondent to tar the road lying in front of the petitioner's property based on Ext.P1 location map, within a short span of time as fixed by this Hon'ble Court.”

2. According to the petitioner, the petitioner and two other residents are using a pathway having a length of 50 metres. Though they submitted application before the Municipality for tarring the same, nothing has been done by the Municipality.

3. Municipality has filed a counter affidavit *inter alia* stating that the property is a private road which cannot be tarred by using the funds of the Municipality. Additional respondent has also filed a counter affidavit supporting the stand taken by the Municipality. It is also submitted that a suit has been filed by additional respondent in which the petitioner is also a party. The

subject matter of the suit is with reference to encroachment into their property.

4. Having regard to the fact that the property involved is a private property, no direction can be given to the Municipality to tar the said road with the funds of the Municipality.

5. Learned counsel for petitioner submits that it is a public road. But when the Municipality denies the said fact, it may not be possible for this Court to issue any directions. Petitioner will have to establish the said fact in appropriate proceedings and thereafter seek necessary reliefs.

Accordingly, there being no merits in the contentions urged on behalf of the petitioner, this writ petition is dismissed.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
12/11/2015

//True Copy//

PS to Judge