

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 15843 of 2015 (E)

PETITIONER(S) :-

JOHN P JACOB, AGED 61 YEARS
S/O P.C.JOHN, PLANTHARAYIL HOUSE, ALUVA DESOM
ALUVA VILLAGE, ALUVA TALUK

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM
SRI.N.RAJESH

RESPONDENT(S) :-

1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY
DEPARTMENT OF LOCAL ADMINISTRATION, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. CIRCLE INSPECTOR OF POLICE
THEVARA POLICE STATION, ERNAKULAM - 682 013.
3. P.K. SABU,
S/O.KARUNAKARAN, POLLATHUNDAYIL HOUSE, VYTTILA P.O
PIN - 682 019, ERNAKULAM, KOCHI.
4. T.P. AJIKUMAR
THUNDATHIL MALAYIL, UDAYA ROAD
THYKKOODAM, VYTTILA P.O. - 682 019.

R3 & R4 BY ADV. SRI.M.K.DILEEPAN
SRI.DEEPAK T.NEDUNGADAN
SMT.P.SUMITHRA
SRI.K.B.VIPIN KUMAR

R1 & R2 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15843 of 2015 (E)

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXT.P1 : TRUE COPY OF SALE DEED NO.2023 DATED 19/4/07 OF MARADU
SUB REGISTRY OFFICE.

EXT.P2 : TRUE COPY OF BASIC TAX REGISTER RELATING TO EXHIBIT P1
PROPERTY.

EXT.P3 : TRUE COPY OF LAND TAX RECEIPT NO.4458126 DATED 21.2.15
ISSUED FROM POONITURA VILLAGE OFFICE.

EXT.P4 : TRUE COPY OF JUDGMENT OF THIS HON'BLE COURT IN WPC
3294/13 DATED 9/5/13.

EXT.P5 : TRUE COPY OF PERMIT ISSUED TO THE PETITIONER FROM COCHIN
CORPORATION BEARING NO.KPR 1-205/15 DATED 18/5/15.

EXT.P6 : TRUE COPY OF PETITION FILED BY THE PETITIONER BEFORE THE
2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.P.(C) No.15843 of 2015

Dated this the 17th day of July 2015

J U D G M E N T

Shaffique, J.

Petitioner has approached this Court seeking police protection in the matter relating to construction of compound wall, for which, he had obtained permit as per Ext.P5 dated 18.5.2015. According to the petitioner, obstruction was being created by respondents 3 and 4 alleging that property purchased by the petitioner is 'excess land', which was declared so by the Taluk Land Board. The petitioner submits that the aforesaid land has been exempted by proceedings of the Taluk Land Board, which was taken into consideration by the Division Bench of this Court in W.P.(C) No.3294 of 2013, wherein, after considering the claim, the Division Bench observed as under :-

“The third respondent is directed to render effective protection to the petitioner for the development of his property as per Ext.P9 permit, if any obstruction is made by respondents 5 and 6, as against them, as and when required. It is made clear that this order will not give any special right to the petitioner to

claim the benefit under Section 7E of the Act, which has to be decided by this Court in CRP No.590/10 filed by the Government against Ext.R5(b) order passed by the Taluk Land Board in which the predecessors-in-interest of the petitioner are parties. It is also made clear that if it is found later that the development is made in the public property unauthorisedly, then, such development will be subject to the decision in Ext.R5(c) proceedings as well."

It is therefore, apparent that CRP No.590 of 2010 filed by the Government is pending before this Court in respect of the benefit, which the petitioner had claimed under Sec.7E of the Kerala Land Reforms Act.

2. According to the petitioner, as matter stands now, the property is in his possession and unless a boundary wall is constructed, there is threat of trespass. Further, respondents 3 and 4 have no right to interdict the construction of the compound wall as they are not even neighbours of the property.

3. Learned Government Pleader submits that since the Civil Revision Petition is pending against the order of the Taluk Land Board, the right of the petitioner to hold the property will depend upon the decision in the said case. The police cannot interfere in the matter without resolving the dispute.

-: 3 :-

4. Having regard to the aforesaid factual situation, we are of the view that since, as the matter stands now, the property is in the possession of the petitioner, he is entitled to construct a compound wall. However, the same will be subject to any decision, that will be taken by this Court in CRP No.590 of 2010.

6. Learned counsel for the petitioner also undertakes that if on account of any reason, the property is declared to be 'excess land' in CRP No.590 of 2010, the petitioner shall take necessary steps to demolish the said boundary wall as per the direction issued by the Revenue Department.

7. As far as respondents 3 and 4 are concerned, though notice was served on them, there is no appearance on their behalf nor any counter affidavit has been filed. They did not claim any right over this property. If at all they have any right, their remedy is to approach the civil court and obtain necessary orders rather than creating physical obstruction from constructing a compound wall by the petitioner. Under such circumstances, this writ petition is disposed of as under :-

-: 4 :-

The 2nd respondent shall ensure maintenance of law and order in the matter relating to construction of compound wall by the petitioner in terms of Ext.P5 permit and prevent any illegal obstruction from respondents 3 and 4 or their men. However, the construction of the compound wall will be subject to any decision that may be taken by this Court in CRP No.590 of 2010.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE