

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

W.P.(C).No.29755 of 2004 (P)

PETITIONER(S):-

1. LEELA ANTONY, AGED 48, W/O.P.D.ANTONY,
PULICKAL HOUSE, RAMALLOOR,
KOTHAMANGALAM (PO), ERNAKULAM DISTRICT-686 691.
2. DR.ANTONY PETER, AGED 61,
S/O.PETER, RAMALLOOR KARA, KOTHAMANGALAM (PO)
ERNAKULAM DISTRICT-686 691.

BY ADVS.SRI.S.V.BALAKRISHNA IYER (SENIOR ADVOCATE)
SRI.K.G.PAVITHRAN

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF LOCAL ADMINISTRATION, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE ASSISTANT EXECUTIVE ENGINEER,
NATIONAL HIGHWAY SUB DIVISION, KOTHAMANGALAM,
ERNAKULAM DISTRICT.
3. THE SURVEY SUPERINTENDENT,
COLLECTORATE, KAKKANAD, ERNAKULAM DISTRICT.

R1 & R3 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN.
R2 BY CENTRAL GOVERNMENT COUNSEL SRI.JAYAPRADEEP. V.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

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- EXT.P1 TRUE COPY OF THE JUDGMENT DATED 3.6.2004 IN
O.P.NO.1780/2003 OF THIS HONOURABLE COURT.
- EXT.P2 TRTUE COPY OF THE NOTICE DATED 30.9.2004 ISSUED BY
THE 2ND RESPOONDENT TO THE TENANT OF THE
PETITIONERS.
- EXT.P2(a) TRUE COPY OF THE NOTICE DATED 3009.2004 ISSUED BY
THE 2ND RESPONDENT TO THE TENANT OF THE PETITIONERS.
- EXT.P2(b) TRUE COPY OF THE NOTICE DATED 30.09.2004 ISSUED BY
THE 2ND RESPONDENT TO THE TENANT OF THE PETITIONERS.
- EXT.P3 TRUE COPY OF THE JUDGMENT IN CONTEMPT CASE (C)
No.1294/2004 DATED 10.1.2005 PASSED BY THE HON'BLE
HIGH COURT OF KERALA.
- EXT.P4 TRUE COPY OF THE LETTER DATED 1.9.04 [G1-1133/2004].
- EXT.P5 TRUE COPY OF THE REPLY DATED 13.09.2004
[NO.2923/2004/L.DIS - OFFICE OF THE ASST. DIRECTOR,
CENTRAL SURVEY OFFICE, TRIVANDRUM.
- EXT.P6 TRUE COPY OF THE NOTICE RECEIVED BY THE
1ST PETITIONER [G.2039/06 DATED NIL.].
- EXT.P7 TRUE COPY OF THE LETTER SUBMITTED BY THE
1ST PETITIONER DATED 16.12.2006 TO THE DISTRICT
SURVEY SUPERINTENDENT, ERNAKULAM.
- EXT.P8 TRUE COPY OF THE SALE DEED NO.2950/83.
- EXT.P9 TRUE COPY OF THE SALE DEED NO.2952/83.
- EXT.P10 TRUE COPY OF THE DOCUMENT NO.988/54.
- EXT.P11 TRUE COPY OF THE TAX RECEIPT DATED 3.7.2004.
- EXT.P12 TRUE COPY OF the TAX RECEIPT DATED 3.7.2004.
- EXT.P13 TRUE COPY OF THE ORDER NO.PW 2-7189/88 DATED 10.5.89
ISSUED BY THE MUNCIPAL COMMISSIONER, KOTHAMANGALAM.

- EXT.P14 TRUE COPY OF THE ORDER NO.PW2-4868/93 DATED 10.11.93
ISSUED BY THE MUNICIPAL COMMISSIONER, KOTHAMANGALAM.
- EXT.P15 TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE
OFFICER, KOTHAMANGALAM, DATED 3.10.90.
- EXT.P16 TRUE COPY OF THE LETTER DATED 24.8.96.
- EXT.P16(a) TRUE COPY OF THE PLAN.
- EXT.P17 DATED NIL, TRUE COPY OF THE FIELD MEASUREMENT SKETCH
OF SURVEY SUB-DIVISIONS OF SY.NOS.1110, 1111 AND 1112
OF KOTHAMANGALAM VILLAGE.
- EXT.P18 DATED NIL, TRUE COPY OF THE A B SKETCH IN RELATION TO
1012/6 OF KOTHAMANGALAM VILLAGE ISSUED FROM
CENTRAL SURVEY OFFICER, TRIVANDRUM.
- EXT.P19 DATED NIL, TRUE COPY OF THE LITHO SKETCH IN RELATION TO
VARIOUS SURVEY NUMBERS INCLUDING SY.NO.1012.

RESPONDENT'S EXHIBITS:-

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- EXT.R2(A) & R2(B) TRUE COPY OF THE SURVEY SKETCH AND PLAN
PREPARED BY THE 3RD RESPONDENT.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.29755 of 2004-P

Dated this the 24th day of July, 2015

JUDGMENT

The petitioners in the above writ petition challenge the attempted action of the 2nd respondent, to take over certain properties of the petitioners, for the widening of the road. The petitioners together had 4 cents of land, comprised in Survey No.1012/6A/1 of Kothamangalam Village and certain shop rooms thereon. The title of the petitioners is asserted by two sale deeds.

2. The essential contention of the petitioners before this Court was that the attempt of the 2nd respondent is to grab their lands for the widening of National Highway 49 [for brevity “NH 49”] on the ground that it is puramboke land; when the 2nd respondent could as well take acquisition proceedings and pay compensation to the land owners. When initially the attempt was made, the petitioners were before this Court with O.P.No.1780 of 2003, which was disposed of by Exhibit P1 judgment. Exhibit P1 directed a proper application to be made before the 3rd respondent to demarcate the land and the same was directed to

be done by the said respondent within one month. The 3rd respondent therein, the Survey Superintendent, is the 3rd respondent here also.

3. Alleging non-compliance of the order contained in Exhibit P1, a contempt case had been filed, as Cont. Case (C) No.1294 of 2004. Alleged contemnor having retired from service, the then incumbent was made a party. Even the present incumbent submitted before Court that the 1st respondent, the alleged contemnor had in fact conducted a survey on 19.07.2004 prior to his retirement on 30.09.2004. The petitioners contended that certain documents were not available in the office of the contemnor and, therefore, submitted that the survey conducted cannot be accepted. The 2nd respondent in the contempt case contended before Court that the 1st respondent had merely sought for clarification and it was not as if the records were not available in the office of the Survey Superintendent. The Court noticed that the petitioners are disputing the correctness of the measurement. However, the Court felt that the same has to be adjudicated in a fresh proceeding and closed the contempt case without prejudice to the contentions of both the parties.

4. The aforesaid writ petition was filed challenging the survey said to have been conducted; but, however, without producing the sketch prepared at the survey. The petitioners in the above writ petition contended that actually no survey was conducted and they did not receive any survey sketch. The above writ petition was filed on 08.10.2004 and a *status quo* order was passed on 11.10.2004. The 2nd respondent very alertly filed a counter affidavit on 28.10.2014, producing the survey sketch and plan prepared on the survey conducted in accordance with Exhibit P1 judgment, as Exhibits R2(A) & R2(B).

5. The sketch and plan were seriously disputed by the learned Senior Counsel appearing for the petitioners on the ground that the measurements are not correct and seeks to substantiate such contention on the basis of the documents received by the petitioners from the office of the Survey Superintendent and the Central Survey Officer, produced as Exhibits P17 and P18. In the course of hearing, however, Exhibit P6 was referred to, in which it was disclosed that a notice was issued by the District Survey Superintendent in pursuance of directions in another writ petition, bearing number W.P.(C).

No.32258 of 2004. In such circumstance, this Court called for the Judges Papers of W.P.(C).No.32258 of 2004.

6. W.P.(C).No.32258 of 2004 is seen to have been filed on 02.11.2004, within a month from the date on which the present writ petition was filed. Therein, Exhibits R2(A) and R2(B) produced in this writ petition were produced as Exhibits P12(a) and P12(b) and the same were challenged on the ground of defect in measurements. A learned Single Judge of this Court dismissed the writ petition with the following observations:

“The dispute raised in this Writ Petition is a boundary dispute, which can be effectively adjudicated in a civil suit and not in a writ petition. Accordingly, the Writ Petition is dismissed without prejudice to the contentions of the petitioners and their right to move the competent civil court. Since the contention of the petitioners is that the survey records have been manipulated and illegal survey reports - Exts.P12(a) and P12(b) have been prepared, those actions are ultravires and therefore, the competent civil court can entertain the suit, even if there is any bar under the Land Conservancy Act. Protection is available only to intra vires actions (see the decisions of the Apex Court in *Dhulabi v. State of Madhyapradesh* (AIR 1969 SC 78) and *Mafatlal Industries Ltd. v. Union of India* [1997 (5) SCC 536]).”

7. The challenge raised in the present writ petition, filed before W.P.(C).No.32258 of 2004, hence, no longer survives. It is also a matter of concern that the present writ filed in the year 2004 was pending in this Court till today with a *status quo* order, while the said contentions were addressed in another writ petition [W.P.(C).No.32258 of 2004] filed by the very same parties subsequent to the present one and the extra-ordinary remedy under Article 226 of the Constitution declined. The respondent authorities also seems to have been unaware of the two writ petitions filed, especially since the NH Sub Division, Kothamangalam was never issued with notice in W.P.(C). No.32258 of 2004 and that writ petition was dismissed at the admission stage itself. The petitioners, however, cannot feign ignorance of having initiated two proceedings.

8. The pendency of the first writ petition is not seen referred to in the second writ petition. This Court, hence, finds that there is clear abuse of process of law and there is suppression of material facts. The petitioners were relegated to the civil Court remedy in 2004 itself. If the petitioners have taken up the said remedy, then definitely that could be continued; but, however, if

they have not, their conduct as also the long passage of time disentitles the petitioners from raking up the issue now. This Court already declined exercise of jurisdiction under Article 226 and relegated the petitioners to the civil remedy, this Court does not find any reason compelling to invoke exercise of such jurisdiction in a writ petition filed earlier to that dismissed. In taking such view, this Court is considerably persuaded by the fact that the petitioners have employed subterfuge in filing the two writ petitions on the same grounds within a period of one month, which has to be deprecated. In such circumstances, the petitioners shall be mulcted with a cost of Rs.2,500/- [Rupees two thousand and five hundred] each, which shall be recovered by the 2nd respondent.

The writ petition would stand dismissed with costs to the respondents, in addition to the cost imposed as above.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]