

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 20165 of 2011 (U)

PETITIONER(S):

1. SOOSAMMA, W/O.GEORGE,
S.G.COTTAGE, KIZHAKKEKARA MURI, KIZHAKKETHERUVU P.O.
KOTTARAKKARA.
2. SHIBI GEORGE, S/O.GEORGE,
S.G.COTTAGE, KIZHAKKEKARA MURI, KIZHAKKETHERUVU P.O.
KOTTARAKKARA.
3. SHEEN GEORGE, S/O.GEORGE,
S.G.COTTAGE, KIZHAKKEKARA MURI, KIZHAKKETHERUVU P.O.
KOTTARAKKARA.
4. SHIBU GEORGE, S/O.GEORGE,
S.G.COTTAGE, KIZHAKKEKARA MURI, KIZHAKKETHERUVU P.O.
KOTTARAKKARA.

**BY ADVS.SRI.A.V.THOMAS (SR.)
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.V.M.KURIAN**

RESPONDENT(S):

1. SECRETARY TO GOVERNMENT,
GOVERNMENT OF KERALA, REVENUE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-1.
2. THE DISTRICT COLLECTOR,
COLLECTORATE, KOLLAM-691001.
3. THE TAHSILDAR, TALUK OFFICE,
KOTTARAKKARA - 691506.
4. THE TALUK SURVEYOR, TALUK OFFICE,
KOTTARAKKARA-691506.

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5. THE ASST. EXECUTIVE ENGINEER,
PWD ROADS DIVISION, T.B.JUNCTION, KOTTARAKKARA-691506.

6. KOTTARAKKARA GRAMA PANCHAYATH,
PANCHAYATH OFFICE, KOTTARAKKARA-691532
REP. BY ITS SECRETARY.

* ADDL.R7 TO R11 IMPEADED

7. KOLLAM-CHENGOTTA ROAD
PUNARUDHARANA KARMA SAMITHY, (REGN.NO.Q 164/2011)
REPRESENTED BY ITS SECRETARY SHRI C.JOSEKUTTY,
AGED 60 YEARS, S/O.CHACKO, PULAMON PO.
KOTTARAKKARA - 691 531.

8. PRIYADARSHINI NAGAR RESIDENTS
ASSOCIATION, (REGN. NO.Q-203/07, REPRESENTED BY
ITS SECRETARY SHRI RAJAN THOMAS, AGED 55 YEARS,
S/O.THOMAS, PULAMON PO., KOTTARAKKARA-691 531.

9. KIZHAKKEKKARA RESIDENTS
ASSOCIATION, (REGN. NO.Q-942/06), REPRESENTED BY
ITS SECRETARY, SHRI P.O.SCARIA, AGED 60 YEARS,
S/O.UMMAN, PULAMON PO., KOTTARAKKARA 691 531.

10. SURABHI NAGAR RESIDENTS
ASSOCIATION (REGN.NO.709/2004) REPRESENTED BY
ITS PRESIDENT, SHRI GEORGE MATHEW, AGED 68 YEARS,
S/O.LUCOS MATHEW, PULAMON PO., KOTTARAKKARA-691531.

11. R.BABURAJ, AGED 40 YEARS,
S/O.RAJAN, PANAYIL VEEDU, PULAMON PO.
KOTTARAKKARA - 691 531.

ADDL.R7 TO R11 ARE IMPEADED AS PER ORDER
DATED 13.12.2011 IN IA.17674/2011

R1-5, BY GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R6 BY ADV. SRI.T.M.ABDUL LATHEEF, SC
R7-11 BY ADVS. SRI.T.M.MOHAMMED YOUSUFF(SR.)
SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SMT.RABIA BEEGAM T.K.
SRI.JOBI.A.THAMPI
SMT.ARATHI KARUNAKARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015,
ALONG WITH WPC.NO.23291/2011 AND CONNECTED CASES, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE SALE DEED NO.2630/1985 OF THE KOTTARAKKARA SRO
- P2: COPY OF THE SALE DEED NO.2680/1985 OF THE KOTTARAKKARA SRO
- P3: COPY OF THE SALE DEED NO.1445/2005 OF THE KOTTARAKKARA SRO
- P4: COPY OF THE BASIC TAX RECEIPT IN RESPECT OF THE PROPERTY IN RE.SY.NO.120/5
- P5: COPY OF THE BASIC TAX RECEIPT IN RESPECT OF THE PROPERTY IN RE.SY.NO.121/9
- P6: COPY OF THE BASIC TAX RECEIPT IN RESPECT OF THE PROPERTY IN RE.SY.NO.121/10
- P7: COPY OF THE POSSESSION CERTIFICATE IN RESPECT OF THE PROPERTY IN RE.SY.NO.120/5
- P8: COPY OF THE POSSESSION CERTIFICATE IN RESPECT OF THE PROPERTY IN RE.SY.NO.121/9
- P9: COPY OF THE POSSESSION CERTIFICATE IN RESPECT OF THE PROPERTY IN RE.SY.NO.121/10
- P10: COPY OF THE SKETCH OF THE PROPERTY ISSUED BY THE VILLAGE OFFICE, KOTTARAKKARA.
- P11: COPY OF THE PROPERTY TAX RECEIPT ISSUED BY THE KOTTARAKKARA GRAMA PANCHAYATH.
- P12: COPY OF THE BUILDING TAX RECEIPT DATED 11/1/11 ISSUED BY THE VILLAGE OFFICE IN FAVOUR OF THE 4TH PETITIONER
- P13: COPY OF THE BUILDING TAX RECEIPT DATED 25/3/11 ISSUED BY THE VILLAGE OFFICER
- P14: COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO THE 1ST PETITIONER IN RESPECT OF BUILDING NO.KPII/653
- P15: COPY OF THE CERTIFICATE OF REGISTRATION ISSUED IN FAVOUR OF M/S.SHIBU AGENCIES UNDER THE KVAT ACT
- P16: COPY OF THE RE-SURVEY SKETCH ISSUED BY THE ADDL.TAHSILDAR, KOTTARAKKARA
- P17: COPY OF THE NOTICE DATED NILL ISSUED BY LAND ACQUISITION OFFICER.

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P18: COPY OF EXTRACT OF MALAYALA MANORAMA DAILY DATED 21/7/11.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.P. (C) Nos. 20165/2011, 23291/2011,
28687/2015 and 29337/2015

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Dated this, the 14th day of October, 2015

J U D G M E N T

Shaffique, J.

These writ petitions concern dispute between the petitioners in WP(C) No.28687/15 and a rival group of private respondents with reference to the building in occupation of the petitioners.

2. Petitioners contend that they are in possession and occupation of an area having an extent of 8.400 cents of land in Re.Sy.Nos.120/5, 121/9 and 121/10 in Block No.22 of Kottarakkara Village. The properties are situated on the side of the Main Central Road near Pulamon Junction at Kottarakkara. It is also stated that the properties are lying contiguously and are demarcated by clear boundaries and they are carrying on business activity in the shop rooms and godown in the premises. While so, it is alleged that certain steps were taken for acquisition of a part of their property in Re.Sy.No.120/15. However, later the same has been dropped. There was an attempt on the side of

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certain persons under the guise of Kollam Chengotta Road Punarudharana Samithy to construct a road through the property of the petitioners by demolishing the existing buildings. Petitioners filed OS No.39/2011 before the Munsiff's Court, Kottarakkara. There was an order of status quo. However, the suit was dismissed on 31/8/2015. Petitioners have preferred an appeal as AS No.64/2015 before Sub Court, Kottarakkara and there is an interim order to maintain status quo. Petitioners submitted that, in the meantime, on 20/7/2011, certain persons claiming from the Survey Department came to the property of the petitioners and started making marks in the building. Petitioners objected to the same. On enquiry, it was understood that steps were being taken to demolish the buildings. Petitioners filed WP(C) No.20165/11 before this Court seeking to restrain the Government and its authorities from initiating any proceedings against the property other than in accordance with law. In the said case, the local Panchayat is also a party to the proceedings. An interim order of status quo has been granted by this Court, which is still pending. It is further stated that on 19/9/2015, a group of people started demolishing portions of the multi storied building in occupation of the petitioners, which continued on 21/9/2015 and at that stage,

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the petitioners had approached this Court seeking for direction to the police to interfere in the matter and provide necessary police protection.

3. Petitioners have filed WP(C) No.29337/15 against the Panchayat seeking to quash Ext.P21 by which petitioners were called upon to demolish the structures within a period of seven days, failing which, it was mentioned that the Panchayat will take appropriate action. This was on account of dismissal of OS No.39/2011. In this case also, the learned Single Judge had issued an order of status quo to be maintained for a period of one month as per order dated 28/9/2015.

4. WP(C) No.23291/11 is filed as a Public Interest Litigation by a registered society claiming that the Society has been formed with the object of renovating and restoring the old Kollam-Chengotta road. It is stated that the Kollam-Chengotta road was constructed more than 200 years ago and it connects Kottarakkara with many places in Kollam as well as Tamil Nadu. Pulamon Junction, which is the heart of Kottarakkara town is a traffic hub of MC Road and Kottarakkara Chengotta National Highway. The petitioners allege that there is major traffic congestion in the said locality, which was on account of large

scale encroachment being made by various persons. Petitioners have also contended that the writ petitioners in WP(C) No.29337/15 are also persons who had encroached into the said area and therefore they have sought for a direction to the respondent authorities viz., State of Kerala and its officers to complete the process of restoration of the said road by evicting the encroachers and renovating the road to enable free flow of traffic.

5. When WP(C) No.29337/15 came up for hearing, we have called for WP(C) Nos.28687/15, 20165/11 and 23291/11 as these writ petitions are connected with the aforesaid writ petition and these cases are heard and decided together. Parties are hereinafter referred to as described in WP(C) No.29337/15.

6. Heard the learned counsel for the petitioners, learned counsel appearing for the party respondents, learned standing counsel appearing for the Panchayat as well as the learned Government Pleader appearing on behalf of the State and its authorities.

7. It is apparent from the factual situation involved in the case that the Public Interest Litigation (WP(C) No.23291/11) has been filed to enable Government to remove the encroachments in

the Pulamon Junction and to reconstruct the road which had been encroached by various persons. It is alleged that the petitioners in WP(C) No. 29337/15 have trespassed into a portion of the road and has constructed buildings which are not being removed at the instance of the Government and its authorities.

8. Learned senior counsel Sri.T.M.Mohammed Youseff appearing on behalf of the private respondents, who are some of the writ petitioners in WP(C) No.23291/11, submits that road is situated in Sy.No.122/1 where the petitioners in WP(C) No.29337/15 cannot have any claim, whereas they have actually trespassed into certain portion of the road and therefore the State and its authorities will be justified in removing such encroachment. It is also argued that the State and its authorities have not taken any action to remove the encroachment despite the traffic congestion in the said area.

9. Learned Counsel Sri.T.M.Abdul Latheef appearing for the Panchayat also submits that since the suit filed by the petitioners has already been dismissed, it is clear that the petitioners cannot have any right with respect to the property in Sy.No.122/1 and therefore, the Government and its authorities are under obligation to direct appropriate action.

10. Learned Government Pleader appearing on behalf of the State and its authorities submits that if there is any encroachment in the road portion, they will take appropriate action in the matter.

11. Learned senior counsel Sri.A.V.Thomas appearing for the petitioners however would submit that as against the judgment of the Civil Court, an appeal has been filed which is pending and an order of status quo has already been issued. Learned counsel however submits that petitioners do not make any claim in respect of the property in Sy.No.122/1. They only claimed the property which they have acquired and situated in Re.Sy.Nos.120/5, 121/9 and 121/10 in Block No.22 of Kottarakkara Village. According to the learned senior counsel, petitioners have only constructed the building in the said portion of the land and if at all it is found by the Government that petitioners have encroached into any other portion of the land, which forms part of the road, it is always open for the Government and its authorities to take necessary steps in accordance with law either under the Land Conservancy Act or any other applicable law to recover possession from the petitioners. It is argued that without taking any such steps, a mob

has demolished the property of the petitioners, which is situated in the property belonging to them.

Having regard to the aforesaid factual siltation, we are of the view that these writ petitions can be disposed of as under;

(1) That if the Government or its authorities are entitled to take any action for recovering the property in Sy.No.122/1, which is stated to be a former road belonging to the Government, it is always open for the competent authorities to take necessary action in accordance with law and if the petitioners are in possession of any portion of the said property, they shall be evicted after giving notice and after hearing them.

(2) It is declared that the petitioners are entitled to continue occupation of the present premises in their possession and if there is any untoward incident or law and order issue by which the petitioners are threatened with their life or enjoyment of the property, police shall interfere in the matter and provide necessary protection.

(3) The petitioners are permitted to repair the

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destruicted portion of the building to ensure that the building is maintained in a proper manner.

(4) The Government shall take necessary steps for eviction of the encroachment from the road within a period of six months from the date of receipt of a copy of this judgment after notice to all the affected parties.

(5) Ext.P21 in WP(C) No.29337/15 is quashed and further steps can be taken subject to the decision in A.S.No.64 of 2015, pending before the Sub Court, Kottarakkara.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
15/10/2015

//True Copy//

PS to Judge