

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 17984 of 2014 (W)

PETITIONER(S):

**ELIAMMA POULOSE,
RETIRED HEASMISTRESS, GOVERNMENT MODEL HIGH SCHOOL,
PALAKKUZHA, RESIDING AT KULIRANKAL, PALAKKUZHA,
MUVATTUPUZHA, ERNAKULAM DISTRICT.**

BY ADV. SRI.P.V.JAYACHANDRAN

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD, ERNAKULAM-682 020.**
- 3. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, MUVATTUPUZHA,
ERNAKULAM-683 122.**
- 4. THE VILLAGE OFFICER,
PALAKKUZHA VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAMDISTRICT-683 122.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 17984 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE PHOTOGRAPH OF THE RESIDENTIAL BUILDING OF THE
PETITIONER FROM THE NORTHERN SIDE.**

**EXT.P2: TRUE COPY OF THE PHOTOGRAPH OF THE RESIDENTIAL BUILDING OF THE
PETITIONER FROM THE NORTHERN SIDE AFTER DEMOLITION.**

**EXT.P3: TRUE COPY OF THE PHOTOGRAPH OF THE RESIDENTIAL BUILDING OF THE
PETITIONER FROM THE NORTHERN SIDE AFTER DEMOLITION.**

EXT.P4: TRUE COPY OF THE COMPLAINT DATED 12.04.2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 17984 of 2014

Dated this the 27th day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

- i. Issue a writ of mandamus or any other writ order or direction, directing the 2nd respondent to consider Ext.P4 complaint and take appropriate legal actions within a time limit to be fixed by this Hon'ble Court.*
- ii. Directing respondents 2 to 4 to restore the property in Sy. No.265/2-1 of Palakkuzha Village in its original nature as evident in Ext.P1 forthwith.*

2. The learned counsel for the petitioner points out that, the respondents/departmental authorities have encroached into the property of the petitioner causing much damage to the improvements; particularly the boundary wall which was demolished by deploying JCB, widening the drainage canal, intruding about 2mtrs into the property of the petitioner. There is absolutely no right or liberty for the respondents to trespass into the property of the petitioner, though it is for public purpose and the action pursued by the respondents are per se wrong and illegal in all respects and hence the challenge.

3. A counter affidavit has been filed by the 3rd respondent

referring to the facts and figures, paragraphs 4 and 5 of which are relevant, which are extracted below:

4. It is submitted that the allegations raised in paragraph 1 of the memorandum of writ petition is not correct and hence denied. In Thodupuzha-Piravom road at Palakkuzha town there was menace of water over flow. During heavy rain the rain water and other polluted water flowing from eastern side passes through the right side of Panchayath office building will cross the culverts and reaches the left side drain near the petitioner's property and finally reaches the western side. But the situation of free flow of water was blocked by the accumulation of plastic bottles, plastic covers and other polluted objects resulting in the blockage of culvert and drain. The compound wall which was constructed by the petitioner years back was without the permission from the department. It was constructed above the foundation of D.R. masonry wall of the PWD drain. The compound wall collapsed and fell down to the drain, resulting in the free flow of polluted water. The partially collapsed compound wall without proper foundation was existing before the complaint.

5. It was requested to the department by the Palakuzha Panchayat Committee resolution for reconstruction of blocked up culvert and drain. The works could not be started by the contractor as per the resolution within the said period. When the intensity of pollution based issues increased, under the leadership of Panchayath President, Palakuzha and the elected representatives of the locality steps were taken for cleaning the drain on 8.1.2014 and 9.1.2014 at Palakuzha. Proper cleaning and rectification

of the drain was done by the contractor at a later time using JCB. A concrete drain was constructed in the place of the original. There was no encroachment to petitioner's property by the contractor in this regard.

4. During the course of hearing, it is brought to the notice of this Court that the petitioner has already moved the 2nd respondent by way of Ext.P4 complaint. Since there is factual dispute, this Court finds it fit and proper to cause the matter to be considered by the 2nd respondent.

5. In the said circumstance, the 2nd respondent is directed to consider and pass appropriate orders on Ext.P4 in accordance with law, after hearing both the sides. The proceedings as above shall be finalized, at the earliest, at any rate, within 'two months' from the date of receipt of a copy of this judgment. The writ petition is disposed of.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the second respondent for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE.**