

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 21330 of 2013 (M)

PETITIONER(S) :

1. MOHAMMAD ASHRAF, AGED 53 YEARS,
S/O.KUNJU MOHAMMED, AASHARI MAALIL HOUSE,
KUTTAMASSERY THOTTUMUGHAM P.O., ALUVA-5.
2. MUHAMMED JAZEEL, AGED 32 YEARS,
S/O.ABDUL JALEEL, JAZEEL MANZIL,
KUTTAMASSERY THOTTUMUGHAM P.O., ALUVA-5.
3. IBRAHIM KUTTY, AGED 68 YEARS,
S/O.BEERAVU, THATTAAARAKUDY HOUSE,
KUTTASSERY THOTTUMUGHAM P.O., ALUVA-5.
4. RANEEF AHAMMED Z., AGED 35 YEARS,
S/O.ZAYED MOHAMMED, RESIDING AT KUZHIKATTIL HOUSE,
KUTTAMASSERY THOTTUMUGHAM P.O., ALUVA-5.

BY ADV. SRI.K.R.VINOD

RESPONDENT(S) :

1. THE SECRETARY, KEEZHMADU GRAMA PANCHAYATH,
KEEZHMADU, ALUVA- 683 102.
2. THE ASSISTANT EXECUTIVE ENGINEER,
OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER,
MINOR IRRIGATION SUB DIVISION, THOTTAKATTUKARA, ALUVA- 683 102.
3. THE EXECUTIVE ENGINEER,
MINOR IRRIGATION DIVISION, ERNAKULAM CIVIL STATION,
KAKKANAD- 682 030.
4. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT- 682 030.
5. THE TAHSILDAR,
ALUVA TALUK, ALUVA- 683 101.
6. JALEEL, AGED 45 YEARS,
S/O.KUNJU MOHAMMED, MADATHIPARAMBIL HOUSE,
KUTAMASSERY THOTTUMUGHAM P.O., ALUVA-683 105.

R1 BY ADV. SRI.S.SHANAVAS KHAN

R2 TO R4 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ

R6 BY ADV. SMT.K.K.RAZIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: THE COPY OF THE RE-SURVEY SKETCH OF FIELD NO.110 OF ALUVA EAST VILLAGE.

EXHIBIT P2: THE COPY OF THE NO-OBJECTION CERTIFICATE ISSUED BY THE 2ND RESPONDENT DATED 17.08.2013.

EXHIBIT P3 SERIES: THE PHOTOGRAPHS SHOWING THE LIE AND LOCATION OF THE CANAL (6 IN NOS.)

EXHIBIT P4: THE COPY OF THE SAID MASS PETITION DATED 16.08.2013.

EXHIBIT P5: THE COPY OF THE REPRESENTATION SUBMITTED BY THE 4TH PETITIONER BEFORE THE 5TH RESPONDENT.

EXHIBIT P6: THE COPY OF THE REPRESENTATION DATED 20.08.2013.

EXHIBIT P7: THE COPY OF THE REPRESENTATION DATED 23.08.2013.

RESPONDENT(S)' EXHIBITS

EXHIBIT R6(A): TRUE COPY OF THE APPLICATION SUBMITTED BY THE 6TH RESPONDENT BEFORE THE PANCHAYAT.

EXHIBIT R6(B): TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT .

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.21330 of 2013

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Dated this the 24th day of March, 2015

JUDGMENT

Alleging inaction on the part of the respondents 1 to 5 in taking action against Ext.P2 certificate issued by the 2nd respondent, the petitioners have come up before this Court.

2. The 6th respondent obtained Ext.P2 No Objection Certificate (NOC) for construction of a compound wall abutting Kuttamassery canal. The petitioners allege that the certificate was obtained behind the back of them, who had lodged several complaints against the proposed construction because the 6th respondent wanted to trespass and encroach upon the canal property which was being enjoyed by them and other residents therein as a pathway for ingress and egress.

3. The petitioner alleges that the 6th respondent did not obtain any permit from the 1st respondent as mandated by Rule 87 of the Kerala Panchayat Building Rules, 2011 for constructing a compound

wall abutting the public canal. The grievance of the petitioners is that even though by Ext.P7, they pointed out that the said act of the 6th respondent before the 1st respondent, he did not issue any prohibitory directions to prevent the illegality. The respondents 4 and 5 who are the custodians of the puramboke land belonging to the Government have also not taken any steps to restrain the 6th respondent from taking into possession of the public property.

4. The petitioners further allege that the 3rd respondent who is bound to take appropriate action against Ext.P2 issued by the 2nd respondent keeps silence, in spite of repeated representations by them. It is with this background, the petitioners have come up before this Court.

5. In the counter affidavit filed by the 1st respondent, they have admitted that Ext.P7 representation has been filed by the petitioners. It was stated that the petitioners submitted Ext.P7 complaint before the 1st respondent alleging that the 6th respondent is constructing a

wall illegally without obtaining a building permit from the respondent panchayat as contemplated under Rule 87 of the Rules. According to the 1st respondent, Ext.P7 was preferred before the panchayat on 23.8.2013 and without waiting for the action to be taken by the panchayat, the petitioner rushed to this court filing this writ petition.

6. It was further stated that pursuant to the receipt of Ext.P7, an inspection was conducted into the premises in question. On inspection it was found that the 6th respondent has cleared the land for carrying out construction of compound wall. However, no construction activities have been commenced. The 6th respondent has not obtained any building permit from the panchayat for constructing the compound wall. As the proposed construction of the compound wall is abutting the public property, permission from the panchayat is mandatory for the execution of the work. Since the 6th respondent has not commenced any construction activities, the panchayat has not

initiated any action against him.

7. The 2nd respondent has filed a separate counter affidavit wherein they have contended as follows:

It was stated that Kuttumassery L.I scheme was commissioned in 1952 to irrigate an ayacut of 63.121 Ha. The canal was open at the year of commissioning. The canal at the disputed site was also an open canal and later it was covered with concrete slabs to facilitate traffic for the residents living downstream side of the canal. The land for the construction of the canal along with its side bund was freely surrendered by the owners in 1952. The sketch of the land thus surrendered in 1951 is not available in this office.

It was further stated that the existing width of the canal along with side bunds on the up stream side of 6th respondent's property is 3.8m. and the existing width of the canal along with side bunds on the down stream side of the 6th respondent's property is 3.8m. Conditional sanction was given to the 6th respondent for

constructing a compound wall without reducing the existing width on the down stream side of the canal. The petitioners are using the 3.8m wide road and this width would not be reduced even if the said compound wall is constructed.

It was further stated that there is no influence while granting the NOC as alleged by the petitioner. The NOC is issued based on the application of the 6th respondent and subject to the terms and conditions specified therein. The land owner on the down stream side of the 6th respondent's property has constructed a compound wall abutting the canal property and sanction was given to the 6th respondent to construct the same in alignment with the compound wall already existing in the down stream side of his property. According to the 2nd respondent, the details of land given to Minor Irrigation for constructing canal by way of free surrender is available in the survey department. It was instructed that the compound wall if constructed should rests in irrigation land as per re-survey records.

Such a condition was laid down to protect and reclaim the land owned by the Government and there is no willful act of implication as alleged by the petitioners.

It was further stated that the down stream side of the canal property after the 6th respondent's plot is used by the petitioners. The width of the pathway available in the down stream side is also made available in the place where the compound wall was proposed and the question of obstruction of pathway does not arise as alleged by the petitioners. The statement that one of the staff working under the 2nd respondent is a relative of the 6th respondent is totally false. No relative of the 6th respondent is working in the office of the Assistant Executive Engineer, Minor Irrigation sub division, Aluva. The NOC was issued after inspecting the site visit.

It was stated that there is no case of blocking the access of the public as alleged by the petitioner. In fact the subordinate staff of the 2nd respondent who inspected the site has reported that the people

living on the down stream side of the 6th respondent's plot has also constructed compound wall in the same alignment. It could not be ascertained whether the alignment of existing compound wall on down stream side of the 6th respondent is resting in Government property or private property. Therefore, the subordinate staff of the 2nd respondent has requested the village officer to fix the canal property alignment of the entire stretch.

It was stated that the irrigation department has requested the revenue re-survey department to mark the boundary of canal property of the entire branch of Kurumassery canal. The 6th respondent has not proceeded with the construction of the compound wall except for the excavation of earth for providing foundation. The NOC given was only a conditional NOC and permission to construct the compound wall in alignment with the compound wall existing on the down stream without reducing the width available for the pathway in the down stream side.

8. The 6th respondent filed a separate counter affidavit contending as follows:

The writ petition is not maintainable either on law or on facts and it is filed without disclosing the true facts. It was stated that the 6th respondent have constructed the building after getting permission from the 1st respondent. The canal at the disputed site was an open canal commissioned in 1952. It was covered with concrete slabs to facilitate traffic for the residents living down stream side of the canal. The existing width of the canal along with the side bunds on the downstream side of the 6th respondent property is 3.8m. Ext.P2 NOC was issued to him with conditions.

The contention of the petitioner that his passage would be totally obstructed if the compound wall is constructed is false. The land owner on the down stream side of his property has constructed a compound wall abutting the canal property and sanction was given to him to construct compound wall in alignment with the compound

wall existing. It was further stated that the people living on the down stream side of his property has also construct compound wall in the same alignment.

It was further stated that the allegations of the petitioner that the 6th respondent has obtained sanction on influencing the officials is not correct. It was stated that he has submitted an application before the 1st respondent for getting permission to construct the compound wall. A true copy of the application and receipt issued by the respondent panchayat is produced as Exts.R6(a) and (b). It was further stated that he has no intention to violate any of the conditions in Ext.P2 and he has not started the construction of the compound wall. He would proceed with the construction only after getting permission from the respondent panchayat.

9. Today when the matter came up for hearing, the learned standing counsel for the respondent panchayat submitted that after filing of the writ petition, the 6th respondent has submitted the

application as Ext.R6(a) seeking permission to construct a compound wall. It was submitted that the panchayat has no objection in hearing and disposing of the same.

Therefore, this Court is of the view that the writ petition can be disposed of directing the respondent panchayat to consider and pass orders on the application submitted by the 6th respondent after affording the petitioner as well as the 6th respondent an opportunity of being heard, in accordance with Rule 87 of the Kerala Panchayat Building Rules, 2011, and also taking into account Ext.P2 NOC granted by the 2nd respondent.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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