

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 19049 of 2015 (E)

PETITIONER(S):

**MEETHIYAN, AGED 55 YEARS,
S/O. HASSAINAR, MATHRAKKATTU HOUSE, PINARMUNDA KARA,
PERINGALA 683 565, ERNAKULAM.**

**BY ADVS.SRI.PAUL K.VARGHESE
SMT.A.A.GEETHA**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
CIVIL STATION, KAKKANAD, ERNAKULAM.**
- 2. KUNNATHUNADU GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PALLIKKARA,
ERNAKULAM DISTRICT 683565.**
- 3. THE SECRETARY,
KUNNATHUNADU GRAMA PANCHAYAT, PALLIKKARA,
ERNAKULAM DISTRICT 683565.**
- 4. INFO PARK,
KAKKANAD, KOCHI REPRESENTED BY ITS CEO.**

**R1 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA
R4 BY ADV. SMT.RASHMI. K.V., SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-07-2015
ALONG WITH WPC.NO.18393/2015, THE COURT ON 29-07-2015, DELIVERED
THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE SETTLEMENT DEED NO 5183/05 OF
PUTHENCROUZ SRO DATED 25/7/2005**
- EXHIBIT P2 A TRUE COPY OF THE SETTLEMENT DEED NO 5181/05 OF
PUTHENCROUZ SRO DATED 25/7/2005**
- EXHIBIT P3 A TRUE COPY OF THE DECISION NO.6(2) OF THE KUNNATHUNADU
GRAMA PANCHAYATH DATED 4/11/2013**
- EXHIBIT P4 A TRUE PHOTOGRAPH OF THE COMPOUND WALL PUT UP BY 4TH
RESPONDENT INFRONT OF THE PROPERTY OF SRI PAULOSE
MALLELIL**
- EXHIBIT P5 A TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE
THE PANCHAYATH DATED NIL**
- EXHIBIT P6 A TRUE COPY OF THE RECEIPT ISSUED BY THE PANCHAYAT TO THE
PETITIONER DATED 22/6/2015**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) Nos.18393 & 19049 of 2015

Dated this the 29th day of July, 2015.

JUDGMENT

The petitioners have approached this Court alleging that the fourth respondent has constructed a very huge compound wall adjacent to their property violating the stop memo issued by the respondent panchayath.

2. The petitioners are the owners of different residential plots placed in the different sub division of Sy.No.378 of Kunnathunadu Village. Adjacent to the properties of the petitioners, the fourth respondent is having property. The property of the petitioner in W.P.(C) No.18393 of 2015 is on the southern side of the property owned by the fourth respondent and the property of the petitioner in W.P.(C) No.19049 of 2015 is on the western side of the property of the fourth respondent. Both petitioners allege that the fourth respondent had illegally constructed a compound wall at a height of more than 25 feet covering the entire frontage of

their residence blocking air and light to their property. This according to the petitioners, is without obtaining permission from the panchayath and other statutory bodies. Therefore, they approached the concerned panchayath. However, no action was taken. Both petitioners would allege that because of the said construction, their life has become miserable.

3. The fourth respondent has filed a detailed statement in W.P.(C) No.18393 of 2015 which was made use for opposing the other writ petition also. Along with the statement, the fourth respondent has submitted Ext.R4(a) photographs and R4(b), which is the copy of the master plan of the Info park Phase showing the land having an iron fence as well as the property of the petitioners.

4. As the inconsistent versions were forthcoming through the rival submissions regarding the fact situation, this Court directed the parties to take out a commission. Accordingly, Mr.Arun Antony, Advocate of this Court was deputed as Commissioner and he was directed to ascertain the matters made mention of in the application submitted by the

petitioners as well as the work memo submitted by the fourth respondent. He has submitted a vivid report along with certain sketches and the photographs which show the correct picture of the property of the petitioners as well as the adjacent property owned by the fourth respondent.

5. The commissioner would report that the proposed height of the compound wall now constructed by the fourth respondent is 7.3 to 7.4 feet. It is also stated by the commissioner that once the iron fence is built on the brick wall, the total height would be around 10-11 feet from the road level of the fourth respondent. When measured from the other side, ie, side of the petitioners, the height of the brick wall would be 9 feet and once the grill work above the same is completed, the total height would be around 11-12 feet from the slab level of the drainage. Therefore, it can be seen that the allegation of the petitioners that the wall is about 25 feet height is only an exaggerated version. It can be seen that only one side of the property of the petitioners comes along the side of the property of the fourth respondent. Demarcating the

property of the petitioners and the property of the fourth respondent, there is a drainage, which admittedly was constructed by the fourth respondent. The compound wall is not close to the house of the petitioners as it was made to appear. There is considerable distance between the house as well as the compound wall now constructed.

6. It is also crucial to note that the commissioner has noticed the existence of a temporary shed intended to house labourers in the property of the petitioner in W.P.(C) No.18393 of 2015. The height of the same is about 12 feet. That means, the roof of the temporary shed is at a higher plane than that of the height of the compound wall now constructed. The sheds so constructed are shown in Ext.C3(a) of the sketch of the commissioner report. Therefore, there is absolutely no basis in the allegation now raised by the petitioners that the construction of the compound by the fourth respondent, would cause any obstruction to the light and air as alleged. Even assuming that the said construction would cause any obstruction to the light and air of the petitioners, their

remedies are elsewhere and not before this Court invoking the jurisdiction under Article 226 of the Constitution of India.

7. Though, it was strenuously argued by the learned counsel for the petitioners that the panchayath had issued a stop memo, the learned counsel for the fourth respondent would submit that though by mistake such a stop memo happened to be issued by the panchayath, subsequently the same has been withdrawn by the respondent panchayath. This fact was admitted by the learned standing counsel for the respondent panchayath also.

Therefore, this Court is of the view that the petitioners are not entitled to get the reliefs as prayed for.

In the result, the writ petitions fail and accordingly, they are dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.