

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 19903 of 2015 (K)

PETITIONER:

- 1. K.V. CHERIYA, AGED 63 YEARS,
KANIYAMKUDIYIL VEEDU, M.M. ROAD,
PERUMBAVOOR, ERNAKULAM DISTRICT.**
- 2. ANNAMMA CHERIYA, AGED 60 YEARS,
W/O.K.V. CHERIYA, KANIYAMKUDIYIL VEEDU,
M.M. ROAD, PERUMBAVOOR, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.C.P.PEETHAMBARAN,
SRI.C.P.REJI,
SMT.MINI.V.A.**

RESPONDENTS:

- 1. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA, ERNAKULAM DISTRICT.**
- 2. THE EXECUTIVE ENGINEER,
PERIYAR VALLEY IRRIGATION PROJECT, DIVISION 1,
PERUMBAVOOR, ERNAKULAM DISTRICT.**
- 3. RAYAMANGALAM GRAMA PANCHAYATH,
RAYAMANGALAM P.O, KURUPPAMPADY,
PERUMBAVOOR-683 545, REPRESENTED BY SECRETARY.**
- 4. DR.SABU VARGHESE,
PULINATTU VEEDU, M.C. ROAD,
PERUMBAVOOR, ERNAKULAM DISTRICT.**

R1 & R2 BY GOVT. PLEADER SMT.K.A. SANJEETHA.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT P1:- PHOTOGRAPH SHOWING FRONT PORTION OF THE PETITIONER'S BUILDING.
- EXT.P2: TRUE COPY OF THE COMPLAINT DTD. 29/01/2013 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P3:- TRUE COPY OF THE REPLY OF THE ASSISTANT EXECUTIVE ENGINEER, PERUMBAVOOR DTD. 10/05/2013.
- EXT.P4: TRUE COPY OF THE LETTER DTD. 24/04/2013 OF THE 3RD RESPONDENT.
- EXT.P5:- TRUE COPY OF THE PHOTOGRAPH SHOWING THE BIG HOLES UNDER THE FOUNDATION OF PETITIONER'S BUILDING.
- EXT.P6: TRUE COPY OF THE REPORT DTD. 24/12/2013 OF THE ASSISTANT EXECUTIVE ENGINEER (BUILDINGS), PERUMBAVOOR.
- EXT.P7:- TRUE COPY OF THE ORDER DTD. 28/04/2015 OF THE 1ST RESPONDENT.
- EXT.P8: TRUE COPY OF THE REPLY DTD. 16/09/2014 OF THE 2ND RESPONDENT.
- EXT.P9:- TRUE COPY OF THE LETTER DTD. 24/06/2015 OF THE BRANCH MANAGER, STATE BANK OF TRAVANCORE, VALAYANCHIRANGARA BRANCH.
- EXT.P10: TRUE COPY OF THE REPRESENTATION DTD. 23/06/2015 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19903 of 2015

Dated this the 2nd day of July, 2015.

JUDGMENT

The petitioners are aggrieved by the demolition of retaining wall of a canal, which according to the petitioners, would cause damage to their property.

2. The grievance of the petitioners, who are the owners of a property by name Kaniyamkudiyil building, is that due to the high handed action of the third and fourth respondents, the petitioners' building is going to fall on account of the loss of lateral support. The petitioners allege that the fourth respondent with the tacit connivance of the third respondent on 26.1.2013, excavated soil from the southern side of the canal and filled-up his plot situated on the northern side of the canal. Though petitioners could intercept the same, he continued the activity causing heavy damage to the foundation of the petitioners' building. Due to the excavation, the side wall protecting the canal and also the

building of the petitioners are weakened causing erosion of the soil from the foundation of the building. By using the soil, the fourth respondent reclaimed his marshy land. He also sold some quantity of soil to third parties. This was done in collusion with the President of the third respondent panchayath and without getting sanction from the second respondent or any other authorities. The complaint submitted by the petitioners were enquired into by the first respondent and found that due to removal of the protection wall and soil, the petitioners' building has been affected substantially and therefore passed Ext.P7 order, which is not yet implemented.

3. I have heard the learned counsel for the petitioners and the learned Government Pleader in the matter.

4. When the matter came up for hearing, on a specific query was put for to the learned counsel for the petitioners as to whether the petitioners are intending to claim damages on account of the loss caused to the demolition, the learned counsel for the petitioners answered in the negative. His

submission is that the petitioners have approached the RDO concerned who passed Ext.P7 order and the party respondent is proceeding to violate the said order.

As the proper course open to the petitioners is to approach the RDO concerned, which has already been done by the petitioners by filing Ext.P10, this writ petition is disposed of directing the RDO concerned to consider Ext.P10, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.