

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C) .No. 23930 of 2012 (M)

PETITIONER(S) :-

BALAN T.K., AGED 72 YEARS, S/O.KANDAN,
CHETOOR MITHAL, PUTHOOR AMSOM
PERUMANNA VILLAGE, KOZHIKODE TALUK AND DISTRICT.

BY ADVS.SRI.P.R.SREEJITH
SRI.M.PRAMODH KUMAR

RESPONDENT(S) :-

1. SUPERINTENDING ENGINEER,
P.W.D. ROADS AND BRIDGES, MANANCHIRA
KOZHIKODE - 671 001.
2. EXECUTIVE ENGINEER,
P.W.D. ROADS AND BRIDGES, MANANCHIRA
KOZHIKODE - 671 001.

R1 & R2 BY GOVERNMENT PLEADER SRI.REJI JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

WP(C).NO.23930 OF 2012

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 :- TRUE COPY OF THE ASSIGNMENT DEED No.1008/1975 OF CHEVAYUR SUB REGISTRY.

EXT.P2 :- TRUE COPY OF THE PHOTOGRAPHS SHOWING MANGAVU KANNIPARAMBU ROAD AND THE PETITIONER'S PLOT AND COMPOUND WALL.

EXT.P3 :- TRUE COPY OF THE FIELD No.138 IN THE FIELD MEASUREMENT BOOK OF PERUMANNA VILLAGE.

EXT.P4 :- TRUE COPY OF PETITIONER'S APPLICATION TO THE TAHSILDAR ON 3.10.2012 TO MEASURE AND FIX THE BOUNDARIES OF HIS PROPERTY.

RESPONDENT'S EXHIBITS :-

EXT.R2(a) :- COPY OF THE PLAN PREPARED BY THE TALUK SURVEYOR, KOZHIKODE.

//TRUE COPY//

P.A. TO JUDGE

A.M.SHAFIQUE, J

W.P(C). No. 23930 of 2012

Dated this the 13th day of November, 2015

J U D G M E N T

Petitioner has approached this Court seeking for a declaration that demolition of petitioner's boundary wall situated in R.S. No.138/4 in Perumanna Village of Kozhikode Taluk is arbitrary and illegal and for a direction to respondents to restrain from proceeding with demolition of the petitioners compound wall shown in Ext.P2 and from taking possession.

2. The petitioner has a case that certain item of property has been acquired from him during 1978 for widening of the road. Thereafter he had constructed a compound wall in the year 1980. In 2008, an allegation has been made stating that the petitioner had encroached into the road portion and constructed the compound wall. At this stage, apprehending that the respondent authorities may demolish the compound wall he has approached this Court seeking the aforesaid reliefs. It is contended that the petitioner had not encroached into any portion of the PWD road and the allegation is baseless.

3. Counter affidavit has been filed inter alia stating that the petitioner had encroached into the PWD road and constructed the compound wall. The encroachment is in around 5.48 cents of land and boundary wall has been constructed by the petitioner. The widening work of the road is standstill due to the aforesaid action of the petitioner. It is further stated that the PWD has requested the Revenue Authorities to demarcate the boundary of PWD road on 22.9.2012 based on which Ext.R2(a) plan has been prepared, which reveals encroachment.

4. Reply affidavit has been filed by the petitioner stating that the Taluk Surveyor's plan was not proper and he relies upon the true copy of Field No.138 in the Field Measurement Book of Perumanna Village, which according to him, is after acquisition for the road and he constructed the compound wall following demarcation made by the competent authorities. He also denies the contention that he had encroached into 5.48 cents of property.

5. It is apparent from the facts as narrated above that the respondent authorities has a contention that the petitioner had encroached into certain item of land belonging to the

Government. Therefore, the remedy is to take appropriate proceedings in accordance with law and cannot unilaterally take action by demolishing the compound wall. As far as the petitioner's claim is concerned, he can approach the civil court and defend the said proceedings initiated by the respondents or his remedy is to approach the civil court for appropriate relief.

6. Having regard to the aforesaid factual situation, the writ petition is disposed of as under :

The petitioner is free to approach the civil court to obtain necessary orders to prove the ownership and possession of the property and in the alternate the respondents are entitled to take appropriate proceedings in accordance with law for evicting the petitioner, who shall be entitled to defend, the said proceedings as per the procedure prescribed.

Sd/-
A.M.SHAFIQUE,
JUDGE

// TRUE COPY //

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