

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 20476 of 2015 (H)

PETITIONER(S):

**RAMACHANDRAN, S/O. RAJAPPAN, AGED 40 YEARS,
RESIDING AT VAZHAKKATTIL, PUTHENCHIRA,
THOTTAKAM P.O., VAIKOM TALUK, KOTTAYAM DISTRICT.**

**BY ADVS.SMT.SARITHA THOMAS,
SRI.SAJEEVAN KURUKKUTTIYULLATHIL.**

RESPONDENT(S):

- 1. DISTRICT COLLECTOR, KOTTAYAM DISTRICT
IN HIS CAPACITY AS CHAIRMAN OF
DISTRICT DISASTER MANAGEMENT COMMITTEE,
COLLECTORATE P.O., KOTTAYAM - 686 002.**
- 2. THALAYALAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
THALAYAZHAM (N) VAIKOM TALUK, THALAYAM VILLAGE,
THOTTAKAM KARA, THOTTAKAM P.O., VIETNAM JUNCTION,
KOTTAYAM DISTRICT.**
- 3. MR.S. DEVARAJAN,
NADIAPARAMBIL HOUSE, THOTTAKAM P.O.,
KOTTAYAM DISTRICT IN THE CAPACITY OF THE
PRESIDENT OF THE THALAYAZHAM GRAMA PANCHAYATH,
PIN-686 025.**
- 4. TAHSILDAR OF VAIKAM TALUK,
THALAYAM VILLAGE, THOTTAKAM KARA,
THOTTAKAM P.O., VIETNAM JUNCTION,
KOTTAYAM DISTRICT.**
- 5. VILLAGE OFFICER,
THALAYAM VILLAGE, THOTTAKAM KARA,
THOTTAKAM P.O., VIETNAM JUNCTION,
KOTTAYAM DISTRICT.**

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**6. MRS.MINI, W/O. AJI, RESIDING AT CHOORAVELIL HOUSE,
THOTTAKAM KARA, THALAYAM VILLAGE, VAIKAM TALUK,
TAHALAYAM P.O., VIETNAM JUNCTION, KOTTAYAM DISTRICT.**

**7. HARIYAPPAN, S/O. NARAYANAN,
RESIDING AT SURABHIYIL HOUSE,
THOTTAKAM KARA, THALAYAM VILLAGE,
VAIKAM TALUK, TAHALAYAM P.O.,
KOTTAYAM DISTRICT.**

**R1, R4 & R5 BY GOVT. PLEADER SRI.GIKKU JACOB.
R2 BY ADVS. SRI.S.RADHAKRISHNAN,
SRI.S.RAJ MOHAN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - TRUE COPY OF THE SALE DEED BEARING DOCUMENT NO. 262/2004 OF THALAYAM SUB REGISTRY.
- P2 - TRUE COPY FO THE SAID ORDER DTD. 16.06.2015 BY THE 5TH RESPONDENT.
- P3 - TRUE COPY OF THE PLAINT AS PER OS NO.198/2015 DTD. 04.07.2015.
- P4 - THE ORDER DTD. 03.07.2015 BEARING NO. HE8-2015/33456/5.
- P5 - PHOTOGRAPHS OF THE DISPUTED AREA.
- P6. COPY OF THE PRIOR TITLE DEED BEARING DOCUMENT NO.649/1998 DATED 31/05/1988 OF ULLALA SUB REGISTRY.
- P7. COPY OF THE SALE DEED BEARING NO.631/1997 DATED 30/04/1997 OF ULLALA SUB REGISTRY.
- P8. COPY OF THE BASIC TAX RECEIPT DATED 17/03/2014 WITH RESPECT TO THE LAND COMPRISED IN SURVEY NO.274/4-5.
- P9. COPY OF THE GAZETTE NOTIFICATION WITH RESPECT TO THE NATURE OF THE LAND FOR THE PURPOSE OF FAIR VALUE UNDER SECTION 28 OF THE KERALA STAMP ACT PUBLISHED BY DEPARTMENT OF REGISTRATION, GOVERNMENT OF KERALA.
- P10. COMMISSION REPORT DATED 10/07/2015 IN EXT.P3 SUIT.
- P11. COPY OF THE DIAGRAM PREPARED BY THE PETITIONER SHOWING THE REAL CONDITION OF THE LAND AND LIE OF THE RIVER.

RESPONDENT'S EXHIBITS:-

EXT.R2A COPY OF THE REPORT FILED BY THE TAHSILDAR, VAIKOM.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.20476 of 2015

Dated this the 8th day of October, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

- i. Issue a writ of certiorari or other appropriate writ, order or direction calling for the records leading up to Ext.P2 and P4 and to quash the same;
- ii. Issue a writ of mandamus or other appropriate writ, order or directing respondents 1 to 5 from making suitable arrangements to restore the previous drainage facilities without disturbing Ext.P1 land and proprietary interests of the petitioner in the said land;
- iii. Allow the cost of the proceedings from respondents.

2. The District Collector has dealt with the issue regarding flow of water from Vaikom-Chenthuruth road under the Disaster Management Act.

3. The Authority constituted under the Disaster Management Act has necessary power to take measures for drainage of water logging under Section 34 of the Disaster Management Act, 2005.

4. The District Collector being the Chairman of the Authority has issued Exts.P2 and P4 notice. It appears that the petitioner has constructed concrete detention wall in his land and on account of this, flow of water is diverted through the road.

5. This Court is of the view that if the petitioner's compound wall has to be interfered, necessarily, it can be only by acquiring the petitioner's land under the Land Acquisition Act. The petitioner has every right to construct compound wall in his land in accordance with law. However, the Authority is also competent to take measures in terms of the Disaster Management Act. Therefore, the District Collector has to decide whether any portion of the petitioner's private property has to be interfered for the purpose of drainage or not. If the private property of the petitioner need to be interfered, the District Collector is free to take any measures in terms of the Disaster Management Act to ensure free flow of water to avert any disaster on account of incessant rain or otherwise.

6. However, this Court is of the view that if any portion of the petitioner's property has to be interfered, certainly, that cannot

be only according to the measures to the Land Acquisition Act and not otherwise by invoking powers of the Disaster Management Act. The Disaster Management Act did not provide taking over the land over the private property of the individuals except to the limited extent under Section 65 for an interim measures. Therefore, following directions are issued:

The District Authority is free to take appropriate measures to provide drainage facilities to avert possible disaster in terms of the Disaster Management Act.

- i. If the District Collector wants to interfere with the petitioner's property, that can be done only after obtaining necessary consent from the petitioner or by recourse to the acquisition of the petitioner's property under the Land Acquisition Act.
- ii. The petitioner and the Panchayath Officials shall appear before the District Collector in this regard on 11.11.2015.
- iii. Thereafter, the District Collector shall take any decision in this matter after adverting to the

petitioner's objection and hearing the Panchayath

Officials in the light of the discussions as above.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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