

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.K. ABDUL REHIM

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 24694 of 2010 (J)

PETITIONER

ABRAHAM C.O.
MAMPILLIL HOUSE, MANGALAMKUNNU,
KARIYAMBADI, MEENANGADI, WAYANAD.

BY ADVS. SRI. AUGUSTINE JOSEPH
SRI. K.S. ROCKEY
SRI. TONY AUGUSTINE

RESPONDENTS:

1. THE ASST. EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, KALPETTA, WAYANAD.
2. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, KALPETTA, WAYANAD-673121.
3. THE DISTRICT COLLECTOR,
KALPETTA, WAYANAD-673121.
4. STATE OF KERALA,
REP. BY THE SECRETARY, PUBLIC WORKS DEPARTMENT
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. P.V. ELIAS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE REPRESENTATION DATED 01-01-2010 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT- P2- TRUE COPY OF THE REPRESENTATION DATED 01-01-2010 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT- P3- TRUE COPY OF THE COMPLAINT DATED 08-03-2010 SUBMITTED BY THE PETITIONER BEFORE THE CHIEF ENGINEER, PWD.
- EXT- P4- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 29-04-2010 BEFORE THE 3RD RESPONDENT.
- EXT- P5- TRUE COPY OF THE LETTER DATED 26-03-2010 FROM THE 4TH RESPONDENT.
- EXT- P6- TRUE COPY OF THE LETTER DATED 08-03-2010 FROM THE 2ND RESPONDENT.
- EXT- P7- TRUE COPY OF THE LETTER FROM THE PETITIONER DATED 05-04-2010
- EXT- P8- TRUE COPY OF THE LETTER DATED 30-03-2010 FROM THE 1ST RESPONDENT.
- EXT- P9- A ROUGH SKETCH PROPOSED TO SHOW THE ORIGINAL PROPOSAL TO CONSTRUCT THE DRAINAGE THROUGH THE SOUTHERN SIDE OF THE PWD ROAD.

RESPONDENTS' EXHIBITS

- EXT- R1 (a)- TRUE COPY OF THE M-BOOK.
- EXT- R1 (b)- TRUE COPY OF THE JUDGMENT IN TLSC 60/2010.
- EXT- R2 (a)- A SKETCH SHOWING THE LOCATION OF THE PETITIONER'S HOUSE, ROADWAY AND THE HIGH LAND ON THE OPPOSITE SIDE OF THE HOUSE.

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 24694 OF 2010-J

DATED THIS THE 25th DAY OF MARCH, 2015.

J U D G M E N T

The petitioner is residing on the northern side of Kaniyambetta-Meenangadi public road which is vested with the Public Works Department of the State Government. Grievance is that, due to re-construction of the road and raising of its level undertaken in the year 2005, there is acute water logging in the property of the petitioner, which is situated at lower terrain of about 1.5 Meters from the surface of the Road. Based on a representation submitted by the petitioner, the 1st respondent had arranged a work to construct a drainage through the side of the PWD Road. The work was tendered at an estimated cost of Rs.7,00,000/-. But the work in question was not executed. The petitioner alleges that, due to the heavy flooding during the monsoon in the year 2009, one of the protection walls of the petitioner's property had collapsed, which had resulted in causing heavy loss. The petitioner had submitted various

complaints before respondents 1 & 2 and before the hon'ble Chief Minister. Subsequently he made Ext.P4 representation before the 3rd respondent requesting to construct proper drainage in order to prevent heavy water flow into his property from the PWD Road. Responding to the representation submitted before hon'ble Chief Minister, the Government have forwarded a copy of a report (Ext.P6) obtained from the 2nd respondent to the petitioner. The 2nd respondent had reported that the property of the petitioner is situated at a depth of 1.5 meters from the Road surface and there is also a panchayat road situated nearby to his house having a steep descending gradient. It is observed that during rainy season water flowing from the panchayat road as well as from the PWD Road will be collected in the petitioner's property. However it was informed that an estimate is being prepared for constructing a leading drain in front of the house of the petitioner, in order to channel out the water logging. It was assured that such work will be arranged before commencement of the rainy season during

2010-2011. Since no action was pursued on the basis of such report, this writ petition is filed seeking relief by way of direction to the respondents to complete the work of drainage through the PWD Road in front of the petitioner's house, within a time frame. Inter alia, the petitioner seeks direction to the respondents to pay damages with respect to loss sustained due to collapse of the compound wall. Further relief sought for is to cut and remove trees standing in front of the property of the petitioner on the PWD Road.

2. The petitioner had produced Exts.P7 & P8 documents which would indicate that, during the year 2005, work was arranged for construction of a drain and the tender was finalised with an estimated cost of Rs.7,00,000/-. But the work was not executed. Despite that no action was initiated against the tenderer. It is also admitted in Ext.P8 reply given under the Right to Information Act that, various favourable reports were submitted before the higher authorities based on representations made by the petitioner.

3. In the counter affidavit filed on behalf of respondents 1 & 2 it is conceded that, favourable actions were initiated for constructing drainage at the site, after being found that execution of such a work is absolutely necessary. According to the respondents, at the time of tendering the work at the cost of Rs.7,00,000/-, "it was well informed to all concerned, that the work could start only on handing over the required land to the contractor". It is stated that despite earnest efforts made land could not be made available. Allegation regarding collapse of compound wall due to the water logging is denied and it is mentioned that the collapse of the wall was only due to defective construction without following requisite technical specifications. It is also stated that the trees which are sought to be cut and remove are not standing in any dangerous condition, as alleged by the petitioner. It is repeated in the counter affidavit that the work tendered could not be started for want of land, since nobody including the petitioner was willing to relinquish land for

the purpose. It is stated that the respondents have taken all possible steps to redress grievance of the petitioner and the petitioner was well informed about these facts. The petitioner had filed a reply affidavit refuting the contentions, stating that there existed 10 meter road margin between road and the property in question and it is not required to have any relinquishment of the land for construction of the drainage.

4. When the writ petition came up for consideration on 25-02-2015 this court passed an interim order directing the 2nd respondent to file personal affidavit explaining the present conditions and circumstances enumerating the steps adopted, specifically as to whether the work in question was cancelled and regarding utilization of the fund earmarked for the said work. Pursuant to the said order, the 2nd respondent had filed an affidavit dated 04-03-2015. In the affidavit the 2nd respondent had repeated the same version that, it was well informed to all concerned that the work could start only on handing over of the required land

to the contractor. But despite earnest efforts from the side of the PWD authorities, the land could not be made available for providing outlet to the drain. It is admitted that the proposal was to construct the drain through the southern side of the Road towards East, i.e., through the opposite side of the petitioner's property. It is clarified that after arranging the work, the owner of the adjacent property did not agreed to divert the flood water to his property. Hence it is contended that there was no negligence or latches on the part of the respondents.

5. While considering the issue based on the pleadings as mentioned above, this court is of the considered opinion that the authorities of the PWD, who was officiating at the relevant time when the tender was finalized, had acted in a most negligent and irresponsible manner. This court is at a loss to understand as to how an estimate for work for constructing a drainage can be prepared and approved without there being sufficient land available for execution of such work. It is revealed from the

affidavit filed by the 2nd respondent that the work arranged was intended to divert the flood water to another low laying property near to the road which belongs to another person. Naturally if the flood water collected in the property of the petitioner is intended to be diverted to another property, there will be stiff objection. Why the authorities of the PWD had taken action for tendering the work without realising these facts, remains highly suspicious. The averment that there occurred no negligence and laches on the part of the respondents cannot be swallowed without a pinch of salt. However, the present incumbent in the office of the 2nd respondent who is personally present before this court had submitted that those officials who were holding office during the relevant time were already been transferred.

6. Fact remains that the grievance of the petitioner continues without any redressal, since the lapse of many years. All reports are to the effect that the petitioner's property is being seriously affected injuriously in a prejudicial manner, because of the water logging which is

caused partially due to reconstruction of the PWD Road. In the affidavit filed by the 2nd respondent it is mentioned that there are 3 possible ways to ensure smooth flows of flood water during rainy season. They are; (i) allow the flow of water through the petitioner's own land through which a drainage can be constructed with covering slab or (ii) to allow the water to flow through the nearest pathway if the petitioner's neighbours agree for it and or (iii) to drain out the flood water to a culvert about 400 meter away which is very costly work due to the high level of land in between.

7. Counsel for the petitioner contended that the first two options suggested are not feasible and workable because there will be stiff objections from the neighbouring property owners and because of the fact that the pathway mentioned is widely used by the people in the locality. It is pointed out the third option is feasible. The 2nd respondent who is personally present before this court also conceded that the third option to create a drainage through the southern side of the road for about 400 meters towards east

to led the flood water to a culvert situated therein is possible. But, according to the 2nd respondent, this work will incur huge expenditure than the original work proposed, because deep cutting of Road margin in certain area which is situated in a higher level is required.

8. Considering the entire circumstances as enumerated above, this court is of the opinion that all the authorities have conceded about the restraintment and prejudices caused with respect to beneficial enjoyment of the property of the petitioner. It is also revealed that after being convinced about the grievance, the authorities have taken steps to construct a drainage, which could not be materialised, primarily due to negligent and irresponsible acts on the part of the respondents 1 & 2 themselves. Under such circumstances at construction of a drainage as suggested as option No.(iii) above has to be given preference and to be executed by the State Government through the PWD. This court is convinced that, on the facts it is a fit case to exercise discretionary jurisdiction vested

on this court under Article 226 to issue necessary directions.

9. Therefore the writ petition is disposed of by directing the 2nd respondent to immediately prepare an estimate for construction of a drainage as mentioned above and to get approval of the work from the authority of the State Government concerned, by including the project in the budget allocations for the current or the ensuing financial year. All earnest efforts should be taken to execute the work by approval of the project and by tendering the same, without any further delay. At any rate the work in question shall be tendered within a period of 6 months from the date of receipt of a copy of this judgment.

10. With respect to the relief for directing payment of damages based on collapse of the compound wall, this court is of the opinion that the issue could not be agitated in this writ petition. It is left open to the petitioner to seek appropriate remedy to the extent if any he is aggrieved, by resorting to common law. Further, this court is of the

opinion that no materials are produced to show that the trees in question are standing in any dangerous position and that cutting and removal of the trees is necessary at present. Therefore the relief in this regard is declined. However, if any further circumstances warrants such relief, the petitioner will at liberty to approach the authorities concerned.

Sd/-
C.K. ABDUL REHIM
JUDGE

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True copy

P.A. to Judge