

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 24899 of 2010 (J)

PETITIONER :

**DR.BEENA.J.S,KOTTARAPARAMBU VEEDU,
VALIKODE, NEDUMANGAD.P.O, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON
SRI.M.AJAY (IRUMPANAM)**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAUPURAM-01**
- 2. DISTRICT COLLECTOR, COLLECTORATE,
THIRUVANANTHAPURAM-01.**
- 3. THE SUB COLLECTOR, COLLECTORATE,
THIRUVANANTHAPURAM-01.**
- 4. THE VILLAGE OFFICER, VILLAGE OFFICE,
NEDUMANGAD-695 541.**
- 5. TAHSILDAR, TALUK OFFICE,
NEDUMANGAD-695 541.**
- 6. LEENA.N.K, ASHTAPADI, VALIKODE,
NEDUMANGAD.P.O, THIRUVANANTHAPURAM-695 541.**

**R1 TO R5 BY GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN
R6 BY ADV. SRI.J.JAYAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE LOCATION SKETCH OF THE PROPERTY OF THE PETITIONER AND THE 6TH RESPONDENT PREPARED BY THE VILLAGE OFFICER NEDUMANGAD**
- P2 COPY OF THE ORDER NO.B7-22253/09 DATED 12/05/2009 ISSUED BY THE 2ND RESPONDENT**
- P3 COPY OF THE RELEVANT PAGES OF THE PASSPORT IN THE NAME OF THE PETITIONER.**
- P4 COPY OF THE REPRESENTATION DATED 11/05/2010 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT**
- P5 COPY OF THE REPRESENTATION DATED 07/05/2010 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT**
- P6 COPY OF THE REPRESENTATION DATED 20/5/2010 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT**
- P7 COPY OF THE REPORT OF THE VILLAGE OFFICER DATED 23/04/2010 OBTAINED UNDER THE RI ACT**
- P8 COPY OF THE PHOTOGRAPHS SHOWING THE DAMAGE CAUSED TO THE BUILDING OF THE PETITIONER AS WELL AS THE LOCATION**

RESPONDENT'S EXHIBITS:

- R6(A) COPY OF THE APPLICATION SUBMITTED BY THE 6TH RESPONDENT BEFORE THE 2ND RESPONDENT**
- R6(B) COPY OF THE ORDER DATED 12/5/2009 OF THE 2ND RESPONDENT**
- R6(C) COPY OF THE LETTER DATED 5/4/2010 ISSUED BY THE VILLAGE OFFICER, NEDUMANGAD**
- R6(D) COPY OF THE NOTICE DATED 23/6/2010 ISSUED BY THE TALUK SURVEYOR, NEDUMANGAD**

/TRUE COPY/

P.A.TO JUDGE

K. VINOD CHANDRAN, J.

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W.P.(C) No.24899 of 2010 - J

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Dated this the 13th day of July, 2015

J U D G M E N T

The petitioner is aggrieved by the fact that the 6th respondent has not complied with Ext.P2 order. The specific objection raised is insofar as no restraining wall as stipulated in Ext.P2 having been constructed. The petitioner and the 6th respondent are adjacent property owners. The petitioner's contention is that Ext.P2 order speaks of a consent from the adjacent property owner, which she had not given. In any event, the petitioner submits that the 6th respondent has proceeded with Ext.P2 and excavated sand from her property which has threatened the stability of the petitioner's property. The petitioner contends that if restraining wall is not built in the 6th respondent's property, then her property and the residential building thereon would be put to jeopardy.

2. The entire contentions in the writ petition proceeds on the premise, that the petitioner's property and the 6th respondent's property are at the same level and the 6th respondent excavated sand from her property alone. However, this Court is not able to find on the material available that the petitioner's property and the 6th respondent's property was on the same level. True restraining wall was directed to be constructed as per Ext.P2, which obviously has not been constructed by the 6th respondent as is evident from the counter affidavit.

3. The counter affidavit however speaks about the petitioner's father having objected to the construction of the restraining wall. In paragraph 9 of the counter affidavit the 6th respondent admits that the sand was excavated from her portion of the property. However, it is stated that the petitioner had to leave three meters gap, on the objection raised by the father of the 6th respondent so that no damage would be caused to the petitioner's property. When a boundary wall was sought to be

constructed the respondent was requested to do so after conceding three meters of the property left at the time of removing sand from the 6th respondent's property, to the petitioner herein.

4. The factual disputes which arose herein cannot be adjudicated in a writ petition under Article 226 of the Constitution of India. The petitioner hence would have reserved the liberty to approach the appropriate forum for the relief prayed for, if the damage to her property still subsisting. The petitioner would also have the liberty to approach the District Collector, pointing out the condition in Ext.P3 and the District Collector would have to look into whether the refusal to construct the restraining wall causes any threat to the petitioners property.

The writ petition would stand disposed of.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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// true copy //
P.A to Judge.