

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 21934 of 2015 (N)

PETITIONER(S):

PARALATT KUNHAMMAD, AGED 61 YEARS,
S/O.KUNHABDULLA, RESIDING AT BADARIYA NIVAS,
ERAMALA AMSOM, ADHIYUR DESOM, KOZHIKODE DISTRICT.

BY ADVS.SRI.P.CHANDRASEKHAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SMT.UMA
SRI.K.NANDAKUMAR
SMT.V.A.HARITHA
SMT.P.M.MAZNA MANSOOR
SRI.P.VIVEK.

RESPONDENT(S):

1. ERAMALA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
ORAKKATTERI P.O.PIN - 673 501, KOZHIKODE DISTRICT.
2. THE SECRETARY,
ERAMALA GRAMA PANCHAYATH ORAKKATTERI P.O.,
PIN - 673 501, KOZHIKODE DISTRICT.
3. SATHEESAN, AGED 41 YEARS,
S/O.SATHYAN, MULLILANDI KUNIYIL, ERAMALA AMSOM,
ADHIYUR DESOM, VADAKARA, ORAKKATTERI P.O.,
PIN - 673 501, KOZHIKODE DISTRICT.
4. SANTHOSH KUMAR V.K., AGED 36 YEARS,
S/O.KUMARAN, VARALATUKUNIYIL HOUSE, ERAMALA AMSOM,
ADHIYUR DESOM, VADAKARA, ORAKKATTERI P.O.,
PIN - 673 501, KOZHIKODE DISTRICT.
5. BALAKRISHNAN, AGED 51 YEARS,
THUNDICHI KANDIYIL HOUSE, ERAMALA AMSOM,
ORAKKATTERI DESOM, VADAKARA P.O., PIN - 673 501,
KOZHIKODE DISTRICT.

R1&R2 BY ADVS. SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

R4 BY ADVS. SRI.P.N.SUKUMARAN
SRI.K.A.ANAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: A TRUE COPY OF THE FIR NO.580/2013 OF EDACHERY POLICE STATION.

**EXT.P-2: A TRUE COPY OF THE ORDER DATED 27.3.2015 IN I.A.NO.360/2015 IN
A.S.NO.34/2014 PASSED BY THE SUBORDINATE JUDGE, VADAKARA.**

**EXT.P-3: THE TRUE COPY OF THE LETTER DATED 6.5.2015 ISSUED BY THE
2ND RESPONDENT IN REPLY TO THE QUERY OF PETITIONER'S WIFE.**

**EXT.P-4: THE TRUE COPY OF THE PLAN SUBMITTED BY THE PETITIONER TO THE
2ND RESPONDENT.**

**EXT.P-5: THE TRUE COPY OF THE COMPLAINT DATED 4.5.2015 FILED BY THE
PETITIONER'S WIFE BEFORE THE JUDICIAL MAGISTRATE OF THE FIRST
CLASS VADAKARA.**

**EXT.P-6: A TRUE COPY OF LETTER NO.A4-3230/15 DATED 3.7.2015 OF THE
2ND RESPONDENT TO THE PETITIONER.**

**EXT.P-7: A TRUE COPY OF THE BUILDING PERMIT NO.A4.629/11 DATED 9.2.2011
BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.21934 of 2015

Dated this the 13th day of August, 2015.

J U D G M E N T

The petitioner is seeking an interim direction directing the 2nd respondent to consider and pass orders on building permit application of the petitioner.

2. The petitioner owns and possesses 36 cents of property in Eramala village, Vadakara Taluk. According to the petitioner, the respondents 3 to 5 demolished the compound wall of the petitioner's property to claim a non existent way through his property. Since the petitioner was abroad and his wife is managing the property, he filed a suit through his wife before Munsiff court, Vadakara. He alleges that the 4th respondent, who is a ward member of the 1st respondent panchayat, along with respondents 3 and 5 tried to create a way through petitioner's property and the police registered a crime to that effect. The Munsiff court decreed

the suit finding that the respondents 3 to 5 cannot claim any way through the petitioner's property. Respondents 3 to 5 have filed appeal against the said decree and the appeal is pending before Sub court, Vadakara. The petitioner filed an application in that appeal to permit him to construct the compound wall and the court permitted the petitioner to construct the same on condition that he would demolish the compound wall if the decision goes against him and if the court so directs. The Sub court also directed that the petitioner should get building permit and plan from the 2nd respondent if required. The petitioner alleges that even according to the 2nd respondent, no building permit is required if the property does not abut public road. The petitioner submitted an application for building permit since the 2nd respondent insisted for it. The petitioner alleges that, to help the respondents 3 to 5 for creating evidence to show that there was a way through petitioner's property, the 1st respondent is insisting that in the plan accompanying

application for building permit, the petitioner should show the alleged way claimed by the respondents 3 to 5. Aggrieved of this stand of the 2nd respondent, the petitioner has approached this Court with this writ petition.

3. I have heard the learned counsel for the petitioner. Though notice has been served on the respondents, only the 2nd and 5th respondents entered appearance.

4. The petitioner is now aggrieved by the insistence of the 2nd respondent to submit a fresh application to show the alleged way claimed by the respondents 3 to 5, which according to the petitioner, is totally without any jurisdiction. The petitioner points out that, building permit is required for construction of compound wall of property under Rule 87 of Kerala Panchayat Raj Building Rules, only if the compound wall abuts a public road, public property or public waterway. Now, the learned counsel for the petitioner points out that the respondent has no case that the petitioner's property abuts a public road. It was also

pointed out that the petitioner has approached Munsiff court, Vadakara, with O.S.No.137/13 against respondents 3 to 5 for a prohibitory injunction restraining them from trespassing into the suit property and not to commit any waste thereon and there was also a prayer for damages also. The suit was decreed in favour of the petitioner on 30.10.2014 against which the respondents 3 to 5 have filed A.S.No.34/2014 before the Sub court, Vadakara and the same is now pending consideration. It was pointed out that the Sub court, Vadakara, has permitted the petitioner to reconstruct compound wall subject to the final outcome of the appeal. Therefore, it appears that there is no legal impediment in permitting the petitioner to construct the compound wall subject to the decree to be passed in the appeal now pending before the Sub court, Vadakara.

In the result, this writ petition is allowed and Ext.P6 is quashed. The 2nd respondent is directed to consider and pass orders on the building permit application No.A4.3230/15

dated 5.6.2015, within a period of 3 weeks of receipt of copy of this judgment. However, it is hereby made clear that the construction, if any made, by the petitioner, shall be subject to the decree to be passed by the Sub court, Vadakara, in A.S.No.34/2014.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge