

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 22862 of 2014 (G)

PETITIONER(S):

BENOY ABRAHAM,
AGED 51 YEARS, S/O.M.K.ABRAHAM, MECHERIL HOUSE,
MATHIRAPALLY,
M.A.COLLEGE P.O., KOTHAMANGALAM.

BY ADV. DR.GEORGE ABRAHAM.

RESPONDENT(S):

1. THE VILLAGE OFFICER,
KOTHAMANGALAM - 686 691.
2. THE TALUK SURVEYOR,
TALUK OFFICE, KOTHAMANGALAM - 686 691.
3. THE TAHSILDAR
KOTHAMANGALAM - 686 691.
4. M.J.SIMON,
MANJALIYIL VEEDU, NEAR SUB STATION,
KOTHAMANGALAM P.O.,
KOTHAMANGALAM - 686 691.
5. THE DISTRICT SURVEY SUPERINTENDENT,
CIVIL STATION, KAKKANAD, KOCHI -682 030.
6. THE SECRETARY,
KOTHAMANGALAM MUNICIPALITY,
KOTHAMANGALAM P.O.KOTHAMANGALAM - 686 691.

R6 BY ADV. SRI.V.M.KURIAN
R4 BY ADV. SRI.SHAJI THOMAS
R4 BY ADV. SRI.N.NAGARESH
R4 BY ADV. SRI.BINU PAUL
R4 BY ADV. SRI.T.V.VINU
BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED SHAFI M.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P-1: TRUE COPY OF THE TITLE DEED OF THE PETITIONER'S PROPERTY IN SURVEY NO.1273/3B OF KOTHAMANGALAM VILLAGE.
- EXT.P-2: TRUE COPY OF PREVIOUS TITLE DEED OF THE PETITIONER'S PROPERTY DATED 30.8.2006 OF SRO, KOTHAMANGALAM.
- EXT.P-3: TRUE COPY OF THE TAX RECEIPT IN RESPECT OF THE PETITIONER'S PROPERTY.
- EXT.P-4: TRUE COPY OF COMPLAINT FILED BY THE 4TH RESPONDENT BEFORE THE 2ND RESPONDENT DATED 12.12.2006.
- EXT.P-5: TRUE COPY COMPLAINT FILED BY THE 4TH RESPONDENT BEFORE THE ASSISTANT EXECUTIVE ENGINEER, PWD, KOTHAMANGALAM.
- EXT.P-6: TRUE COPY OF JUDGEMENT DATED 21.12.2006 IN WPC NO.34425/2006.
- EXT.P-7: TRUE COPY OF COMMUNICATION DATED 18.1.2007 ISSUED BY THE ADDITIONAL THASILDAR, KOTHAMANGALAM.
- EXT.P-8: TRUE COPY OF LETTER ISSUED BY THE THASILDAR TO THE 2ND RESPONDENT ON 12.2.2007.
- EXT.P-9: TRUE COPY OF THE SKETCH PREPARED BY THE VILLAGE OFFICER.
- EXT.P-10: TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 23.2.2007.
- EXT.P-11: TRUE COPY OF THE ORDER OF THE HON.OMBUDSMAN IN OP NO.440/2010.
- EXT.P-12: PHOTOGRAPH SHOWING THE NATURE OF THE PROPERTY AS WELL AS THE COMPOUND WALL OF THE PETITIONER'S PROPERTY.
- EXT.P-13: TRUE COPY OF THE ORDER DATED 2.3.2013 PASSED BY THE 6TH RESPONDENT.
- EXT.P-14: TRUE COPY OF THE JUDGEMENT IN WPC 7692/13 DATED 19.3.2013.
- EXT.P-15: TRUE COPY OF THE SKETCH PREPARED BY THE TALUK SURVEYOR.

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EXT.P-16: TRUE COPY OF THE ORDER PASSED BY THE HON'BLE OMBUDSMAN
IN C.M.P 576/13, DATED 28.3.2014.

EXT.P-17: TRUE COPY OF THE COMPLAINT DATED 3.1.2013 FILED BY THE
PETITIONER BEFORE THE TAHSILDAR, KOTHAMANGALAM.

EXT.P-18: TRUE COPY OF THE REQUEST FILED BY THE PETITIONER UNDER
THE RIGHT TO INFORMATION ACT.

EXT.P-19: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER TO THE 6TH RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON J.

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Dated, this the 17th day of March, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers :

"(i) To issue a writ of certiorari or any other writ, order or direction to quash Exhibit P11, Exhibit P15 and Exhibit P16.

(ii) To declare that Exhibits P11 and P16 orders issued by the Hon'ble Ombudsman for Local Self Government Institutions, Thiruvanthapuram without hearing the petitioner, who was necessary part in the proceedings and hence the same are to be treated as null and void against the petitioner.

(iii) To issue a writ of mandamus or any other appropriate writ order or direction direction the respondents 3 and 5 to conduct proper survey with respect to the immovable property owned by the petitioner as per Exhibit P1 and further permit the petitioner to construct a residential building in the said property.

(iv) To grant such other and further reliefs to the petitioner as the Hon'ble Court may consider just and proper in the facts and circumstances of the case.

2. The learned counsel for the petitioner submits that the order passed by the Ombudsman is per se wrong and illegal in all respects and no notice whatsoever was issued to the petitioner before Ext. P11 and P16 orders were passed.

3. Heard the learned Government Pleader appearing for the respondents 1 to 3 and 5, the counsel appearing for the 4th respondent and the learned standing counsel appearing for the 6th respondent.

4. After hearing both the sides, this Court finds that in view of prayer No. 3, the matter could be disposed of, directing the respondents 3 and 5 to conduct proper survey of the property concerned and with notice to both the sides, subject to satisfaction of the legal requirements, at any rate, within three months from the date of receipt of a copy of this judgment. It is ordered accordingly. In view of the direction as above, this Court makes it clear that the orders stated as passed by the Ombudsman contrary to the rights and interests of the petitioner will have no relevance or significance, in so far as the present issue is concerned.

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: 3 :

The petitioner shall produce a copy of this judgment along with copy of the writ petition before the concerned respondent for further steps.

The Writ Petition is disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd