

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 26360 of 2011 (S)

PETITIONER(S):

- *1. SINDU MANOHARAN,W/O.MANOCHARAN,AGED 41,
MULANTHANATH HOUSE, PINDIMANA P.O.,
PIN- 686 698, KOTHAMANGALAM. (DELETED)
- *(1) **2. JOHN ABRAHAM, S/O.ABRAHAM,
POICKATTIL HOUSE, MALIPPARA P.O., PIN- 686 691,
KOTHAMANGALAM. (RENUMBERED)
- *(2) ***3. SUKUMARAN.M.R., MULAMTHANATH HOUSE,
CHELAD P.O., PIN- 686 681, KOTHAMANGALAM,
ERNAKULAM DISTRICT. (RENUMBERED)

*1ST PETITIONER IS DELETED

THE 1ST PETITIONER IN THE CAUSE TITLE IS DELETED AND THE 2ND AND
3RD PETITIONERS ARE RENUMBERED AS 1ST AND 2ND PETITIONERS
RESPECTIVELY VIDE ORDER DATED 29/5/13 IN I.A.NO.17190/11.

BY ADVS.SRI.VAKKOM N.VIJAYAN
SMT.V.RENJU
SRI.P.ANIYAN
SMT.M.A.RAMITHA

RESPONDENT(S):

1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT,
SECRETARIAT, TRIVANDRUM-695 039.
2. THE DIRECTOR OF PANCHAYATS,
TRIVANDRUM-695 034.
3. THE EXCISE COMMISSIONER, TRIVANDRUM-695 034.
4. THE DISTRICT COLLECTOR, ERNAKULAM, PIN- 682 030.

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- 5. THE SECRETARY, PINDIMANA GRAMA PANCHAYAT,
ERNAKULAM DISTRICT, PIN -686 698.**
- 6. THE VILLAGE OFFICER,
PINDIMANA VILLAGE, KOTHAMANGALAM TALUK,
ERNAKULAM, PIN- 686 698.**
- 7. SAJU MATHEW, VALIYAPARAMBIL HOUSE,
MALIPPARA P.O., PIN- 686 691, KOTHAMANGALAM.**
- 8. VARGHESE JOSEPH KUNNATH @ K.J.VARGHESE,
KUNNATH HOUSE, CHELAD P.O., KOTHAMANGALAM,
ERNAKULAM DISTRICT, PIN -686 681.**

***ADDL.R9 IMPEADED**

***Addl.R9. EXECUTIVE ENGINEER,
PERIYAR VALLEY IRRIGATION PROJECT,
DIVISION NO.1, IRINGOLE.P.O., PIN -683 542,
KOTHAMANGALAM.**

***ADDL.R9 IS IMPEADED AS PER ORDER DATED 18.11.2013 IN
IA.NO. 14710/2013.**

**R1 TO R4,R6 & ADDL.R9 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R5 BY ADV. SRI.E.D.GEORGE
R7 & R8 BY ADV. SRI.ALEXANDER JOSEPH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT-P1. THE TRUE COPY OF THE SALE DEED NO.3831/2007 OF KOTHAMANGALAM SRO.(WITH READABLE COPY)
- EXHIBIT-P1(A). THE ENGLISH TRANSLATION OF EXHIBIT-P1.
- EXHIBIT-P2. THE TRUE COPY OF THE SITE/SERVICE PLAN.
- EXHIBIT-P3. THE TRUE COPY OF THE SKETCH OBTAINED BY THE 2ND PETITIONER UNDER THE RIGHT TO INFORMATION ACT.
- EXHIBIT-P4. THE TRUE COPY OF REFERENCE NO.70/2011 DT. 5.2.2011.
- EXHIBIT-P4(A). THE ENGLISH TRANSLATION OF EXHIBIT-P4.
- EXHIBIT-P5. THE TRUE COPY OF LETTER DT. 19.4.2011.
- EXHIBIT-P5(A). THE ENGLISH TRANSLATION OF EXHIBIT-P5.
- EXHIBIT-P6. THE TRUE COPY OF THE CIRCULAR DT. 8.4.1996.
- EXHIBIT-P7. THE TRUE COPY OF THE JUDGMENT DT. 22.3.2000 IN OP NO.2347 OF 2000 D OF THIS HON'BLE COURT.
- EXHIBIT-P8. THE TRUE COPY OF THE ORDER DT. 27.3.2010.
- EXHIBIT-P8(A). THE ENGLISH TRANSLATION OF EXHIBIT-P8.
- EXHIBIT-P9. THE TRUE COPY OF THE REPRESENTATION DT. 15.6.2011 OF THE 3RD PETITIONER.
- EXHIBIT-P10. THE TRUE COPY OF THE REPRESENTATION DT. 18.7.2011 OF THE 2ND PETITIONER.
- EXHIBIT-P11. THE TRUE COPY OF THE PARTITION DEED NO.8502 OF 2004 OF KOTHAMANGALAM SRO.
- EXHIBIT-P11(A). THE ENGLISH TRANSLATION OF EXHIBIT-P11.
- EXHIBIT-P12. THE TRUE COPY OF THE DOCUMENT NO.471 OF 1963 OF KOTHAMANGALAM SRO.
- EXHIBIT-P12(A). THE ENGLISH TRANSLATION OF EXHIBIT-P12.
- EXHIBIT-P13 TRUE COPY OF THE ORDER DATED 20/7/2013 PASSED IN ORIGINAL PETITION NO.1654/2012 BY THE HON'BLE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXHIBIT-P14. TRUE COPY OF THE LETTER DATED 22/1/2014 OF TALUK SURVEYOR ALONG WITH SKETCH TO ADDL.THAHASILDAR, KOTHAMANGALAM (ENGLISH TRANSLATION OF EXT.P14)

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P15 COPY OF THE LETTER DATED 27/6/2013 OF VILLAGE OFFICER, PINDIMANA
(TRUE ENGLISH TRANSLATION OF EXT.P15)

P16 COPY OF THE LETTER DATED 30/10/2014 OF VILLAGE OFFICER, PINDIMANA
(TRUE ENGLISH TRANSLATION OF EXT.P16)

RESPONDENTS' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO.JUDGE

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ASHOK BHUSHAN, Ag.C.J.

&

A.M. SHAFFIQUE, J.

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Dated this the 30th day of January, 2015

JUDGMENT

A.M.Shaffique,J.

Petitioners have approached this Court with the following prayers:

- “i. To issue a writ of mandamus or other appropriate writ direction or order directing the 1st respondent to order a vigilance investigation with regard to the execution of Sale Deed No.3831 of 2007 of Kothamangalam SRO, the permission granted by the Pindimana Grama Panchayat to construct buildings as per Exhibit P2 in the puramboke land, the regularisation of unauthorised construction ordered by the 5th respondent as per Exhibit P8 and also the licence issued by the Excise department to conduct toddy shop in govt puramboke land etc and book the culprits and proceed against them in accordance with law.
- ii. To issue a writ of certiorari or other appropriate writ direction or order calling for the records leading to Exhibit P8 and quashing the same.
- iii. To issue a writ of mandamus or other appropriate writ direction or order directing the respondents 1 to 6 to consider and pass orders on Exhibits P9 & P10 representations pending before them and to take appropriate action to remove the unauthorised construction made by the 8th respondent in the govt puramboke land covered by Exhibnit P1 document and take possession of the land by govt.
- iv. To iissue a writ of mandamus or other appropriate writ

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direction or order directing the 3rd respondent to take steps to stop the functioning of Toddy Shop No 17 which is being conducted in the govt puramboke land.”

2. The allegation raised by the petitioners is that the 8th respondent has encroached into the Government land and also constructed building in violation of the building Rules. When the matter was complained of, no action has been taken by the local authorities and therefore, the writ petition is filed.

3. During the pendency of the writ petition, petitioners have produced Ext.P13, an order passed by the Ombudsman for Local Self Government Institutions in OP No.1654 of 2012. A perusal of the said order indicates that a similar complaint was filed against the 8th respondent by one C.P.Mathew, in which identical allegations have been raised. The Ombudsman after taking into consideration the respective contentions, directing the Secretary of the Panchayat to give notice to the parties to find out whether there is any construction

in Government land. Further directions were also issued to measure the property with the assistance of Taluk/Village records. Four months time was granted to complete the procedure.

4. Having regard to the fact that the subject matter in issue had already received the attention of the Ombudsman and appropriate directions had been issued, we do not think that a further enquiry into these aspects as complained of is required to be entertained in this public interest litigation.

5. The learned counsel for the petitioner submits that pursuant to the order passed by the Ombudsman, the Tahsildar has submitted a report as Ext.P14.

6. Learned counsel appearing for the 8th respondent submits that he has not encroached into any Government land. He has purchased the land from various persons, who had obtained Kudikidappu rights. There appears to be some mistake in Survey Numbers,

which has resulted in the controversy in the matter. According to the 8th respondent, he does not have any intention to hold on to any Government land, and if it is so found he is ready and willing to surrender the same. It is argued that apart from the 8th respondent, there are several other co-owners in respect of the property, who are not parties to the case.

7. It was also argued that the petitioners have approached this Court without disclosing true and correct facts. The respondents 2 and 3 had some enmity towards the 8th respondent and therefore, the public interest litigation should not be maintained.

8. Learned Government Pleader also submits that since appropriate action had been taken by the Ombudsman, in the light of Ext.P13 order, there is no necessity to issue any further direction in the matter.

9. Having regard to the aforesaid submission, it is clear that the issue involved in this public interest

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litigation had already received the attention of the Ombudsman and appropriate direction has been issued. In the light of the said fact, we do not think that there is any necessity to pass any order as prayed for. However, we make it clear that parties are at liberty to take appropriate steps in accordance with law.

With the above observation, the writ petition is dismissed.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

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