

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA**

**THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937**

**WP(C).No. 23704 of 2014 (K)**  
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**PETITIONER(S):**  
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- 1. VARGHESE STEPHEN AGED 31 YEARS  
S/O. LATE A.V.STEPHEN, ALAPPATTU HOUSE  
KAROTTU PERINGALI, MELUKAVU P.O., MELUKAVU  
KOTTAYAM DISTRICT-686 652.**
- 2. SUSHEELA AGED 51 YEARS  
W/O. GEORGE, ALAPPATTU HOUSE, KAROTTU PERINAGALI  
MELUKAVU P.O., MELUKAVU, KOTTAYAM DISTRICT-686 652.**

**BY ADV. SRI.K.RAVI (PARIYARATH)**

**RESPONDENT(S):**  
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- 1. THE STATE OF KERALA  
REP.BY THE CHIEF SECRETARY  
DEPARTMENT OF RURAL DEVELOPMENT  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE NODAL OFFICER  
THE KERALA STATE RURAL ROADS DEVELOPMENT AGENCY  
3RD FLOOR, CSI BUILDING, PULIMOODU JUNCTION  
THIRUVANANTHAPURAM-695 001.**
- 3. THE EXECUTIVE ENGINEER  
PROGRAMME IMPLEMENTATION UNIT  
PRADHAN MANTRI GRAM SADAK YOJANA (PMGSY)  
DISTRICT PANCHAYAT, KOTTAYAM-686 001.**
- 4. THE MELUKAVU GRAMA PANCHAYAT  
REP.BY ITS SECRETARY, MELUKAVU P.O.  
KOTTAYAM DISTRICT-686 652.**

**R4 BY ADV. SRI.S.SHAJI**

**R1-R3 BY ADV. V.K. RAFAEK, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- P1 : COPY OF ASSIGNMENT DEED NO.4273/95 DTD.27.12.95.
- P2 : COPY OF ASSIGNMENT DEED NO.412/13 OF SRO, ERATTUPETTA,  
DTD.8.3.2013.
- P3 : COPY OF THE REPRESENTATION SUBMITTED AT THE INSTANCE OF THE 1ST  
PETITIONER BEFORE THE 3RD RESPONDENT DTD.16.6.2014.
- P4 : COPY OF THE REPRESENTATION SUBMITTED BY THE INSTANCE OF THE 2ND  
PETITIONER BEFORE THE 3RD RESPONDENT DTD.16.6.2014.
- P5 : COPY OF THE RECEIPT ISSUED FROM THE OFFICE OF THE 4TH  
RESPONDENT TO THE 1ST PETITIONER DTD.16.6.2014.
- P6 : COPY OF THE RECEIPT ISSUED FROM THE OFFICE OF THE 4TH  
RESPONDENT TO THE 2ND PETITIONER DTD.16.6.2014.
- P7 : PHOTOGRAPH SHOWING THE LIE OF THE LAND OF THE 1ST PETITIONER'S  
PROPERTY DATED NIL.

**RESPONDENT(S)' EXHIBITS: N I L**  
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**//TRUE COPY//**

**P.A. TO JUDGE**

**JV**

**ANIL K. NARENDHAN, J.**

**W.P.(C) No.23704 of 2014**

**Dated this the 3<sup>rd</sup> day of September, 2015**

**JUDGMENT**

The 1<sup>st</sup> petitioner owns 25 cents of land in Survey No.1083/1B/2 of Melukavu Village, alongwith his mother and sister, covered by Ext.P1 assignment deed No.4273/95 dated 27.12.1995 of SRO Erattupetta. Similarly the 2<sup>nd</sup> petitioner owns 10 cents of land in Survey Nos.1083/1A and 1083 1B/2 of Melukavu Village covered by Ext.P2 assignment deed No.412/13 dated 08.03.2013 of SRO Erattupetta. Mechal-Peringali Road passes through the side of the petitioners' property.

2. According to the petitioners Mechal - Peringali Road got included in the Pradhan Manthri Gram Sadak Yojana (PNGSY), a Central Government Scheme for the purpose of better road connectivity in rural area. The grievance of the petitioners is that, even without obtaining any consent for the purpose of surrender of land for the implementation of the aforesaid scheme, respondents 3 and 4 are proposing to encroach upon their property in order to widen the road. In such

circumstances, the petitioners submitted Exts.P3 and P4 representation before the 3<sup>rd</sup> respondent. The petitioners have also made similar representations before the 4<sup>th</sup> respondent Grama Panchayat, which were acknowledged vide Exts.P5 and P6 receipts. It was thereafter the petitioners have approached this Court in this writ petition seeking a writ of mandamus commanding respondents 3 and 4 to consider Exts.P3 and P4 representations submitted by the petitioners within such time as this Court may deem fit and proper. They have also sought for an interim order directing respondents 3 and 4 not to proceed with widening of the Mechal - Kolani Thottam - Peringali Road, on the side of their property covered by Exts.P1 and P2, pending consideration of this Court.

3. On 16.09.2014, while admitting this writ petition, this Court passed an interim order to the effect that, no portion of the property owned by the petitioners shall be utilized for the widening of the road in question in the absence of any land acquisition proceedings initiated by the 1<sup>st</sup> respondent.

4. A counter affidavit has been filed on behalf of the 3<sup>rd</sup> respondent and paragraph 5 of the same reads thus:

"It is further submitted that in the PMGSY scheme it is the

sole responsibility of the Grama Panchayat to obtain necessary land for road construction from the land owners and hand over to Programme Implementation Unit Kottayam prior the commencement of the work. Moonilavu Grama Panchayat handed over the land to Programme Implementation Unit and Melukavu Grama Panchayat has not been handed over the site so far. The road construction in the Melukavu Grama Panchayat cannot be started unless they hand over the land to the Programme Implementation Unit. The matter was informed to the Melukavu Grama Panchayat vide letters. Under this circumstance Programme Implementation Unit will not take up the work in that Panchayat until and unless the site is handed over to Programme Implementation unit by the Melukavu Grama Panchayat. The Programme Implementation Unit has no intention to encroach into the private land."

5. The 4<sup>th</sup> respondent has also filed a counter affidavit and paragraphs 3, 4, 5 and 6 of the same read thus:

"3. It is submitted that the Melukavu - Kolanithottam - Peringali Road referred in the above writ petition is included in the asset register of the 4<sup>th</sup> respondent with 5 meter width in the year 1985. The said road begins from Melukavu-Poonchira road and ending at Kolanithottam, which is the boarder of both Melukavu and Moonilavu Grama Panchayaths. The above road is belongs to ward No.3 of the Melukavu Grama Panchayath and goes through Mechal area of Moonilavu Grama Panchayath.

(4) It is respectfully submitted that the construction of the said road is under the Pradamanthri Grameen Sadak Yojana (PMGSY) Scheme, which is done by the 3<sup>rd</sup> respondent, who is the implementing authority. The above road work is done under the supervision of the District Panchayath, Kottayam. The District Panchayath, Kottayam is not a party in the party array.

(5) It is further submitted that Melukavu Grama Panchayath had never interfered with the above road construction. The 4<sup>th</sup> respondent never encroached any property of the petitioners and they have not incurred any loss instead of increasing the market value of the landed property of the petitioners by constructing the above road under (PMGSY) Scheme.

(6) it is most humbly submitted that suppressing all the above said material facts the petitioners approached this Hon'ble Court by filing this Writ Petition."

6. A reading of the counter affidavits filed by respondents 3 and 4 would make it explicitly clear that the said respondents have no intention to encroach upon the petitioners' property covered by Exts.P1 and P2 for implementing the project in question. In such circumstances, since Exts.P3 and P4 representations are still pending consideration before the 3<sup>rd</sup> respondent, I deem it appropriate to dispose of this writ petition, without going into the merits of the rival contentions, by

directing the 3<sup>rd</sup> respondent to consider and pass appropriate orders on Exts.P3 and P4 representations submitted by the petitioners, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment, with notice to them. The interim order passed by this Court on 16.09.2014 shall continue to be in force till such time.

It is made clear that this judgment will not stand in the way of respondents 3 and 4 in implementing the project in question if the petitioners are agreeable for surrender of the land in question, in accordance with law.

JV

sd/-  
**ANIL K. NARENDRAN,**  
**JUDGE**