

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 24003 of 2014 (A)

PETITIONER:

**M.A.BHASHYAM, AGED 78 YEARS
S/O.M.K.AYYAPPAN, POORAM, NETAJI NAGAR
KADAVANTHRA DESOM, ELAMKULAM VILLAGE, COCHIN-682020.**

BY ADV. SRI.S.SHYAM

RESPONDENTS:

**CORPORATION OF KOCHI
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE
COCHIN-682016.**

**R1 BY ADV. SRI.V.E.ABDUL GAFOOR,SC,COCHIN CORPORATION
SRI.P.K.SOYUZ,SC,COCHIN CORPORATION**

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE ORDER DATED 22/3/12 IN C.C.NO.909 OF 2010 BY THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

EXHIBIT-P2: TRUE COPY OF THE ORDER DATED 25/7/13 IN C.C.NO.909 OF 2010 BY THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

EXHIBIT-P3: A TRUE COPY OF THE NOTICE DATED 13/6/2014 RECEIVED FROM THE ASSISTANT EXECUTIVE ENGINEER ATTACHED TO THE VYTTILA OFFICE OF THE CORPORATION.

EXHIBIT P4(a) : PHOTOGRAPH OF THE MAIN CANAL IN NETAJI NAGAR AREA

EXHIBIT P4(b) : PHOTOGRAPH OF THE MAIN CANAL IN NETAJI NAGAR AREA

EXHIBIT P4(c) : PHOTOGRAPH OF THE MAIN CANAL IN NETAJI NAGAR AREA

EXHIBIT P4(d) : PHOTOGRAPH OF THE MAIN CANAL IN NETAJI NAGAR AREA

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P.(C) No. 24003 of 2014

Dated this the 11th day of March, 2015

JUDGMENT

Briefly stated, the petitioner, a resident of ward No.54 of the respondent-Corporation, initially approached the Hon'ble Ombudsman for Local Self Government Institutions by filing C.C. No.909 of 2010. The grievance of the petitioner was that, the respondent-Corporation had not been cleaning the drainage canal passing nearby.

2. The Hon'ble Ombudsman through Ext.P1 order directed the respondent-Corporation to ensure that the problem faced by the inhabitants of the locality was solved.

3. Complaining of non-compliance with Ext.P1 order by the respondent-Corporation, the petitioner filed the present writ petition.

4. The respondent-Corporation in turn joined the issue by filing a statement, wherein it is averred that in compliance with Ext.P1 order, the respondent-Corporation has raised the height of the culvert and has also been cleaning the canal from time to time.

5. According to the learned counsel for the respondent-Corporation,

presently there is no water logging in the canal causing any inconvenience to the petitioner or any other resident of the locality. The learned counsel for the petitioner has, however, strenuously contested the said statement of the learned Standing Counsel for the respondent-Corporation.

5. In the totality of the circumstances, in a summary proceeding, which the writ petition is under Article 226 of the Constitution, this Court cannot undertake any roving enquiry as it were a fact finding commission. There is a positive averment on the part of the respondent-Corporation – and I believe the said averment is made with a sense of responsibility – that the situation has been remedied, and that there is no water logging. Any contradiction thereto is a disputed question of fact requiring evidence, oral and documentary, to be resolved.

6. In the facts and circumstances, this Court is inclined to close the writ petition based on the statement filed by the respondent-Corporation, leaving it open for the writ petitioner to take recourse to any appropriate judicial forum, such as a civil court, which can go into the disputed questions of fact and resolve the issue, if the petitioner's still of the opinion that despite raising the height of the culvert and its periodic maintenance, the problem has still been in subsisting.

With the above observation, the writ petition stands disposed of.

Sd/-
DAMA SESHADRI NAIDU,
JUDGE

//true copy//

P.A to Judge

smv