

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 27259 of 2013 (F)

PETITIONER(S)/PETITIONER:

K.AJITH,
AJITH VIHAR, KANIKKAPETTI, MUNDELA P.O.
ARUVIKKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENT(S)/RESPONDENTS:

1. THE ARUVIKKARA GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, ARUVIKKARA P.O.
THIRUVANANTHAPURAM - 695 564.
2. DEPUTY DIRECTOR OF PANCHAYATH,
CIVIL STATION, KUDAPPANAKUNNU,
THIRUVANANTHAPURAM - 695 005.
3. THE TAHASILDAR,
TALUK OFFICE, NEDUMANGAD,
THIRUVANANTHAPURAM - 695 541.
4. NISHA,
PUNNAVILA PUTHEN VEEDU, MUNDELA, ARUVIKKARA,
THIRUVANANTHAPURAM - 695 564.

R1 BY ADV. SRI.LATHEESH SEBASTIAN
R2, R3 BY SMT.LILLY LESLIE, GOVERNMENT PLEADER

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

DG

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1. A TRUE PHOTOCOPY OF THE REPRESENTED SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXHIBIT P2. A TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT.**
- EXHIBIT P3. A TRUE PHOTOCOPY OF THE ORDER PASSED BY THE OMBUDSMAN IN O.P.NO.869/2012 ON 30.07.2012.**
- EXHIBIT P4. THE TRUE PHOTOCOPY OF THE REPORT ALONG WITH A SKETCH SUBMITTED BY THE ADDITIONAL TAHASILDAR, NEDUMANGAD.**
- EXHIBIT P5. THE TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE ADDITIONAL TAHASILDAR, NEDUMANGADU BEFORE THE OMBUDSMAN ON 02.02.2013.**
- EXHIBIT P6. A TRUE PHOTOCOPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE CHIEF MINISTER'S SUTHARIA KERALAM PROGRAM.**
- EXHIBIT P7. A TRUE PHOTOCOPY OF THE REPRESENTATION DATED 07.02.2013 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXHIBIT P8. A TRUE PHOTOCOPY OF THE REPRESENTATION DATED 10.04.2013 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- EXHIBIT P9. A TRUE PHOTOCOPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS

- EXT.R1(a): COPY OF THE REPORT OF THE VILLAGE OFFICER, ARUVIKKARA VILLAGE TO THE DISTRICT COLLECTOR.**
- EXT.R1(b): COPY OF THE LETTER OF THE DISTRICT COLLECTOR DATED 29.8.2013.**

//TRUE COPY//

PA TO JUDGE

ANU SIVARAMAN, J.

W.P.(C).No.27259 of 2013

Dated this the 9th day of September, 2015

J U D G M E N T

This writ petition is filed seeking the following prayers:

“I. Issue a writ of Mandamus or any other appropriate writ or order or direction directing the 1st respondent to comply with the orders of Ombudsman and take immediate action to remove the unauthorized and illegal constructions made by the 4th respondent by encroaching the Panchayath road/pathway with immediate effect.

II. Issue a writ of Mandamus or any other appropriate writ or order or direction directing the 2nd respondent to take further action against the secretary of the 1st respondent for not complying the orders and submit a report to that effect before this Court.

III. Issue such other writ or order or direction as this Honourable Court may be fit in the circumstances of the case.”

2. The allegation of the petitioner is that the 4th respondent has constructed a boundary wall encroaching into the Panchayath road, thereby reducing the width and obstructing

the road. It is stated that even though Exhibit P3 order was issued by the Ombudsman for the Local Self Government Institutions and Exhibits P4 and P5 reports were filed by the Revenue authorities, no action was taken to demolish the encroached portion of the compound wall in full.

3. The 1st respondent, Panchayath has filed a counter affidavit stating that though there was illegal construction of the compound wall by encroaching the road puramboku by the 4th respondent, the same was inspected and the with the assistance of the Revenue and Taluk Survey authorities, the encroachments were removed. It is contended that thereafter the Village Officer submitted a report to the District Collector on 24.07.2013 stating that no encroachment or unauthorized obstruction of the pathway or the road is in existence. It is stated that by Exhibit R1(b) communication dated 29.08.2013, the District Collector informed the 4th respondent that there is no further encroachment on Government land or obstruction of the pathway.

4. However, the 2nd respondent filed a counter affidavit before this Court dated 30.06.2014 stating as follows:

“It is hereby submitted that on the basis of

Ext.P6 complaint and Ext.P8 representation submitted by the petitioner, a site inspection was conducted by the Office of the 2nd respondent and found that the construction over the encroached area was demolished to the length of 1.30 meters. But, as per Ext.P4 report prepared by the Additional Tahsildar, Nedumangad, the length of the compound wall in the encroached area is about 2.50 meters. Thereafter, Ext.P9 communication was issued to the 1st respondent directing to implement the directions of the Ombudsman for Local Self Government Institution. Another site inspection was conducted by the Office of the 2nd respondent on 19.05.2014 and it was found that the 1.2 meters of boundary wall constructed in the encroached portion has to be removed.”

5. In the above circumstances, the contention of the Panchayath that the encroachment has been fully removed and that there is no further encroachment on the Puramboku property does not appears to be correct. It is pertinent to note that the 4th respondent though served with notice from this Court, has not chosen to appear and place her contentions on record. It is also seen stated that she had filed a civil suit before

the competent Civil Court for injunction, restraining the petitioner from demolishing her compound wall. Since it is now the case of the 2nd respondent that on the basis of the reports submitted by the Revenue authorities, there is still an encroachment into the road puramboku to an extent of nearly 1.20 meters, it is for the respondents 1 to 3 to take appropriate action for removal of such encroachment or obstruction as the case may be.

The writ petition is, therefore, disposed of, directing respondents 1 to 3 to conduct further inspection on the basis of the counter affidavit filed on behalf of the 2nd respondent in this writ petition, the relevant portion of which is extracted above, and to remove the encroachments into the road puramboku at the instance of the 4th respondent, if any found. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

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