

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 27611 of 2011 (B)

PETITIONER(S):

**MADHAVAN, VIJAYA BHAVAN,
NEAR SALVATION ARMY CHURCH, EDATHARA MURI
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.M.R.RAJESH
SRI.K.M.ALEXANDER**

RESPONDENT(S):

**1. REVENUE DIVISIONAL OFFICER,
THIRUVANANTHAPURAM - 695 001.**

**2. THE ADDL. TAHSILDAR,
THIRUVANANTHAPURAM TALUK - 695 001.**

**3. THE VILLAGE OFFICER,
ANDOORKONAM VILLAGE, THIRUVANANTHAPURAM DISTRICT 695 026.**

*** ADDL.R4 IMPEADED**

**ADDL.R4 NIRMALA, W/O SASIDHARAN
 NISHA BHAVAN, POTHENCODE**

[* ADDL.R4 IS IMPEADED AS PER ORDER DTD.21.11.2011 IN IA 18418/2011]

**ADDL.R4 BY ADV. SRI.G.SUDHEER
R1-R3 BY ADV. SOJAN JAMES, SENIOR GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE SALE DEED NO.1575/1983 DATED 20.07.1983 OF SRO
POTHENCODE
- P2 : COPY OF THE TAX RECEIPT NO.1365113 DTD.24.12.2002
- P2(A) : COPY OF THE TAX RECEIPT NO.0270280 DTD.19.07.2003
- P2(B) : COPY OF THE TAX RECEIPT NO.1490935 DTD.05.10.2004
- P2(C) : COPY OF THE TAX RECEIPT NO.2705000 DTD.20.06.2005
- P3 : COPY OF A POSSESSION CERTIFICATE NO.1113/04 DATED 05.10.04
- P4 : COPY OF THE ORDER DATED 30.09.2009 IN IA NO.2128/2009 IN
O.S.NO.366/2009 IN MUNSIF COURT, ATTINGAL
- P5 : COPY OF THE STATEMENT FILED BY THE PETITIONER
- P6 : COPY OF THE ORDER NO.C3-6043/2008 DATED 29.01.2010
- P7 : COPY OF THE MEMORANDUM OF THE APPEAL DATED 18.02.2010
- P8 : COPY OF THE ORDER NO.D.4250/10/D.DIS DATED 20.09.2011

RESPONDENTS' EXHIBITS:

- ANNEXURE-A: COPY OF NOTICE DATED 16.08.2011 ISSUED BY THE REVENUE
DIVISIONAL OFFICER, KUADAPPANAKUNNU

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.27611 of 2011

Dated this the 9th day of June, 2015

JUDGMENT

The petitioner, who is the owner of 10 cents of land in Survey No.2581/67 of Andoorkonam Village vide Ext.P1 sale deed bearing No.1575/1983 of SRO Pothencode, has approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P6 order dated 29.01.2010 of the 2nd respondent and also Ext.P8 order dated 20.09.2011 of the 1st respondent.

2. It appears that proceedings under the Kerala Land Conservancy Act, 1957 was initiated against the petitioner alleging that he has encroached into a public way comprised in Re-Survey No.183/12 of Andoorkonam Village, which resulted in Ext.P6 order being passed by the 2nd respondent, which was confirmed in Ext.P8 order passed by the 1st respondent. The 1st respondent passed Ext.P8 order on Ext.P7 appeal filed by the petitioner under Section 16 of the Kerala Land Conservancy Act. A reading of Ext.P8 order would show that it is only a cryptic order passed by the 1st respondent, without any reasons whatsoever for confirming the decision taken by the 2nd respondent in Ext.P7.

3. The 1st respondent has filed a counter affidavit contending, inter alia, that the petitioner was proceeded against for encroaching Government land and that the 1st and 2nd respondents have acted only in accordance with the provisions under the Kerala Land Conservancy Act.

4. The additional 4th respondent has also filed a counter affidavit supporting the stand taken by the 1st and 2nd respondents. A reading of the counter affidavit would show that it was upon a petition moved by the additional 4th respondent, proceedings were initiated against the petitioner under the provisions of the Kerala Land Conservancy Act. Relying on the documents produced alongwith the counter affidavit, the additional 4th respondent would contend that the petitioner is not in possession of any property near Re-survey No.183/7 of Andoorkonam Village and that the land in Re-survey No.183/7 is a public pathway. The additional 4th respondent would contend further that, the petitioner has encroached some portions of the aforesaid public pathway and constructed compound wall and put up a gate blocking the pathway.

5. I heard the arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for

respondents 1 to 3 and also the learned counsel appearing for the 4th respondent.

6. By Ext.P8 order, the 1st respondent has disposed of an appeal filed by the petitioner under Section 16 of the Kerala Land Conservancy Act. Ext.P8 order reads thus:

"Heard the appellant and perused records. As per the report Number C3-6043/08 dtd 13.04.2010 of Additional Tahsildar Thiruvananthapuram the appellant has encroached 0.06 m2 government puramboke comprised in Re Survey Number 183/7. Thus the stay order dtd 09.03.10 has been vacated. The order Number C3-6043/08 dtd 29.01.10 of Additional Tahsildar has been upheld, and Additional Tahsildar is directed to evict the said encroachment."

7. As per Section 16 of the Act, the 1st respondent is the appellate authority, who has to decide an appeal filed against an original order passed by the 2nd respondent. The 1st respondent, being the appellate authority, has to exercise such power under the Act in a fair and reasonable manner, after affording a reasonable opportunity of being heard to both sides and after adverting to the various contentions raised by the parties. A cryptic order or decision without due reflection on the issues raised may render such decision unsustainable.

8. A reading of Ext.P8 would show that merely relying on a report filed by the 2nd respondent, who is none other than the original authority, the 1st respondent dismissed Ext.P7 appeal by Ext.P8 order, thereby confirming Ext.P6 order passed by the original authority. The manner in which Ext.P7 appeal is disposed of by the 1st respondent is per se arbitrary and patently illegal and it is also in clear violation of the principles of natural justice.

9. In such circumstances, without going to the merits of the rival contentions raised by the parties, this writ petition is disposed of setting aside Ext.P8 order passed by the 1st respondent, thereby directing the 1st respondent to consider Ext.P7 appeal afresh, with notice to the petitioner and also to the additional 4th respondent, and pass a reasoned order, meeting all the contentions raised by the parties, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a certified copy of this judgment.

All the contentions raised by the parties are left open.

sd/-
ANIL K. NARENDRA,
JUDGE