

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 25202 of 2014 (S)

PETITIONER(S) :-

CHESHIRE TARZAN, AGED 44 YEARS,
S/O. TARZAN, RESIDING AT KADAVIL HOUSE, MUTTATHU LANE
KADAVANTHRA P.O., KOCHI - 682 020, KERALA.

BY ADV. SRI.SAJI VARGHESE KAKKATTUMATTATHIL

RESPONDENT(S) :-

1. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM - 695 024.
2. THE MINISTRY OF ROAD TRANSPORT AND HIGHWAY
REPRESENTED BY ITS SECRETARY, NEW DELHI - 110 001.
3. THE REGIONAL OFFICER,
MINISTRY OF ROAD TRANSPORT AND HIGHWAY
PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM - 695 033.
4. THE EXECUTIVE ENGINEER,
NATIONAL HIGHWAY DIVISION, KODUNGALLUR.
5. THE CORPORATION OF COCHIN,
ERNAKULAM, COCHIN - 682 031
REPRESENTED BY ITS SECRETARY.
6. M/S. BERGGRUEN HOTEL PRIVATE LIMITED,
CENTRAL PLAZA, 6TH FLOOR, CST ROAD
KALINA, SANTA CRUG (E), MUMBAI - 400 098
REPRESENTED BY ITS MANAGING DIRECTOR.
7. KEYS HOTEL
THEVARA DESOM, ELAMKULAM VILLAGE, KANAYANNOOR TALUK
THEVARA P.O., PIN - 682 013
REPRESENTED BY ITS MANAGER MR. SOORAJ.

R2-R3 BY ADV. SRI.N.NAGARESH, ASG
R5 BY ADV. SRI.BABU KARUKAPADATH, SC, COCHIN CORPORATION
R6-R7 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURIAN THOMAS
BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R5 BY SRI.P.K.SOYUZ, SC, COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXHIBIT-P1-TRUE COPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER TO THE TAHSILDAR, KANAYANNUR TALUK WITH ENGLISH TRANSLATION.

EXHIBIT-P2-TRUE COPY OF THE LETTER ISSUED BY THE VILLAGE OFFICER TO THE 5TH RESPONDENT WITH ENGLISH TRANSLATION.

EXHIBIT-P3-TRUE COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER, ELAMKULAM DATED 25/07/2007 EVIDENCING THE LIE AND NATURE OF THE PROPERTY OF THE 6TH RESPONDENT.

EXHIBIT-P4-TRUE COPY OF THE LICENCE AGREEMENT DATED 19/08/2008 PURPORTED TO BE EXECUTED BY THE PRESIDENT OF INDIA WITH 6TH RESPONDENT.

EXHIBIT-P5-TRUE COPY OF THE READABLE COPY OF EXHIBIT-P4.

EXHIBIT-P6-TRUE COPY OF THE APPLICATION DATED 11/06/2014 UNDER RTI ACT.

EXHIBIT-P7-TRUE COPY OF THE LETTER DATED 12/08/2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P8-TRUE COPY OF THE REPLY DATED 25/08/2014 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT-P9-TRUE COPY OF THE G.O NO. 1161/8/PWD DATED 25-7-2008.

EXHIBIT-P10-TRUE COPY OF THE LETTER DATED 05/09/2014 ISSUED BY THE 3RD RESPONDENT IN FAVOUR OF THE PETITIONER.

EXHIBIT-P11-TRUE COPY OF THE GUIDELINE ISSUED BY THE 2ND RESPONDENT DATED 23.7.2003.

EXHIBIT-P12-TRUE COPY OF THE REPRESENTATION GIVEN TO THE HONOURABLE GOVERNOR OF KERALA DATED 16/09/2014.

EXHIBIT-P13-TRUE COPY OF THE REPRESENTATION FORWARDED TO HIS EXCELLENCY THE PRESIDENT OF INDIA.

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

Ashok Bhushan, C.J. & P.R.Ramachandra Menon, J.

W.P.(C) No. 25202 OF 2014

Dated this the 16th day of September, 2015

JUDGMENT

Ramachandra Menon, J

This Writ Petition, styled as a 'Public Interest Litigation', (though it is stated in the pleadings that the petitioner is also personally interested), has been filed seeking for the following reliefs:

"I. Call for the records relating to Exhibit P1 to P13 from the respondents 1 to 7.

II. Quash Exhibit P4 licence agreement and Exhibit P9 Government Order by issuing a writ of Certiorari or other appropriate writ direction or order.

III. Issue a writ of mandamus or other appropriate writ direction or order commanding the 5th respondent not to number the building constructed by the 6th respondent in name of 7th respondent.

IV. Issue a writ of mandamus or other appropriate writ direction or order commanding the respondents 2 to 4 to take appropriate action to demolish the construction made in the property of National Highway at Thevara and also to evict the 6th and 7th respondent from the acquired land comprised in survey No.1008/8 of Elamkulam Village.

V. Appoint an independent investigating agency having no control by the Government of Kerala to conduct an

investigation in the matter and to find out the conspiracy in issuing Exhibit P4 licence executed in the name of His Excellency the President of India and direct to take appropriate action against the culprits.

VI. Such other reliefs which in the circumstances in the case which this Hon'ble Court deems fit and proper."

2. Heard learned counsel appearing for the petitioner, learned counsel appearing for the party respondents and the learned Government Pleader as well.

3. Going by the pleadings and prayers, the case projected by the petitioner is that the party respondents herein, who proposed to set up a hotel in the concerned property, were actually having no direct road access to the National Highway 47A (wrongly described as NH 47) on the southern side and the access was through some other means. However, in the meanwhile, they were making steps to have direct entry to the National Highway and an agreement was stated as executed between them and the Governmental authorities as borne by Ext.P4. This, according to the petitioner, was a fabricated one; having no authority of law and without concurrence of the competent authority. It is stated that the property concerned

lying on the southern side of the property belonging to the party respondents was in fact acquired by the Government for the purpose of widening the National Highway and if any private access was to be provided through the said property, consent was to be given by the competent authority who is none other than the 2nd respondent and nobody else. Actually, it is without any sanction that the private access was sought to be established. The writ petition was filed in the said circumstance, alleging encroachment into the public property, seeking for interference by this court.

4. In the meantime, the petitioner filed I.A. No.13482 of 2014 seeking to implead the National Highway Authority of India and the Union of India in the party array. In response to the said I.A., a statement dated 14.10.2014 has been filed by the National Highway Authority of India, pointing out that the said authority will get the power, only if the matter is entrusted to them by the Ministry of Road Transport & Highway under Section 11 of the National Highway Authority of India Act, 1988. In the instant case, such situation has not taken place. The authority

concerned is the Central Government, which however is being managed by the State Government, through the Executive Engineer of National Highway Division. In the said circumstances as per order dated 08.10.2014, the I.A. was dismissed by this Court declining to implead the concerned parties in the party array.

5. It is brought to the notice of this Court that Ext.P4 agreement has been duly authorised and executed by the parties concerned, as discernible from the relevant records produced before this Court. It is also pointed out that the matter was considered by the State Government, who issued Ext.P9 Government Order bearing No. G.O.(Rt) No.1161/08/PWD dated 25.07.2008, granting the relief sought for, providing private access through the acquired property; subject to the specific conditions stipulated therein.

6. Learned counsel appearing for the party respondents submits that they have fully complied with the conditions and are ready and willing to give effect to the same in the right spirit and perspective. More so, when the order is very

specific to the effect that "the National Highway has recommended to sanction the formation of a temporary access through the National Highway land, which can be treated as a service road of National Highway, after realising the required fee from the applicant". Learned counsel for the petitioner points out that as per Ext.P1 proceedings of the Village Officer, some encroachments were reported, but no action was taken by the competent authority.

7. Party respondents have filed a counter affidavit, wherein it is stated that, in the course of further proceedings, the property was necessitated to be measured out with the help of the Tahsildar, whereupon it was noted that no encroachment was there. It is also stated that the dispute has already been compromised between the parties. Learned counsel for the petitioner submits that, if there is any encroachment there cannot be any compromise and eviction has to follow.

8. Learned Government Pleader submits that the version of the party respondents with regard to the measurement of the property effected through the Tahsildar is correct and if at

all any of the conditions are violated by the party respondents (based on which sanction was given), appropriate action will be taken to withdraw the benefit already extended. It is also pointed out that if any existing encroachment is there or if any further attempt is made to encroach into the public property which has been acquired for widening of National Highway, remedial measures will be taken and the property belonging to the State will be protected.

In the above circumstances, this Court does not find it necessary to pass further orders in this petition. Hence the Writ Petition is closed, leaving it open to the concerned respondents to take appropriate action, if at all any violation or encroachments were there beyond the terms and conditions of the agreement.

**Ashok Bhushan,
Chief Justice.**

**P.R.Ramachandra Menon,
Judge.**