

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937**

**WP(C).No. 29319 of 2008 (M)**  
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**PETITIONER:**  
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**M/S.HINDUSTAN UNILEVER LTD., A COMPANY  
INCORPORATED UNDER THE COMPANIES ACT, 1956,  
ARYAD SOUTH VILLAGE,  
AMBALAPUZHA TALUK, ALLEPPEY-688521  
REP. BY ITS LEGAL EXECUTIVE JIKKU GEORGE JACOB.**

**BY ADVS.SRI.JOSEPH KODIANTHARA  
SRI.MATHEWS K.UTHUPPACHAN**

**RESPONDENT(S):**  
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**1. STATE OF KERALA, REP. BY THE CHIEF  
SECRETARY TO GOVT., SECRETARIAT, TRIVANDRUM.**

**2. ARYAD GRAMA PANCHAYAT  
PATHIRAPALLY PO., ALLEPPEY,  
PIN-688 521, AMBALAPUZHA TALUK,  
REP. BY ITS SECRETARY.**

**R,R2 BY ADV. SRI.E.JAYADEV  
R BY GOVERNMENT PLEADER SRI. P. M. SANEN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**AK**

**WP(C).No. 29319 of 2008 (M)**  
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**APPENDIX**  
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**PETITIONER(S)' EXHIBITS:**  
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**EXHIBIT P1: TRUE COPY OF THE SALE DEED DATED 20-11-1923 BETWEEN THE  
TATA OIL MILLS CO. LTD. AND TOMCO.**

**EXHIBIT P2: TRUE COPY OF THE ORDER DATED 18-05-1994 PASSED BY THE  
HONOURABLE HIGH COURT OF MUMBAI IN C.P. NO. 333/1993.**

**EXHIBIT P3: TRUE COPY OF THE TAX RECEIPT DATED 25-01-1996 ISSUED BY THE  
VILLAGE OFFICE, KOMALAPURAM.**

**EXHIBIT P4 (a):TRUE COPY OF THE BASIC TAX RECEIPT DATED 20-10-2004  
ISSUED BY THE VILLAGE OFFICE, KOMALAPURAM.**

**EXHIBIT P4 (b):TRUE COPY OF THE BASIC TAX RECEIPT DATED 05-04-2005 ISSUED  
BY THE VILLAGE OFFICE, KOMALAPURAM.**

**EXHIBIT P4 (c):TRUE COPY OF THE BASIC TAX RECEIPT DATED 07-08-2007 ISSUED  
BY THE VILLAGE OFFICE, KOMALAPURAM.**

**EXHIBIT P5: TRUE COPY OF LETTER DATED 25-9-2008 SERVED BY THE  
PETITIONER'S CARE TAKER ON 27-9-2008 FROM 2ND RESPONDENT.**

**EXHIBIT P6: TRUE COPY OF PLAN ISSUED ON 27-09-2008 FROM KOMALAPURAM  
VILLAGE.**

**EXHIBIT P7: TRUE COPY OF REPRESENTATION DATED 30-09-2008 ISSUED BY THE  
PETITIONER TO THE 2ND RESPONDENT.**

**RESPONDENT(S)' EXHIBITS: NIL**  
.....

**/TRUE COPY/**

**P.A. TO JUDGE**

**AK**

**SHAJI P. CHALY, J.**

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**W.P.C. No. 29319 of 2008**

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Dated this the 9<sup>th</sup> day of November, 2015.

**JUDGMENT**

This writ petition is filed seeking to declare that all actions taken by the 2<sup>nd</sup> respondent Panchayath pursuant to Ext. P5 communication and the decisions referred to therein are illegal, without authority of law and without jurisdiction. It is also prayed to quash Ext. P5.

2. Brief facts for the disposal of the writ petition are as follows:

The petitioner company owns land having an extent of 7 acres and 93 cents at Aryad South Village, Ambalapuzha Taluk, Alappuzha District under Thandaper No. 5518 and comprised in Survey Nos. 515/A, 796/16A, 796/16C, 796/14A, 180/1B, 181/1A, 180/2B, 181/2, 180/2A/1, 180/2A/2 and 180/1A at presently situated in Re-survey No. 305/7.

3. It is contended by the petitioner that, the 2<sup>nd</sup> respondent Panchayath has attempted to interfere with the possession of the land by the petitioner and the action initiated is

without jurisdiction contrary to the established facts and it is designed to harass the petitioner. It is also contended that, the petitioner is a successor in interest of M/s. Tata Oil Mills Company Limited which was the owner of the aforesaid extent of property. Pursuant to the amalgamation, mutation was effected in the name of the petitioner and the mutation entries were made in the Thandaper register and view number 5518 is assigned by the Village Office at Komalapuram and the petitioner is remitting basic tax in accordance with the said Thandaper evidenced by Exts. P3 and P4 (a) to (c).

4. It is further contended by the petitioner that, all of a sudden the care taker was served with Ext. P5 letter dated 25-9-2008, on 27-9-2008, by which it is stated that the Kuttikkad-Puthanparambu Madayanthode is in a covered state and a decision has been taken by the Panchayath to include this under the National Job Guarantee Scheme to ensure the smooth flow of water to Madayanthode by cutting a channel to remove water logging. It is the contention of the petitioner that, it was never informed that the channel is proposed to be cut through the property of the petitioner. Thereafter, all of a sudden the people engaged by the 2<sup>nd</sup> respondent trespassed into the petitioner's property on 27-9-2008 and started works preliminary to the digging on the petitioner's

land. Thus apprehending that the 2<sup>nd</sup> respondent will indulge in further illegal activities, petitioner has filed this writ petition before this Court.

5. Heard the learned counsel for the petitioner and the learned Government Pleader.

6. The contention putforth by the petitioner is that, the 2<sup>nd</sup> respondent Panchayath has no manner of right to encroach into the property of the petitioner, for which they are paying basic tax and under the full ownership of the petitioner. It is also contended that, Ext. P5 is passed by the Panchayath without any notice to the petitioner. It is also contended that, the 2<sup>nd</sup> respondent Panchayath has no manner of right, power or authority to take law into their hand and dig a channel for the purpose of draining the water through the property of the petitioner.

7. It is contended by the learned Government Pleader that, the attempt of the Panchayath was only to drain out the water during rainy season through the property. Having considered the rival submissions, I am of the considered opinion that, the 2<sup>nd</sup> respondent Panchayath has no power or authority to dig a channel through the property of the petitioner without establishing any right of the Panchayath over the said properties. On a perusal of the documents and pleadings, I am also of the opinion that, the

Panchayath or the Government has not produced any document to establish that they are entitled to cut open a channel through the property belonging to the petitioner.

8. In that view of the matter, I am of the considered opinion that, actions pursuant to Ext. P5 cannot be proceeded with any further. If at all the respondents have any intention to cut open a channel to drain out the water through the property of the petitioner or if the respondents have any dispute over the title of the property, necessarily the 1<sup>st</sup> and 2<sup>nd</sup> respondents are duty bound to issue prior notice to the petitioner and take a decision in accordance with law after considering the entire facts and circumstances of the case.

9. In that view of the matter, I set aside Ext. P5 to the extent it interferes with the right of the petitioners property and direct the 2<sup>nd</sup> respondent Panchayath, if at all it has any further inclination to proceed with opening of channel, affecting the rights of the petitioner, the petitioner shall be issued with 30 days prior notice, and action if any, can only be taken after hearing the petitioner as well as all concerned in the subject matter.

The writ petition is disposed of accordingly.

Sd/-  
**SHAJI P. CHALY,**  
**JUDGE.**

/True Copy/

P.A. to Judge

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