

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

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

WP(C).No. 30030 of 2009 (W)

PETITIONER :

**M.P. ITTOOP, AGED 66 YEARS,
MAIKULANGARA, KINGINIMATTOM,
IKKARANADU (S) VILLAGE, KOLENCHERRY P.O.,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)
SRI.ROSHEN D.ALEXANDER
SMT.INDU SUSAN JACOB
SMT.NISHA JOHN
SRI.ENOCH DAVID SIMON JOEL**

RESPONDENT(S) :

- 1. REVENUE DIVISIONAL OFFICER
MUVATTUPUZHA.**
- 2. CHARLES T. DAVID
S/O.DAVID, THOPPIL HOUSE, PERINGOLE
KOLENCHERY P.O., ERNAKULAM DIST.**

**R1 BY GOVT. PLEADER SRI. P.K. ABDUL RAHMAN
R2 BY ADVS. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI**

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

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE PETITION DATED 22-3-08 FILED BY THE 3RD RESPONDENT.
- EXT.P2 COPY OF THE OBJECTION DATED 11-8-08 FILED BY THE PETITIONER.
- EXT.P3 COPY OF THE REPORT OF EXECUTIVE ENGINEER DATED 14.8.08.
- EXT.P4 COPY OF THE RESOLUTION DATED 17.3.08 TAKEN BY THE PANCHAYAT.
- EXT.P5 COPY OF THE MASS PETITION SUBMITTED BY THE PUBLIC.
- EXT.P6 ORIGINAL ORDER OF THE SUB DIVISIONAL MAGISTRATE DATED 3-11-2008 NO. A3-2029/08.
- EXT.P7 COPY OF THE ORDER DATED 1-12-2008 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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A.M. SHAFFIQUE, J.

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Dated this, the 9th day of November, 2015

J U D G M E N T

Petitioner being aggrieved by Ext.P6 order passed by the Revenue Divisional Officer has approached this Court. Ext.P6 order was passed by the Revenue Divisional Officer purportedly invoking the power under Section 133 of the Criminal Procedure Code, which was based on a petition submitted by one Sri.Charles T.David alleging that he is a person residing on the western side of the canal bund road of PVIP canal of Puthuppanam-Pancode Road. Petitioner was conducting a tar mixing plant near to the said road. On account of transportation of heavy vehicles including torrace and tipper lorries, the road has been substantially damaged. It is contended that the road is only an inspection road and it was not intended for plying heavy vehicles and only small vehicles ply through the said road.

2. Having regard to the aforesaid factual situation and referring to the expert opinion of the Executive Engineer which indicates that there is no serious damage to the canal bund road,

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the Revenue Divisional Officer as per Ext.P6 directed the PVIP authorities to take steps to prohibit the traffic of heavy vehicles including torrace etc., as the road was unfit to ply heavy vehicles. Ext.P6 order has been clarified by the Revenue Divisional Officer as per Ext.P7 order dated 1/12/2008 indicating that the PVIP authorities shall take necessary steps for prohibiting the heavy vehicle traffic through the road, only if the road is in a dangerous condition.

3. Learned counsel for the petitioner submits that challenging the above order, when revision was filed, this Court in Crl.R.P.No.4075/2008 observed that since the order does not have trappings of an order issued by invoking powers of an Executive Magistrate under Section 133 of Cr.P.C., revision is not maintainable. Thereafter, the petitioner had preferred this writ petition and on 23/10/2009, an interim order had been passed in which it was mentioned that if the road is not in a dangerous condition in the sense that if by plying of heavy vehicles, no danger will be caused to other vehicles on the road or to the pedestrians, the 1st respondent shall permit heavy vehicles to pass through the road referred to in Ext.P6.

4. It is submitted by the learned counsel for the petitioner that the road is fit enough to ply heavy vehicles as well and the petitioner had been using the said bund road since then and no damage had occurred to the road.

5. Sri.Jaju Babu, learned senior counsel appearing for the 2nd respondent submits that an application was filed by the 2nd respondent before the Revenue Divisional Officer under Section 133 of Cr.P.C. In the light of the said facts, I am of the view that a final order will have to be passed treating Ext.P6 as an interim order and after getting necessary reports from the PVIP authorities. The Revenue Divisional Officer shall also indicate the power under which he is exercising jurisdiction. I am of the view that such an order would suffice presently and it shall be open for the parties to appear before the Revenue Divisional Officer and take appropriate steps in that regard.

Accordingly, this writ petition is disposed of as under;

(i) That Ext.P6 shall be considered as a provisional order by the Revenue Divisional Order.

(ii) The Revenue Divisional Officer shall obtain necessary report from the PVIP authorities and thereafter take fresh decision

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in the matter clearly indicating the provision under which he is exercising jurisdiction and necessary final orders shall be passed within a period of three months from the date of receipt of a copy of this judgment, after hearing all the affected parties.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
9/11/2015

//True Copy//

P.S to Judge