

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 29756 of 2008 (P)

PETITIONER(S):

**C.M.GOPALAKRISHNA PRABHU
CHANATHURUTHIL,
VALAMANGALAM SOUTH P.O., THURAVOOR, ALAPPUZHA.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S):

- 1. THE SECRETARY, ALAPPUZHA JILLA PANCHAYAT
ALAPPUZHA**
- 2. THE SECRETARY,
BLOCK PANCHAYATH, PATTANAKKADU, THURAVOOR
ALAPPUZHA DISTRICT.**
- 3. THE SECRETARY,
THURAVOOR GRAMA PANCHAYATH, THURAVOOR
ALAPPUZHA DISTRICT.**

**Addl.R4. THE SUPERINTENDING ENGINEER
MINOR IRRIGATION DIVISION, CHENGANNOOR - 689122.**

**Addl.R5. THE EXECUTIVE ENGINEER
MINOR IRRIGATION DIVISION, CHENGANNOOR - 689122.**

**Addl.R6. THE ASSISTANT EXECUTIVE ENGINEER
OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER
MINOR IRRIGATION DIVISION, CHERTHALA
ALAPPUZHA DISTRICT - 688 524.**

(ADDL.R4 TO R6 ARE IMPEADED AS PER ORDER DATED 01.01.2014 IN IA 12/2014)

BY SRI P.V.ELIAS, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE COMMUNICATION DATED 30.12.1993 ISSUED BY THE EXECUTIVE ENGINEER
- P2 : COPY OF THE COMMUNICATION DATED 01.01.1994 RECEIVED FROM THE DISTRICT COLLECTOR
- P3 : COPY OF THE COMMUNICATION DATED 13.09.1994 ISSUED BY THE EXECUTIVE ENGINEER TO THE SUPERINTENDING ENGINEER
- P4 : COPY OF THE COMMUNICATION DATED 27.05.2002 ISSUED BY THE EXECUTIVE ENGINEER
- P5 : COPY OF THE REPRESENTATION DATED 19.11.2002 ISSUED BY THE EXECUTIVE ENGINEER
- P6 : COPY OF THE PAPER REPORT DATED 08.07.2003 IN THE NEWSPAPER MATHRUBHOOMI, COCHIN EDITION
- P7 : COPY OF THE JUDGMENT IN WPC NO.15806/2004 BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 05.07.2007
- P8 : COPY OF THE REPRESENTATION FILED ON 06.08.2007 BY THE PETITIONER BEFORE THE 3RD RESPONDENT
- P9 : COPY OF THE SITE PLAN SHOWING THE DETAIL ESTIMATE FOR PROVIDING PROTECTIVE WORKS ON THE NORTH EASTERN SIDE OF VALAMANGALAM PADDY FIELDS IN THURAVOOR PANCHAYATH
- P10 : COPY OF THE DECISION IN THE MEETING CONDUCTED BY 3RD RESPONDENT DATED 23.10.2007

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.29756 of 2008

Dated this the 29th day of June, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of mandamus commanding the respondents to implement the decision in terms of Ext.P10 forthwith and to carry out all works in terms of Exts.P1 to P3 and P10 for providing an outer bund (protection wall) on the North-East side of Valamangalam paddy field in Thuravoor Panchayath.

2. Going by the averments in the writ petition, the petitioner is an agriculturist having land in Ward No.4 of Valamangalam South in Cherthala South. By Ext.P1 communication dated 30.12.1993, the Executive Engineer, Minor Irrigation Division, Chengannoor has informed the District Collector, Alappuzha that for constructing an outer bund (protection wall) for the paddy land referred in the petition submitted by the petitioner situated in Ward No.4 of Valamangalam South, a cost of Rupees Five lakhs will have to be incurred. Thereafter, the petitioner received Ext.P2

communication dated 01.01.1994 from the 1st respondent in which it was stated that, the work in question will be undertaken, once funds are made available. Ext.P2 was followed by Ext.P3 letter of the Executive Engineer, Minor Irrigation Division, Chengannoor, stating that, he is awaiting Administrative Sanction for providing protective works to the North East side of Valamangalam paddy fields in Thuravoor Panchayath and the Superintending Engineer, Minor Irrigation Circle, Thiruvananthapuram was requested to forward the same for taking further action in the matter.

3. According to the petitioner, despite Exts.P1 to P3 nothing materialized and it was in such circumstances, he has submitted Ext.P4 representation dated 27.05.2002 before the Minister for Agriculture. Thereafter, the petitioner received Ext.P5 communication from the District Collector, by which he was informed that, subject to availability of funds, the outer bund (protection wall) will be constructed.

4. Later, the petitioner has approached this Court in W.P. (C). No.15806/2004, which was disposed of by Ext.P7 judgment directing him to move the Grama Panchayath and on such representation, the Grama Panchayath was directed to take

appropriate decision, in accordance with law. The petitioner moved Ext.P8 representation dated 06.08.2007, based on which Ext.P10 decision was taken in the meeting of the Grama Panchayath, held on 23.10.2007 to request the District Panchayath to take necessary action in this matter as the Grama Panchayath is not having sufficient funds to carry out the construction. It was in such circumstances, the petitioner has approached this Court in this writ petition seeking various reliefs.

5. Heard arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

6. The learned counsel for the petitioner would contend that, despite Exts.P1 to P3 and Ext.P10, no effective steps have been taken to construct the outer bund (protection wall) to the paddy field in question. Per contra, the learned Government Pleader on instructions would submit that, the work in question was awarded during 1994-1995 for an amount of Rs.3,86,436/-. But it was terminated without risk and cost since the original estimate was insufficient to suit the site conditions and also the Contractor was not willing to execute the work in question in the

revised estimate. Further, the fund was also lapsed.

7. The materials on record, prima facie indicate that the Grama Panchayath is not having sufficient funds to undertake the work in question. It was in such circumstances, by Ext.P10 they have decided to approach the District Panchayath for undertaking the work in question. When the specific stand taken by the Grama Panchayath is that, it is not having sufficient funds to undertake the work in question, this Court cannot compel it to take any further action in this matter, especially when the petitioner has not alleged any malafides in the inaction on the part of the Grama Panchayath in undertaking the work in question. Therefore, in the light of Ext.P10, it is for the petitioner to approach the District Panchayath, Alappuzha for further action on Ext.P10 decision taken by the Grama Panchayath.

Therefore, this writ petition is disposed of directing the petitioner to file an appropriate representation before the District Panchayath, Alappuzha, on the strength of Ext.P10 decision taken by the Grama Panchayath. If any such representation is received, the District Panchayath shall consider the same and pass appropriate orders thereon, as expeditiously

as possible, at any rate, within a period of three months from the date of receipt of a copy of the representation alongwith a certified copy of this judgment, with notice to the petitioner and also to the Grama Panchayath.

It is made clear that, this Court has not expressed anything on the merits of the claim made by the petitioner and it would be open to the District Panchayath, Alappuzha, to take appropriate decision on the matter, strictly in accordance with law.

SD/-
ANIL K. NARENDHAN,
JUDGE

JV