

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 30485 of 2012 (I)

PETITIONER(S) :

T. GOPINATHA MENON, AGED 73 YEARS,
S/O.KUNJUNNY, THATTATTU HOUSE, CHELLIPPADAM,
P.O.MADAKATHRA, THRISSUR-680651.

BY ADVS.SRI.YASH THOMAS MANNULLY
SRI.P.A.GIREESH KUMAR

RESPONDENT(S) :

1. MADAKKATHARA GRAMA PANCHAYATH,
KURICHIKARA P.O., THRISSUR DISTRICT
PIN-680028 REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY,
MADAKKATHARA GRAMA PANCHAYAT, KURICHIKARA P.O.
THRISSUR DISTRICT, PIN-680028.

3. THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, THIRUVANANTHAPURAM-696501,
REPRESENTED BY ITS SECRETARY.

4. BENNY MATHEW M.R.
FLAT NO.4C, NAVANI PRINCESS, BENNET ROAD,
THRISSUR-680020.

R4 BY ADV. SRI.SINU.G.NATH
R1-R2 BY ADV. SRI.M.ANIL KUMAR
R1-R2 BY ADV. SMT.PREETHI K.PURUSHOTHAMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE COMPLAINT IN OP 306 OF 2011.
- EXHIBIT P2: TRUE COPY OF THE ASSET REGISTER OF CHELLIPADAM
MADAKKATHARA ROAD.
- EXHIBIT P3: TRUE COPY OF THE COMPLAINT BEFORE THE SUB
INSPECTOR OF POLICE, MANNUTHY POLICE STATION DT.10-
12-2009.
- EXHIBIT P4: TRUE COPY OF THE COMPLAINT DT.21-12-2009 GIVEN TO
THE PRESIDENT, MADAKKATHARA GRAMA PANCHAYAT.
- EXHIBIT P5: TRUE COPY OF THE ORDER DATED 24-8-2011 IN OP
306/2011.
- EXHIBIT P6: TRUE COPY OF THE ORDER DT.17-1-2012 IN CMP
131/2011 IN OP 306/2011.
- EXHIBIT P7: TRUE COPY OF THE REPORT DT.20-7-2012 BY TALUK
SURVEYOR, THRISSUR.
- EXHIBIT P8: TRUE COPY OF THE DECISION NUMBERED 6(2) DT.13-8-
2012 BY MADAKKATHARA GRAMA PANCHAYAT COUNCIL.
- EXHIBIT P9: TRUE COPY OF THE IA 132 OF 2012 IN OP 306/2011.
- EXHIBIT P10: TRUE COPY OF THE ORDER DT.31-10-2012 IN IA 132/12
- EXHIBIT P11: TRUE COPY OF THE INFORMATION DT.23.12.09 UNDER
RTI ACT GIVEN BY THE VILLAGE OFFICER, MADAKKATHARA.
- EXHIBIT P12: TRUE COPY OF THE PHOTOGRAPHS OF CHELLIPADAM
MADAKKATHARA ROAD AND THE ENCROACHMENT ACTIVITIES
DONE BY THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS :

- EXT.R4 (A) -TRUE COPY OF DECREE & JUDGMENT IN OS 2782/2009 OF
PRL.MUNSIFF'S COURT, THRISSUR.
- EXT.R4 (B) -TRUE COPY OF COMMISSION REPORT & JUDGMENT IN OS
2782/2009 OF PRL.MUNSIFF'S COURT, THRISSUR.
- EXT.R4 (C) - TRUE COPY OF REPRESENTATION TO CORRECT MISTAKE IN
ASSET REGISTER.

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.30485 of 2012

Dated this the 19th day of November, 2015.

JUDGMENT

The petitioner approached the Ombudsman for Local Self Government Institutions stating that the 4th respondent has encroached a portion of puramboke property forming part of Chellipadam Madakkathara Road. Believing the averments in the petition, the Ombudsman passed Ext.P6 order directing the 2nd respondent to request the Tahsildar to arrange measurement of the property with the assistance of the Taluk Surveyor and the Village Officer. The Taluk Surveyor was also directed to measure the property, after giving notice to all the parties, within three months from the date of receipt of a copy of the order. In compliance with the said direction, the property was measured to find out the alleged encroachment by the Surveyor and the Village Officer, as directed by the Ombudsman. The Surveyor filed

Ext.P7 report stating that the disputed property has been measured on the basis of the title deed in favour of the 4th respondent and found that no encroachment had been made by the 4th respondent. It is also stated that the 4th respondent is in possession of a lesser extent of property than the extent of property described in his title deed i.e., as per the title deed, the 4th respondent is having 0.2428 Hectares of property; but on measurement, he was found in possession of only 0.2214 Hectares. The Surveyor submitted Ext.P7 report to the 1st respondent Panchayat and the Panchayat Committee considered the report in detail and took Ext.P8 resolution. The Panchayat Committee, after elaborate discussions, accepted the said report specifically on a finding that there is no puramboke pathway on the western side of the property owned and possessed by the 4th respondent. Considering the fact that the Surveyor made a report that no encroachment has been made by the 4th respondent, the Panchayat Committee dropped the entire proceedings against the 4th respondent.

2. Dissatisfied with Ext.P8 resolution of the Panchayat Committee, again, the petitioner approached the Ombudsman by filing another I.A.No.132/2012 in O.P.No.306/2011 stating that the title deed, by which the 4th respondent got possession and enjoyment of the property, is fabricated one created for taking possession of the Panchayat puramboke land unlawfully. Virtually, in the second round, he has taken a stand which was totally inconsistent with his earlier stand when he approached the Ombudsman at first. In short, the petitioner has no consistent case against the 4th respondent and after considering the fresh plea as regards the encroachment, the Ombudsman rejected the petition on a finding that the Ombudsman is not an appellate forum, provided under law. This writ petition is filed challenging Ext.P10 order passed by the Ombudsman.

3. Heard The learned counsel for the petitioner.

4. Going by the sequence of events from the very beginning, it is seen that, firstly, the petitioner approached the Ombudsman stating that the 4th

respondent has encroached the puramboke land and he took the possession of the said land unlawfully. Believing his statement, the Ombudsman passed an order directing the Panchayat to measure the property using the service of Taluk Surveyor and Village Officer. In compliance with that order the Taluk Surveyor measured the property and found that the 4th respondent is not in possession of excess land and, more particularly, he was in possession of a lesser extent of land than the extent of property described in his title deeds. Considering the said fact the Panchayat Committee passed Ext.P8 resolution dropping the proceedings on the finding that the 4th respondent is not in possession of any excess land.

5. The petitioner was not satisfied with the said order. He again approached the Ombudsman with another plea stating that the 4th respondent created the title deeds fraudulently with an intent to take the possession of the puramboke land unlawfully; but such a contention was not raised when the petitioner has approached the Ombudsman at the first time.

6. In short, the petitioner has no consistent case and he has filed various petitions with different pleas, one after another, before different Forums, by way of experimental exercise, to wreak vengeance against the 4th respondent. Put it differently, he has been proceeding against the 4th respondent in retaliation of the reasons best known to him alone and public money and the service of public servants were being misused for the same without any bona fides. Hence he is liable to pay expenses for the service of the public servants, which he has utilised unnecessarily. In that view of the matter, this writ petition is dismissed with cost of Rs.5,000/- and the Registry is directed to take steps to realise the cost, if the petitioner has not paid the cost within three months from today.

Sd/-
K. HARILAL, JUDGE

Nan/okb.