

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WP(C).No. 26787 of 2015 (W)

PETITIONER :

K. AYISHAKUTTY AGED 48 YEARS
W/O.SULTHN K.A., NOOR MAHAL, KADAYATTUMMAL
KAITHAPOYIL PO, KOZHIKODE 673586

BY ADV. SRI.NIRMAL. S

RESPONDENTS :

1. SUPERINTENDENT OF POLICE, KOZHIKODE RURAL
OFFICE OF THE SUPERINTENDENT OF POLICE, PUTHAPPANAM
VADAKARA, KOZHIKODE DISTRICT 673001
2. DEPUTY SUPERINTENDENT OF POLICE
THAMARASSERY, KOZHIKODE 673001
3. SUB INSPECTOR OF POLICE
THAMARASSERY, KOZHIKODE 673001
4. GIRISH JOHN
S/O.JOHN, KUMBATTU HOUSE, KAITHAPOYIL PO
EANGAPUZHA VILLAGE, PADOOR DESOM, KOZHIKODE 673001
5. OK.MATHEW
S/O.KUNJACHAN, OTTATTUKALAYIL HOUSE, KAITHAPOYIL PO
EGANAPUZHA VILLAGE, PADOOR DESOM, KOZHIKODE 673001
6. JOSE VARGHESE
S/O.VARGHESE, KALAPURA HOUSE, KAITHAPOYIL PO
EGANAPUZHA VILLAGE, PADOOR DESOM, KOZHIKODE 673001
7. BIJU RAJ
S/O.RAJAN, MANAPPATTIL HOUSE, KAITHAPOYIL PO

EGANAPUZHA VILLAGE, PADOOR DESOM, KOZHIKODE 673001

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8. THAMPI KJ

S/O.JOHN, KUMBATTU HOUSE, KAITHAPOYIL PO
EGANAPUZHA VILLAGE, PADOOR DESOM, KOZHIKODE 673001

9. JOHNSON

S/O.VARGHESE, KALAPURA HOUSE, KAITHAPOYIL PO
EGANAPUZHA VILLAGE, PADOOR DESOM, KOZHIKODE 673001.

R1 TO R3 BY SR.GOVERNMENT PLEADER, SRI.C. RASHEED

R4 & R6 TO R9 BY ADV. SRI.M.R.ANISON

SMT.K.P.GEETHA MANI

SRI.AUGUSTUS BINU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- P1: TRUE COPY OF THE IDENTITY CARD OF THE PETITIONER ISSUED BY GOVERNMENT OF KERALA, HOME DEPARTMENT
- P2: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER OF EANGAPUZHA VILLAGE OFFICE DATED 02.07.2015
- P3: TRUE COPY OF THE RESIDENTIAL CERTIFICATE DATED 22.07.2015
- P4: TRUE COPY OF THE ACCOUNTS STATEMENTS OF THE BANK EVIDENCING THE LOAN TAKEN FOR THE CONSTRUCTION OF THE HOUSE DATED 24.08.2015
- P5: TRUE COPY OF THE BUILDING PERMIT AND THE SITE PLAN OF THE APPROVED BUILDING.
- P6: TRUE COPY OF THE PAMPHLETS ISSUED IN THE NAME OF ROAD PROTECTION COMMITTEE CALLING FOR DHARMA.
- P7: TRUE COPY OF THE COMPLAINT DATED 31.08.2015 ALONG WITH THE RECEIPT

RESPONDENTS' EXHIBITS :

- EXT.R4(A) : TRUE COPY OF INFORMATION DATED 09.09.2015.
- EXT.R4(B) : TRUE COPY OF THE COMPLAINT DATED 31.01.2015 SUBMITTED BY MR. P.K. SHYJAL ALONG WITH ITS ENGLISH TRANSLATION.
- EXT.R4(C) : TRUE COPY OF REPLY SUBMITTED BY THE SECRETARY, PUTHUPADI GRAMA PANCHAYAT ALONG WITH ITS ENGLISH TRANSLATION.
- EXT.R4(D) : TRUE COPY OF REPRESENTATION DATED 15.07.2015 ALONG WITH ITS ENGLISH TRANSLATION.
- EXT.R4(E) : TRUE COPY OF REPRESENTATION DATED 15.07.2015 ALONG WITH ITS ENGLISH TRANSLATION.
- EXT.R4(F) : TRUE COPY OF THE BUILDING PLAN SUBMITTED BY THE PETITIONER.
- EXT.R4(G) : TRUE COPY OF THE BUILDING PLAN SUBMITTED BY THE PETITIONER.
- EXT.R4(H) : TRUE COPY OF THE COMPLAINT DATED 10.07.2015 SUBMITTED BEFORE THE SECRETARY, PUTHUPADY GRAMA PANCHAYAT AND ITS ENGLISH TRANSLATION.

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EXT.R4(I) : TRUE COPY OF COMMUNICATION BEARING NO.A6.1037 DATED
17.09.2015 ISSUED BY THE SECRETARY PUTHUPADY GRAMA
PANCHAYAT AND ITS ENGLISH TRANSLATION.

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.P.(C) No. 26787 OF 2015

Dated this the 25th day of September, 2015

JUDGMENT

Shaffique, J.

The petitioner has approached this court seeking police protection in the matter relating to construction of a building for which petitioner has obtained building permit from the local authority. It is stated that Respondents 4 to 9 are obstructing the construction of the building on the allegation that the petitioner has trespassed into a portion of public road. It is stated that the respondents allege that the width of the road in front of the petitioner's property is 8 meters, whereas as per the asset register maintained in the Panchayat, the width of the road is only 6 meters. According to the petitioner, the ground floor of the premises has already been constructed and the issues had arisen only when upper floors are being constructed in terms of the building permit. Though complaint was given to the police for necessary police protection to proceed with the construction, no action was taken by the Police and therefore the petitioner has approached this Court.

2. Counter affidavit has been filed by respondents 4 and 6 to 9 *inter alia* stating that by constructing the aforesaid building, the petitioner is intending to trespass into the road known as Chemmarampatta - Kaipram road. It is stated that the said road was developed in the year 1980 and it was having a width of 8 meters and the petitioner, being the President of the Panchayat, has manipulated the records and in the asset register the width of the road is shown as only 6 meters. Respondents have already preferred appropriate complaint before the appropriate authorities and during the pendency of the same, there cannot be any construction activities reducing the width of the road.

3. Petitioner has filed reply and relied upon Ext.P8 showing the relevant pages of asset register which indicates that the width of the road is only 6 meters.

4. Having regard to the aforesaid factual situation, there is dispute between the parties with regard to the width of the road. The prima facie material produced before this Court is the extract of the asset register maintained by the Panchayat

which shows the width of the road as 6 meters. Respondents have a contention that the asset register has been manipulated. Of course, it is for the competent authority of the Panchayat to decide whether the asset register is wrongly prepared or not. As matters stand now, the width of the road is shown as 6 meters and we have to proceed on that basis.

5. Since the learned Government Pleader on instructions would submit that the petitioner had already obtained a permit for construction of the building, but the construction was obstructed by the private respondents.

6. Respondents 4 to 9 apparently have no right to physically obstruct the construction of the building on account of the fact that the petitioner is having a valid building permit. If they have any objection with regard to the construction of the building by the petitioner by trespassing into any portion of the road, their remedy is to approach the civil court or the competent authorities. They cannot take law into their hands and physically prevent the construction of the building. If such obstruction is caused by respondents 4 to 9, on the complaint of the petitioner,

police is bound to ensure maintenance of law and order and prevent any such obstruction.

Having regard to the above factual situation the writ petition is disposed of as under:

1. The 3rd respondent shall ensure maintenance of law and order in the matter of construction of building by the petitioner and prevent any obstruction.

2. This order, however, will be subject to any further orders that may be passed by the civil court or competent authorities with regard to the width of the road.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

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