

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No. 27014 of 2014 (B)

PETITIONERS : -

1. K.RAGHUNATH, AGED 43 YEARS,
S/O KESAVAN,
KETHAPPA MANNATHIL HOUSE, KANNAKI NAGAR,
KODUVAYUR POST, PALAKKAD.
2. K.RAJU, AGED 35 YEARS,
S/O.KESAVAN, KETHAPPA MANNATHIL HOUSE,
KANNAKI NAGAR, KODUVAYUR POST, PALAKKAD.

BY ADV.SRI.U.BALAGANGADHARAN

RESPONDENTS : -

1. THE KODUVAYUR GRAMA PANCHAYAT,
REPRESENTED BY THE SECRETARY, KODUVAYUR,
PALAKKAD-678501.
2. THE SECRETARY,
KODUVAYUR GRAMA PANCHAYAT,
KODUVAYUR, PALAKKAD-678501.
3. MURALI PRAKASH,
S/O.MANIYAN, HOUSE NO.30/16, MURALIKRIPA,
ARAPPATH HOUSE, SAKTHI NAGAR,
MELAMURY, PALAKKAD-678001.

R1, R2 BY ADV.SRI.K.MOHANAKANNAN
R3 BY ADV.SRI.BINOY VASUDEVAN
R3 BY ADV.SMT.P.G.BABITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-01-2015, ALONG WITH WPC. 485/2014, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS : -

- EXT.P1 : COPY OF THE DOCUMENT NO.1334/2010 DATED 23.4.2010 OF SRO KODUVAYUR.
- EXT.P2 : COPY OF THE STOP MEMO DATED 28.12.2013 ISSUED BY 2ND RESPONDENT.
- EXT.P3 : COPY OF THE INTERIM ORDER DATED 17.1.2014 IN WP(C)485/2014 FILED IN HIGH COURT OF KERALA,ERNAKULAM.
- EXT.P4 : COPY OF THE BUILDING PERMIT DATED 5.8.2014 ISSUED BY 2ND RESPONDENT.
- EXT.P5 : COPY OF THE ORDER DATED 26.8.2014 ISSUED BY 2ND RESPONDENT.

RESPONDENTS' EXHIBITS : -

- EXHIBIT R3(a) : TRUE COPY OF THE COMMISSION REPORT IN I.A. No. 2206 OF 2013 IN O.S. No. 461 OF 2013 ON THE FILE OF THE COURT OF THE MUNSIFF ATCHITTUR.
- EXHIBIT R3(b) : TRUE COPY OF THE SKETCH PREPARED BY THE ADVOCATE COMMISSIONER.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 27014 of 2014

&

W.P.(c) No. 485 of 2014

Dated this the 09th day of January, 2015

JUDGMENT

The petitioners, being the owners of Exhibit P1 property, initially started constructing a residential building on the said property, but later, halfway through, they applied for building permission, which is said to have been granted by the second respondent through Exhibit P4.

2. On the strength of Exhibit P4 building permission, when the petitioners have been continuing with the construction, the third respondent has complained to the Grama Panchayat that the petitioners trespassed upon the property belonging to his family Temple and that there is also civil suit pending in that regard. Consequently, the Grama Panchayat issued Exhibit P2 stop memo to the petitioners. Seeking its enforcement, the third respondent

filed W.P. (C) No. 485 of 2014 and obtained Exhibit P3 interim order, through which this Court directed the second respondent, Grama Panchayat, to enforce Exhibit P2 stop memo.

3. It appears that in the light of stop memo issued and especially in the light of the direction given by this Court in Exhibit P3 interim order, the second respondent, Grama Panchayat, issued Exhibit P5 proceedings suspending the building permission granted to the petitioners earlier. Aggrieved thereby, the petitioners filed W.P. (C) No. 27014/2014.

4. Heard the learned counsel for the petitioners, the learned counsel for the third respondent, as well as the learned Standing counsel for respondents 1 and 2 Grama Panchayat, apart from perusing the record.

5. The singular issue that falls for consideration in this writ petition is whether the petitioners have trespassed upon the third respondent's property under the cover of Exhibit P4 building permission granted to them by the Grama Panchayat. If it is to be determined that there is no encroachment, there cannot be any hindrance for the

petitioners to proceed with the construction strictly in terms of the permission granted by the Grama Panchayat. Under these circumstances, it is quite essential for the Grama Panchayat to determine whether the petitioners have been constructing within their own property, for which purpose the Grama Panchayat may have to conduct a survey.

6. In the facts and circumstances, this Court disposes of the writ petition with a direction to the respondent Grama Panchayat to conduct a survey with reference to the properties of the third respondent as well as the petitioners, if necessary by taking the services of Taluk Surveyor, and determine whether there is any encroachment. If it is found that the petitioners are constructing within their own property, the Grama Panchayat shall permit the petitioners to continue with construction strictly in accordance with law based on the permit granted earlier. On the other hand, if it is found that there is any encroachment, the Grama Panchayat can as well take all other remedial steps in that regard. It is made clear that if Grama Panchayat makes a request, the Taluk Surveyor shall make his services available for the purpose indicated above, at the earliest.

Given the urgency in the issue that the construction has been stopped mid-way, the Grama Panchayat may expedite the process and conclude the proceedings at the earliest, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-