

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 31082 of 2009 (E)

PETITIONER :

**P.K. RAJAN,
METHODY NIVAS,
(PO) PALAYAD NADA,
MANIYUR PANCHAYATH,
(VIA) IRINGAL, KOZHIKODE DISTRICT,
PIN - 673530.**

**BY ADVS.SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA V.**

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
KOZHIKODE DISTRICT, CIVIL STATION, MALAPPARAMBA
CALICUT-19.**
- 2. THE BLOCK DEVELOPMENT OFFICER,
THODANNUR BLOCK DEVELOPMENT OFFICE, (PO) THODANNUR
(VIA) VADAKARA, KOZHIKODE DISTRICT.**
- 3. THE TAHSILDAR (REVENUE RECOVERY),
VADAKARA, MINI CIVIL STATION, (PO) VADAKARA
KOZHIKODE.**

R1 TO R3 BY GOVT. PLEADER SRI. R. RANJITH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPIES OF NOTICE DATED 22-9-2001 BY 2ND RESPONDENT.
- EXT.P2 COPIES OF OBJECTION DATED 8-10-2001 BY PETITIONER.
- EXT.P3 COPY OF REVENUE RECOVERY PROCEEDINGS NOTICE DATED 10-3-2006 BY 3RD RESPONDENT.
- EXT.P4 COPY OF THE REPRESENTATION DATED 23-4-2006 TO 1ST RESPONDENT BY PANCHAYATH MEMBER.
- EXT.P5 COPY OF REPRESENTATION DATED 20-2-2007 BY PETITIONER TO 1ST RESPONDENT.
- EXT.P6 COPY OF THE REPORT DATED 31-1-2008 BY THE 2ND RESPONDENT.
- EXT.P7 COPY OF THE LETTER BY 2ND RESPONDENT TO V.O. PALAYAD.
- EXT.P8 COPY OF LETTER DATED 1-9-2008 BY 1ST RESPONDENT.
- EXT.P9 COPY OF REPRESENTATION DATED 19-10-2009 BY THE PETITIONER TO 1ST RESPONDENT.

RESPONDENT'S EXHIBITS :

- EXT. R2(a) COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER DATED 28/5/96.

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 31082 of 2009

Dated this the 14th day of July, 2015

JUDGMENT

The petitioner was elected as 'Convenor' by executing an agreement for digging a well within 'Maniyoor Panchayath in Kozhikode District. He challenges the revenue recovery proceedings to recover the money advanced for the digging well.

2. The total estimate of the digging well was fixed at Rs.25,000/-. The petitioner claims that he has expended more than Rs.16,000/-. After verifying the work undertaken by the petitioner, a sum of Rs.14,597/- was sanctioned deducting retention fee. It appears that the petitioner got only Rs.13,893/- after deducting certain other recoveries. The petitioner's case is that the work could not be completed due to incessant rain during that time. It appears that lower stage of the well has been collapsed due to the incessant rain. The petitioner received Ext.P1 notice from the Block Development Officer to repay the amount paid to him. The petitioner gave a reply stating reasons. In the

reply stated that he has already expended more amounts than he received. Since, the petitioner did not pay the amount, the revenue recovery proceedings are initiated.

3. In the meanwhile, the petitioner had approached the District Collector. The District Collector sought a report from the Block Development Officer. The Block Development Officer also pointed out that lower stage of the well has been fallen and on account of the filling of the well due to the rain, the original depth is not seen in the site. It is also reported that it is impossible to complete the well with the balance amount available for completion.

4. As it appears now the project has been abandoned as the same cannot be completed within the estimated amount. Therefore, authorities have initiated revenue recovery proceedings. It appears that the project could not be completed for the reason that which requires more funds than the original estimate. There is hardly any dispute to the fact that the portion of the well was damaged on account of the incessant rain as the work was undertaken during the rainy season. When the project could not be

completed, the reason beyond the control of the Convenor of the project, cause of loss cannot be attributed to such person. It is perhaps for the reason that the re-estimation was impossible on account of the paucity of funds; it was decided to abandon the project. No materials have been placed before this Court to establish that loss was suffered on account of the omission or commission attributable to the petitioner. On the other hand, the facts otherwise clearly indicate that it was due to incessant rain, the completion of the project was frustrated.

In that view of the matter, I do not find any justification to proceed with the revenue recovery proceedings. Accordingly, the impugned orders are set aside.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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