

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

WP(C).No. 29558 of 2013 (T)

PETITIONER:

T.K.PRAKASAN, AGED 61 YEARS,
S/O. KUMARAN, SMITHA BHAVANAM,
KODAMTHURUTH, KUTHIYATHODU P.O.,
CHERTHALA - 688 533.

BY ADVS.SMT.UMA GOPINATH
SRI. P.B. SAHASRANAMAN(AMICUS CURIAE)

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM.
2. THE SECRETARY,
KODAMTHURUTH GRAMA PANCHAYATH,
KUTHIATHODU P.O., CHERTHALA,
ALAPPUZHA - 688 553.
3. PURUSHOTHAMAN, SUPERINTENDENT,
KODAMTHURUTH GRAMA PANCHAYATH,
(SPECIAL GRADE), KUTHIATHODE P.O,
CHERTHALA, ALAPPUZHA - 688 553.

R2 BY ADV. SRI.P.C.SASIDHARAN
R1 BY GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 29558 of 2013 (T)

PETITIONER'S EXHIBITS:

EXHIBIT-P1-TRUE COPY OF THE LETTER DATED 29/10/2008 ISSUED BY THE SECRETARY OF THE KODAMTHURUTH PANCHAYATH.

EXHIBIT-P2-TRUE COPY OF THE REPLY DATED 04/11/2008 BY THE PETITIONER TO THE SECRETARY.

EXHIBIT-P3-TRUE COPY OF THE LETTER DATED 10/11/2008 TO THE SECRETARY, KODAMTHURUTH PANCHAYATH.

EXHIBIT-P4-TRUE COPY OF THE LETTER DATED 15/12/2008 KODAMTHURUTH PANCHAYATH SECRETARY TO THE PETITIONER.

EXHIBIT-P5-TRUE COPY OF THE COMPLAINT DATED 03/02/2009 FILED BY THE PETITIONER HEREIN BEFORE THE HONOURABLE OMBUDSMAN.

EXHIBIT-P6-TRUE COPY OF THE FORM 'A' FILED BY THE PETITIONER DATED 09/04/2009.

EXHIBIT-P7-TRUE COPY OF THE ORDER DATED 20/11/2009 OF THE HONOURABLE OMBUDSMAN, DIRECTING THE DEPUTY DIRECTOR OF PANCHAYATH, ALAPPUZHA.

EXHIBIT-P8-TRUE COPY OF THE ENQUIRY REPORT DATED 08/04/2010 OF THE PANCHAYATH DEPUTY DIRECTOR TO THE OMBUDSMAN.

EXHIBIT-P9-TRUE COPY OF THE STATEMENT FILED BY THE SECRETARY, KODAMTHURUTH PANCHAYATH IN O.P.482/2009 FILED BY THE PETITIONER BEFORE THE OMBUDSMAN DATED 16/06/2010.

EXHIBIT-P10-TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO THE REPORT FILED BY THE SECRETARY KODAMTHURUTH PANCHAYATH IN O.P.482/2009 DATED 15/07/2010 TO THE PETITIONER.

EXHIBIT-P11-TRUE COPY OF THE ORDER OF THE OMBUDSMAN IN 482/2009 DATED 15/07/2010 COMPLAINT FILED BY THE PETITIONER.

EXHIBIT-P12-TRUE COPY OF THE LETTER GIVEN BY THE SECRETARY, KODAMTHURUTH PANCHAYATH DATED 04/02/2011 TO THE PETITIONER.

EXHIBIT-P13-TRUE COPY OF THE LETTER DATED 21/02/2011 SENT BY THE PETITIONER TO THE PUBLIC INFORMATION OFFICER, KODAMTHURUTH PANCHAYATH REGARDING WHAT STEPS TAKEN BY THE KODAMTHURUTH PANCHAYATH.

EXHIBIT-P14-TRUE COPY OF THE REPLY DATED 19/08/2011 GIVEN TO THE PETITIONER REGARDING THE RIGHT TO INFORMATION REQUIRED BY HIM.

EXHIBIT-P14(a)-TRUE COPY OF THE MINUTES BOOK OF THE KODAMTHURUTHY PACHAYATH.

EXHIBIT-P15-TRUE COPY OF THE COMPLAINT GIVEN BY THE PETITIONER BEFORE THE CHIEF MINISTER, IN HIS MASS PUBLIC CONTACT PROGRAMME DATED 31/10/2011 REGARDING THE NON COMPLIANCE ORDER PASSED BY THE HONOURABLE OMBUDSMAN.

EXHIBIT-P16-TRUE COPY OF THE REPLY DATED 28/11/2011 SENT BY THE SECRETARY, KODAMTHURUTH PANCHAYATH REGARDING THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE CHIEF MINISTER IN HIS MASS CONTACT PROGRAMME.

EXHIBIT-P17-TRUE COPY OF THE LETTER DATED 12/12/2011 FROM THE PRESIDENT, KODAMTHURUTH PANCHAYATH TO THE PETITIONER REGARDING THE CONSTRUCTION OF KANA.

EXHIBIT-P18-TRUE COPY OF THE LETTER DATED 17/05/2013 SENT BY THE PETITIONER TO THE SECRETARY, KODAMTHURUTH PANCHAYATH REGARDING THE DELAY CAUSED BY THE PANCHAYATH IN THE CONSTRUCTION OF KANA.

EXHIBIT-P19-TRUE COPY OF THE PHOTOGRAPHS

RESPONDENT'S EXHIBITS:

EXHIBIT R2(a) TRUE COPY OF THE ORDER OF THE OMBUDSMAN DATED 24.9.2012

EXHIBIT R2(b) TRUE COPY OF THE ORDER DATED 19.11.2014

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.29558 of 2013 T

Dated this the 26th day of March, 2015

JUDGMENT

The petitioner initially had a water pipe projected from his house on to the street to drain the rain water from the terrace. In course of time, acting on the neighbours' complaints, the Panchayat authorities, with the help of police, cut and removed the said pipe, on the ground that it was causing inconvenience and water stagnation in the area. Aggrieved thereby, the petitioner approached the learned Ombudsman by filing O.P.No.482/2009.

2. Initially, the learned Ombudsman passed Exhibit P11 order on 15.07.2010. Seeking its enforcement, especially in the light of the subsequent developments, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has strenuously contended that on more than one occasion, the

respondent officials have agreed before the learned Ombudsman that they would be taking all remedial steps to ensure that a drainage canal is provided on either side of the road where the petitioner's house is situated and that for the said purpose necessary funds have been earmarked. In support of her submissions, the learned counsel has drawn my attention to Exhibit P12 communication issued by the Secretary of the respondent Grama Panchayat.

4. The learned counsel has further contended that, as can be seen from Exhibit P14, extract of the minutes book of the respondent Grama Panchayat, it has undertaken to construct a drainage and to cover the same with slabs, as there is no sufficient width to keep them open. According to her, under these circumstances, permitting the respondent Grama Panchayat to proceed with tarring of the road would make it impossible to have any drainage provided. In sum and substance, the contention of the learned counsel for the petitioner is that unless the respondent Grama Panchayat

provides proper drainage as has been held by the learned Ombudsman and also as has been undertaken by the respondent Grama Panchayat, it cannot proceed further with tarring of the road.

5. Per contra, the learned counsel for the respondent Grama Panchayat has submitted that subsequent to Exhibit P11 much water has flowed under judicial bridges. In elaboration of his submissions, the learned counsel has submitted that as petitioner's activity of letting out the rain water from the terrace had been causing water stagnation, many neighbours complained. According to him, some of them have even approached the learned Ombudsman by filing miscellaneous petitions in the same original petition initiated by the petitioner. Superseding Exhibit P11, the very learned Ombudsman has, contends the learned counsel, subsequently passed orders, the latest being the one rendered on 19.11.2014.

6. The learned counsel for the respondent, making a reference to Exhibit R2(b) dated 19.11.2014, which is said to be the latest order passed by the learned Ombudsman, has specifically contended that there is an express permission on the part of the learned Ombudsman for the respondent Grama Panchayat to proceed with tarring of the road, apart from suggesting that the respondent Grama Panchayat shall resolve the issue with regard to water logging, in course of time.

7. It is the singular contention of the learned counsel for the respondent Grama Panchayat that unless the interim order is vacated and the respondent Grama Panchayat is permitted to proceed with the work of tarring the road, the funds earmarked for the said purpose will lapse, for the financial year is going to end by 31st March 2015.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayat, apart from perusing the record.

9. As can be seen from the record, initially, in Exhibit P11, the learned Ombudsman has observed that no house owner has the right to set up pipeline for flowing rain water to the road resulting in water logging, and that under those circumstances, the action of the respondent Grama Panchayat could not be found fault with in their removing the projected pipe from the terrace of the petitioner. At any rate, the said authority has directed the Secretary of the respondent Grama Panchayat to construct and provide drainage for draining the water from the petitioner's house, as well as others.

10. In Exhibit P12, it is recorded by the respondent Grama Panchayat that as per the 'people's empower plan' 2011-12, to prevent water logging necessary steps for constructing drainage have already begun. In Exhibit P14 (a), which seems to be the extract of the minutes book of the respondent Grama Panchayat, there is reference to O.P. No.482/2009 filed by the petitioner. There is also an

observation that since the road does not have the required width for constructing drainage, it has to be covered with slabs and that there is no sufficient fund for the said purpose in that financial year, i.e., 2011-12. Eventually, based on certain objections filed by the petitioner's neighbours in O.P.No.482/2009 and also independent proceedings in O.P.No.747/2001, the learned Ombudsman passed Exhibit R1(a) common order to the following effect:

“Therefore, the only solution is to have a system whereby water from Prakashan's property is let out in such a way that it does not cause inundation of the pathway and also no blockage of water in Prakashan's property. The Secretary would submit that it can be done by putting a PVC pipe which can be further connected to the nearby thodu. If it is a fruitful solution, using the best scientific method, let it be done but I make it very clear that no water from Prakashan's property shall fall into the pathway and it should be let out through pipe, which can be further connected and taken to the nearby thodu. Similarly, there is no point in simply raising the level of the pathway but let it be made as a motorable one and Panchayat can propose to have a project to cater a short distance of 50 meters. The Secretary of Panchayat has submitted that everything can be done on or before 31.12.2012.”

11. As a matter of further development, the learned Ombudsman once again passed an order on 19.11.2014 in C.M.P.No.204/2014 in Complaint No.482/2009 and Complaint No.747/2011. It is profitable to extract the findings of the learned Ombudsman, which are as follows:

“The A.V.Purushothaman - P.H.C. Road has a length of 48 meters and an average width of 2.30 meters. Though the total area of land in possession of Sri.Prakashan, person mentioned in the complaint, is only 3 cents though shown as 4.5 cents. The remaining cent was surrendered to the road widening. The house of Sri.Prakashan cover almost the entire plot and the water from the terrace was let out in the P.H.C. road with the intervention of the Panchayath, the drain pipe was removed and to this Sri.Prakashan filed a complaint with the Honourable Ombudsman. The Ombudsman instructed the Panchayath to seek a way out on the complaint. It is not practical to construct a canal to drain waste water in the road. During to 14-15, project to tar the entire length of 48 meters was sanction and the project is in the implementing stage. The complaint of the complainant will be solved before December 31st, 2014. Hence, further proceedings in the C.M.P. is closed.”

12. Indisputably, going by Exhibit P19 photographs, the road is very narrow and already a thick layer of metal

has been spread in preparation of tarring the road. At this juncture, holding all the progress of the work cannot be to the advantage of the people of the Grama Panchayat. Essentially, taking into account all eventualities, the learned Ombudsman has passed Exhibit R2(b) order permitting the respondent Grama Panchayat to proceed with the work of taring the road. At this juncture, the learned counsel for the petitioner has strenuously contended that the petitioner has no knowledge about Exhibit R2(b) and that it might have been passed behind his back. I am afraid, that contention cannot be countenanced for the simple reason that the order has been passed inter alia in the same complaint filed by the petitioner. Even otherwise, the direction in Exhibit R2(b), in my considered view, is not to the prejudice of the petitioner.

13. Though there is every justification on the part of the respondent Grama Panchayat in proceeding with tarring of the road for the benefit of the public without any delay by

ensuring that the funds would not lapse; it is, at the same time, essential to observe that given the narrow width of the road, if providing any drainage by digging the canal on either side is not possible, the respondent Grama Panchayat is required to come up with certain suitable remedial measures to ensure that no water logging is caused. At any rate, the learned counsel for the respondent Grama Panchayat has submitted that the road, which is being tarred now, also leads to a Public Health Centre and that the respondent Grama Panchayat wishes to maintain the road cleanly without any water logging. He has submitted that, as has already been decided, the respondent Grama Panchayat will be taking every step to ensure that the road does not suffer from any water logging.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayat, this Court disposes of the writ petition

leaving it open for the respondent Grama Panchayat to proceed with laying of the road, including its tarring. At any rate, it is to be observed that the respondent Grama Panchayat shall take expeditious steps to ensure that the road does not suffer from any water logging. Accordingly, the interim stay granted shall stand vacated. No order as to costs.

Dama Seshadri Naidu, Judge

tkv