

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 27185 of 2015 (W)

PETITIONER:

**DHARMARAJAN B.,
S/O.BHASKARA PANICKER,
AGED 59 YEARS, REVATHY,
UDIYINKULANGARA, AMARAVILA P.O.,
THIRUVANANTHAPURAM - 695 122.**

**BY ADVS.SRI.K.T.SHYAMKUMAR
SRI.HARISH R. MENON**

RESPONDENT(S):

- 1. CHENKAL GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
UDIYINKULANGARA, AMARAVILA P.O.,
THIRUVANANTHAPURAM DISTRICT - 695 122.**
- 2. CHENKAL GRAMA PANCHAYATH COUNCIL,
REPRESENTED BY ITS CHAIRMAN,
UDIYINKULANGARA, AMARAVILA P.O.,
THIRUVANANTHAPURAM DISTRICT - 695 122.**
- 3. MADHAVAN PILLAI, S/O.KRISHNA PILLAI,
POOVAN VILAKATH MELTHATTU PUTHEN VEEDU,
UDIYINKULANGARA, AMARAVILA P.O.,
THIRUVANANTHAPURAM - 695 122.**

**R3 BY ADVS. SRI.L.MOHANAN
SMT.LIGEY ANTONY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

EXT.P-1: TRUE COPY OF THE PHOTOGRAPHS OF THE TREE SLANTING TOWARDS THE PETITIONER'S HOUSE.

EXT.P-2: TRUE COPY OF THE COMPLAINT DATED 11.6.2015 FILED BY THE WIFE OF THE PETITIONER BEFORE THE 1ST RESPONDENT.

**EXT.P-3: TRUE COPY OF THE LETTER DATED 16.6.2015 ISSUED BY THE
IST RESPONDENT.**

EXT.P-4: TRUE COPY OF THE APPEAL DATED 20.7.2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P-5: TRUE COPY OF THE INJUNCTION ORDER ISSUED BY THE HONOURABLE COURT IN IA NO.2439/04 IN RSA NO.1324/2004.

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

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P.B.SURESH KUMAR, J.

W.P.(C).No.27185 of 2015

Dated this the 9th day of November, 2015

JUDGMENT

The challenge in this writ petition is against Ext.P3 communication issued by the first respondent Grama Panchayath.

2. The petitioner preferred a complaint to the first respondent Grama Panchayath, invoking Section 238 of the Kerala Panchayath Raj Act, alleging that a tree standing in the property of the third respondent is in a dangerous condition and that the same is likely to cause damage to the petitioner's building. Ext.P3 communication has been issued by the Panchayath on the said complaint of the petitioner. In Ext.P3, it is stated that this Court had granted Ext.P5 order of temporary injunction in R.S.A.No.1324 of 2004 restraining the third respondent from committing waste in the property in which the tree is standing and therefore, the Panchayath is unable to

exercise its powers under Section 238 of the Kerala Panchayath Raj Act. A perusal of the records in R.S.A.No.1324 of 2004 indicates that the property of the third respondent is the subject matter of a civil dispute and Ext.P5 order of injunction was passed by this Court in the context of the said civil dispute. Ext.P5 order of injunction, in the circumstances, does not preclude the Panchayath from exercising its powers under Section 238 of the Kerala Panchayath Raj Act.

3. Ext.P3 order, in the circumstances, is quashed and the Panchayath is directed to consider the complaint of the petitioner afresh, untrammelled by Ext.P5 order of injunction.

The writ petition is disposed of accordingly.

P.B.SURESH KUMAR, JUDGE.

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