

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No.31614 of 2010 (B)

PETITIONERS :

1. GOPINATHAN NAIR, AGED 59, S/O.RAMAN NAIR,
KANNANKULATHU VEETIL, PADINJAREMURI, UDAYANAPURAM.P.O.,
VAIKKOM TALUK, KOTTAYAM DIST.
2. VIJAYAN NAIR, S/O.RAMAN NAIR,
KANNANKULATHU VEETIL, PADINJAREMURI, UDAYANAPURAM.P.O.,
VAIKKOM TALUK, KOTTAYAM DIST.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)

RESPONDENTS :

1. THE ADDL. DISTRICT MAGISTRATE,
KOTTAYAM-686001.
2. THE ASST. EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION, VAIKKOM-686141.
3. GOPINATHAN, VACALPADY, UDAYANAPURAM.P.O.,
VAIKKOM TALUK, KOTTAYAM DISTRICT-686143.

R2 BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B

R3 BY ADV. SRI.M.R.NANDAKUMAR

R3 BY ADV. SRI.M.V.SASIDHARAN

R2 BY ADV. SRI.SAJEEVKUMAR K.GOPAL, SC, KSEB

BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :-

- | | | |
|--------|---|--|
| EXT.P1 | : | COPY OF THE OBJECTION SUBMITTED BY THE SECOND PETITIONER ON THE FIRST RESPONDENT DTD.5.8.2009. |
| EXT.P2 | : | COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT DTD.6.3.2010. |
| EXT.P3 | : | COPY OF THE COUNTER AFFIDAVIT FILED BY THE ASST.EXECUTIVE ENGINEER DTD.25.5.2010. |
| EXT.P4 | : | COPY OF THE JUDGMENT IN W.P.(C)No.9732 OF 2010 DTD.9.6.2010. |
| EXT.P5 | : | COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT DTD.7.9.2010. |

RESPONDENTS' ANNEXURES :-

- | | |
|----------------|---|
| ANNEXURE R2(a) | COPY OF THE ROUGH SKETCH SHOWING THE PROPOSED ELECTRIC LINE ROUTES SUGGESTED BY MAGISTRATE. |
| ANNEXURE R2(b) | COPY OF THE SKETCH SHOWING THE ALTERNATIVE ROUTE SUGGESTED BY THE PETITIONER. |

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C).No.31614 of 2010

Dated this the 10th day of June, 2015

JUDGMENT

The petitioners, who are brothers have approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P5 order passed by the 1st respondent by which the 2nd respondent has been permitted to draw electric line through their property to effect electric connection to the residential building of the 3rd respondent.

2. Going by the averments in the Writ Petition the 3rd respondent has approached the 2nd respondent with a request to draw electric line for his residential building. Since the proposal made by the 2nd respondent was objected to by the petitioners, the matter was referred to the 1st respondent under Section 16 of the Indian Telegraph Act. The 2nd petitioner submitted Ext.P1 objection. The 1st respondent passed Ext.P2 order, which was under challenge before this Court in W.P.(C)No.9732 of 2010. By Ext.P4 judgment, this Court disposed of the aforesaid Writ Petition setting aside Ext.P2 order and directed the 1st respondent to consider the matter afresh and finalise the proceedings after hearing all the parties

including the petitioners, the 3rd respondent and others who are already made parties before the 1st respondent. This Court has also directed the 1st respondent to consider the feasibility of the alternate route specifically pointed out by the petitioner in Ext.P3 rough sketch produced in this Writ Petition.

3. Pursuant to the direction contained in Ext.P4 judgment, the 1st respondent re-considered the matter with notice to the petitioners and also to the affected parties and passed Ext.P5 order by which it is ordered that a post be erected on road by the middle of the properties of the first petitioner and one Sivasankaran Nair and draw the 20 metre overhead line from this post, which should pass through the properties of the 1st petitioner and one Sivasankaran Nair and erect a post on the boundary of two properties and draw weather proof line to effect electric connection to the 3rd respondent. It is aggrieved by Ext.P5 the petitioners are before this Court in this Writ Petition.

4. On 15.10.2010 this Court passed an interim order to maintain status quo.

5. On 27.3.2015 when this Writ Petition came up for further consideration, the learned Standing Counsel for the Board submitted that the electric line has already been drawn even prior to the filing of the Writ Petition therefore the learned counsel for the petitioners sought time to get instructions and the matter was posted after a week.

6. A statement has been filed on behalf of the 2nd respondent producing therewith Annexure-R2(a) rough sketch showing the route approved in Ext.P5 order passed by the 1st respondent and another sketch, i.e., Annexure-R2(b) showing the alternative route suggested by the petitioner. The 2nd respondent would contend that Ext.P5 order passed by the 1st respondent is strictly in accordance with law and that the 1st respondent has passed the said order after conducting a local inspection by the Tahsildar, Vaikom. The 2nd respondent would also contend that the alternate route suggested by the petitioner is about 101 meter away from the property of the 3rd respondent and further, the line has to draw through the paddy field and the property of another person, which is cultivated with coconut and other valuable trees. On the

other hand, if line is drawn as approved in Ext.P5, it requires drawal of 54 metres of electric line and there is no loss of vegetation and other valuable trees. Another route, as shown in Ext.R2(b) sketch, was also proposed before the 1st respondent by the petitioners. The 1st respondent conducted a site inspection on the new proposal, after giving notice to the affected parties, in order to ascertain the feasibility of that route. On inspection it was found that, the route proposed involves drawing of line over the residential building of one Subrahmaniyan and it involves cutting of several trees. It was considering the above aspects the 1st respondent issued Ext.P5 order approving drawal of line through the route originally proposed by the Board. The counter affidavit would further show that, the 1st respondent passed Ext.P5 order on 7.9.2010 and on the basis of that order the Board has effected service connection to the 3rd respondent on 24.9.2010.

7. I heard the learned counsel for the petitioners, the learned Government Pleader appearing for the 1st respondent and also the learned counsel appearing for the 3rd respondent.

8. The sole issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Ext.P5 order passed by the 1st respondent by which the 2nd respondent is permitted to draw electric line to the residential building of the 3rd respondent through the route suggested by the 2nd respondent.

9. The petitioner would contend that when they have suggested an alternative route, which was also a technically feasible one, the 1st respondent went wrong in overruling their objections and permitting the 2nd respondent to draw the line as originally proposed by the Board. The petitioner is not disputing Annexure-R2(a) rough sketch produced by the 2nd respondent of the route approved by the 1st respondent and also Annexure-R2(b) sketch of the alternate route suggested by them. A perusal of those sketches would make it abundantly clear that the route proposed by the 2nd respondent is the one causing least inconvenience to the parties and it requires only lesser expenditure. The specific stand taken by the 2nd respondent in the counter affidavit is that the alternate route suggested by the petitioners would require cutting of trees and thereby involving higher expenditure is also not seriously

disputed by the petitioners. Reading of Ext.P5 order passed by the 1st respondent would show that the 1st respondent has stated valid reasons for accepting the route proposed by the 2nd respondent and for rejecting the alternate route suggested by the petitioners. The reasoning of the 1st respondent in Ext.P5 order is neither perverse nor patently illegal warranting an interference of this Court under Article 226 of the Constitution of India.

In such circumstances, I find absolutely no ground to interfere with Ext.P5 order passed by the 1st respondent. The Writ Petition fails and the same is dismissed. No order as to costs.

ANIL K.NARENDRA, JUDGE

skj