

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 28501 of 2015 (K)

PETITIONER(S):

1. YENIKKUTTY, AGED 65 YEARS,
S/O.CHERIYA BAVA, THANICHANTE PURAKKAL HOUSE,
EDAKKADAPPURAM, TANUR PO, MALAPPURAM - 676 302.
2. ABID T.P., AGED 28 YEARS,
S/O. YENIKKUTTY, THANICHANTE PURAKKAL HOUSE,
EDAKKADAPPURAM, TANUR PO, MALAPPURAM - 676 302.
3. SIDHIQUE. K.M., AGED 48 YEARS,
S/O.PARI, KUTTYEMADATH HOUSE, EDAKKADAPPURAM,
TANUR PO, MALAPPURAM - 676 302.
4. PATHEEVI, AGED 55 YEARS,
W/O.CHERIYA HAMZA (LATE), CHERCHINTE PURAKKAL HOUSE,
EDAKKADAPPURAM, TANUR PO, MALAPPURAM-676 302.
5. KUTTYEMADATH AMINAKUTTY, AGED 45 YEARS,
W/O.HAMZAKUTTY, EDAKKADAPPURAM,
TANUR PO, MALAPPURAM - 676 302.
6. MUHAMMED HANEEFA,
AGED 42 YEARS, S/O.YENIKKUTTY,
THANICHINTE PURAKKAL,
EDAKKADAPPURAM, TANUR P.O.,
MALAPPURAM - 676 302.
7. KUNJIKOYA, AGED 39 YEARS,
S/O.YENIKKUTTY, THANICHINTE PURAKKAL,
EDAKKADAPPURAM, TANUR PO, MALAPPURAM - 676 302.
8. ASMA, AGED 45 YEARS,
W/O.ASSAINAR (LATE), THANATHINTE PURAKKAL,
EDAKKADAPPURAM, TANUR PO, MALAPPURAM - 676 302.

BY ADV. SRI.R.ABDUL AHAD

RESPONDENT(S):

1. THE DISTRICT COLLECTOR,
CIVIL STATION, MALAPPURAM,
MALAPPURAM DISTRICT-676 001.

2. THE REVENUE DIVISIONAL OFFICER,
TIRUR - 676 101.
3. THE VILLAGE OFFICER, TANUR VILLAGE OFFICE,
TANUR P.O., MALAPPURAM-676 302.
4. TANUR GRAMA PANCHAYATH,
TANUR P.O., MALAPPURAM - 676 302
REPRESENTED BY SECRETARY.
5. CHAPPILIKKADAVATH CHERIYA BAVA,
AGED 65 YEARS, S/O.MOHAMMED, EDAKKADAPURAM,
P.O. TANUR, MALAPPURAM DISTRICT, PIN - 676 302.
6. AYISHA, AGED 63 YEARS,
W/O.ALIKUTTY, CHERIYA MOIDEENAKATH, EDAKKADAPURAM,
P.O. TANUR, MALAPPURAM DISTRICT, PIN - 676 302.
7. KHADEEJA BEEVI, AGED 61 YEARS,
W/O.MOHAMMEDKUTTY, CHERIYA MOIDEENAKATH,
EDAKKADAPURAM, P.O. TANUR,
MALAPPURAM DISTRICT-676 302.
8. HAMZAKUTTY, AGED 66 YEARS,
S/O.ALIKUNHI, CHERIYA MOIDEENAKATH,
EDAKKADAPURAM, P.O. TANUR,
MALAPPURAM DISTRICT-676 302.
9. KUTTIKKADAN VEETIL PUTHEEVI, AGED 56 YEARS,
W/O.HAMZA, EDAKKADAPURAM, P.O. TANUR,
MALAPPURAM DISTRICT-676 302.
10. AYISHAMOL, AGED 61 YEARS,
W/O.EASUPADATH MOHAMMED BAVA,
P.O. KOOTTAYI, TIRUR TALUK, PIN-676 302.

R1 TO R3 BY GOVT. PLEADER SMT.C.K. SHERIN.
R5 TO R10 BY ADV. SRI.JAMSHEED HAFIZ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: TRUE COPY OF THE REPRESENTATION DATED 12.10.2013.
- EXT.P2: TRUE COPY OF THE REPRESENTATION DATED 18.12.2012.
- EXT.P3: TRUE COPY OF THE REPORT OF ADDITIONAL TALUK SURVEYOR, TIRUR DATED 27.09.2013.
- EXT.P4: TRUE COPY OF THE PLAN PREPARED BY THE ADDITIONAL TALUK SURVEYOR DATED 22.10.2013.
- EXT.P5: TRUE COPY OF THE LETTER NO.20714/12(1) DATED 06.02.2014.
- EXT.P6: TRUE COPY OF THE LETTER FROM THE OFFICE OF THE 2ND RESPONDENT DATED 02.03.2015.

RESPONDENT'S EXHIBITS:-

- EXT.R5A COPY OF THE PLAINT IN O.S. NO.424/2014 BEFORE THE MUNSIF COURT, PARAPPANANGADI DATED 11/12/2014.
- EXT.R5B COPY OF THE COMMISSIONERS REPORT DATED 20/01/2015 IN I.A.2697/2014 IN O.S.427/2014 BEFORE THE MUNSIF COURT, PARAPPANANGADI.
- EXT.R5C COPY OF THE REPORT OF THE VILLAGE OFFICER DATED 15/11/2013.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.28501/2015

Dated this the 28th Day of September, 2015

J U D G M E N T

The writ petitioner has approached this Court alleging encroachment of public way by respondents 5 to 10.

2. This Court on 18-09-2015 passed the following orders

“Issue notice by Special Messenger to respondents 4 to 10. The learned Government Pleader takes notice for other respondents.

The second respondent shall ensure that no public way is encroached upon by respondents 5 to 10. If it is found encroached, necessary action shall be taken by the second respondent against respondents 5 to 10 to remove the encroachments as well as restrain them from making further encroachments.”

3. Thereafter, the party respondents moved an I.A.No.13829 of 2015 to vacate the interim order. This Court deferred removal of encroachments for a period of one week by order dated 28-09-2015. The party respondents contend that they have filed a civil suit against the Panchayat as O.S.No.427 of 2014 before the Munsiff's Court, Parappanangadi and in the suit, a Commissioner was deputed and on

inspection by the Commissioner, it was reported that there is no way, as alleged by the Panchayat in existence. It is submitted that till a decision is taken by the civil court, no action shall be taken by any Authority.

4. Essentially, the question in this writ petition is whether there is encroachment in the Government land or not. This Court is of the view that the Tahsildar shall take a decision whether there is encroachment in the Government land or not. If the land in question is a land vested with the Panchayat, the entire matter shall be relegated to the Panchayat. However, if the land is found to be a Government land, the revenue officials are competent to take appropriate action. The decision as directed above shall be taken by the Tahsildar after demarcating the property belonging to the respondents 5 to 10. Needful shall be done after issuing notice to all concerned within three months from the date of receipt of a copy of this judgment. Till a decision is taken by the Tahsildar, *status quo* shall be maintained. The party respondents shall not undertake any construction till determination of the land in question by the Tahsildar.

The writ petition is disposed of as above. No costs.

Sd/-

(A.MUHAMED MUSTAQUE, JUDGE)

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