

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 34367 of 2010 (U)

PETITIONER(S):

**BALAKRISHNAN EZHUTHACHAN,
S/O.KRISHNAN EZHUTHACHAN, AGED 87 YEARS
KUNNIKULAM HOUSE, THONNUKARA VILLAGE, THALAPPILLY
TALUK, THRISSUR DISTRICT.**

**BY ADVS.SRI.C.A.CHACKO
SRI.N.A.SHAFAEEK
SRI.M.S.UNNIKRISHNAN (OASIS)**

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VAIDHYUTHI BHAVAN
THIRUVANANTHAPURAM, PIN-695001.**
- 2. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL MAJOR SECTION, CHELAKKARA
THRISSUR DISTRICT, PIN-680586.**
- 3. THE ADDL.DISTRICT MAGISTRATE,
THRISSUR, PIN-680 001.**
- 4. RAMANARAYANAN,RAMATTOOR VEEDU,
THONNOOR KARA, THRISSUR DISTRICT, PIN-680 610.**

**R,R4 BY ADV. SRI.BINOY VASUDEVAN
R,R4 BY ADV. SMT.P.G.BABITHA
R,R1,2 BY ADV. SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB
R BY SRI.P.P.THAJUDEEN, SC, K.S.E.B**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE SAID OBJECTION DATED 18.11.2009 SUBMITTED BY PETITIONER'S DAUGHTER BEFORE THE 3RD RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE ORDER DATED 23.12.2009 OF THE 3RD RESPONDENT

EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 24.06.2010 IN W.P.(C) NO.9724/2010 OF THIS HON'BLE COURT.

EXHIBIT P4: TRUE COPY OF THE OBJECTION DATED 6.09.2010 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE ORDER DATED 24.09.2010 OF THE 3RD RESPONDENT.

RESPONDENT(S) EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

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ANIL K. NARENDRAN, J.

W.P.(C) No.34367 of 2010

Dated this the 26th day of February, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of certiorari to quash Exhibit P5 order passed by the third respondent in exercise of his powers under Section 16 of the Telegraph Act, 1885.

2. According to the petitioner, he is the absolute owner of 79 cents of property comprised in survey No.259 of Thonnoorkara village. The 4th respondent applied for electric connection to his house and an application to that effect was made before the second respondent. Since the drawing of electric line was objected by the neighboring owners including the petitioner, the 4th respondent referred the matter to the third respondent under Section 16 of the Act.

3. On receipt of notice, the petitioner submitted Exhibit P1 objection before the third respondent

contending that if the line is drawn as suggested by the respondents, it will cause serious inconvenience to him. He has also objected the drawing of line through the pathway owned by him.

4. The third respondent initially passed Exhibit P2 order by which the objection raised by the petitioner was overruled and the electric line was ordered to be drawn over his property. The said order was under challenge in WP(C) No.9724/2010 and this court by Exhibit P3 judgment remanded the matter to the third respondent for reconsideration with proper notice to the petitioner and others.

5. Subsequent to Exhibit P3 judgment, the petitioner submitted Exhibit P4 objection before the third respondent. After hearing both sides, the third respondent by Exhibit P5, granted permission to the Board to draw electric line through the petitioner's property for giving electric connection to the residential building of the 4th respondent. The operative portion of Exhibit P5 order reads thus:

“A portion of the 1st proposal is through the property of Respondent 1, i.e., from north to south. An electric line has already been drawn from east to west through his property. Further drawal of electric line will render his property useless. A portion of the 2nd proposal is through the pathway of Respondent 4 and property of Respondent 2. The pathway has 2 mts width. A line already exists crossing the pathway. If line is drawn from this line by erecting post close to the northern boundary of the pathway of Respondent 4 and erecting another post in the property of Beneficiary, the drawal of electric line through the property of Respondent 2 can be spared. If the post erected close to boundary the usable width of the pathway will not be affected and only the branches of trees are to be cut. Drawing line directly from the post from the western side of the property of beneficiary will be through the middle of the property of respondent 3 and the trees are to be cut. Since the proposal as per order of the former

Additional District Magistrate is clearly found as most convenient and feasible, no reason is found to set aside the original order. The same is upheld. The petition is disposed of as above in compliance of the direction of the Honourable High Court of Kerala is WP(C) 9724/2010.”

6. It is aggrieved by Exhibit P5 order passed by the third respondent, the petitioner is before this court with this writ petition.

7. Heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the respondent Board. In spite of service of notice, there is no appearance for the 4th respondent.

8. By order dated 15.11.2010, this court has directed the respondent Board to maintain status quo. The learned Standing Counsel for the Board on instructions submitted that even prior to the issuance of interim order dated 15.11.2010 directing the respondent Board to maintain status quo, line has already been drawn over the petitioner's property and the same was energised on 12.11.2010 in order to give electric

connection to the residential building of the 4th respondent.

9. A reading of Exhibit P5 order passed by the third respondent would show that it was after considering the rival contentions raised by both sides and after affording a reasonable opportunity of being heard, the third respondent passed such an order in exercise of his power under Section 16 of the Act. Further, cogent and convincing reasons have been stated in Exhibit P5 order to overrule the objection raised by the petitioner against drawing of electric line through his property to give electric connection to the 4th respondent's residential building.

10. I find absolutely no illegality or irregularity in Exhibit P5 order passed by the third respondent. Further, the reasoning of the third respondent in Exhibit P5 order cannot be termed either arbitrary or perverse, warranting interference of this court under Article 226 of the Constitution of India.

In the result, the challenge made against Exhibit P5 fails and the writ petition is dismissed.

Sd/-
ANIL K. NARENDRA
JUDGE

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//TRUE COPY//

P.A. TO JUDGE