

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 31286 of 2014 (I)

PETITIONER(S) :

**P.V.VIJAYALAKSHMI,
'HARISREE', PUNCHAYIL HOUSE, CHIRAKKAL P.O.,
KANNUR DISTRICT-670 011.**

**BY ADVS.SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.**

RESPONDENT(S) :

- 1. GOVERNMENT OF KERALA,
REP.BY ITS SECRETARY, REVENUE DEPARTMENT, SECRETARIAT,
TRIVANDRUM, PIN-695 001.**
- 2. THE DISTRICT COLLECTOR,
CIVIL STATION, KANNUR, PIN-670 001.**
- 3. K.N.RAGHAVAN,
S/O.LATE NARAYANAN, SANTHI NIKETHAN, CHIRAKKAL P.O.,
KANNUR DISTRICT, PIN-670 011.**
- 4. CHIRAKKAL GRAMA PANCHAYAT,
REP.BY IT'S SECRETARY, P.O.CHIRAKKAL,
KANNUR DISTRICT, PIN-670 011.**
- 5. THE TAHSILDAR,
KANNUR, PIN-670 001.**
- 6. THE REVENUE DIVISIONAL OFFICER,
TELLICHERRY, PIN-670 101.**

**R3 BY SRI.GRASHIOUS KURIAKOSE (SENIOR ADVOCATE)
ADV. SRI.GEORGE MATHEWS**

**R1,R2,R5 & R6 BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
BY GOVERNMENT PLEADER SRI.SAVAD.**

R4 BY ADV. SRI.I.V.PRAMOD, S.C

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1 : TRUE COPY OF THE ORDER ISSUED BY RESPONDENT NO.1,
G.O.(MS)NO.179/2003/RD, DATED 06.06.2003.**
- P2 : TRUE COPY OF THE ORDER G.O(RT)NO.2961/2005/RD, DATED 24.05.2005.**
- P3 : TRUE COPY OF THE LETTER SENT BY RESPONDENT NO.2, THE DISTRICT
COLLECTOR TO THE ADDITIONAL SECRETARY, SUTHARYA KERALAM,
DATED 31.07.2012.**
- P4 : TRUE COPY OF THE JUDGMENT IN W.P(C).NO.19345/2013,
DATED 14.08.2013.**
- P5 : TRUE COPY OF EXT.P6 REFERRED TO IN EXT.P4 JUDGMENT OF
THIS HON'BLE COURT, DATED 30.01.2010.**
- P6 : TRUE COPY OF THE ORDER PASSED BY RESPONDENT NO.2,
REF.NO.L2.18339/2009, DATED 12.08.2014.**

RESPONDENT(S)' EXHIBITS :

**EXHIBIT R3(A): TRUE COPY OF REPORT SUBMITTED BY TAHSILDAR
DATED 20.03.1997 TO THE DISTRICT COLLECTOR, KANNUR**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 31286 of 2014

Dated this the 2nd day of December, 2015

J U D G M E N T

The issue in this writ petition pertains to the utilization of 2.375 cents of land situated in Survey No.77/13 of Chirackal Village in Kannur District. The Government had allowed 7 cents of land to house Chirakkal Village Office. The Government has originally proposed to lease out 2.375 cents of land to the 3rd respondent. This was challenged by the petitioner as well as the President of Chirakkal Grama Panchayat. Thereupon, the Government issued Ext.P2 and ordered as follows

“The Government have examined the matter in detail with the relevant records. In the circumstances, reported by the District Collector, Kannur, Government Order that the 7 cents of land (i.e. 2.375 cents + 4.625 cents) in Sy.No.77/13 of Chirakkal Amsom Pazhathi Desom in Kannur Taluk and District will be remained as Government land and will remain as pathway for use of all parties including Sri.K.N.Raghavan and a boundary should be made separating this 7 cents of land utilized for the Village Office so as to protect this pathway

obstruction free from vehicle parking and other encroachment. The District Collector, Kannur should take immediate action in this matter as directed above.”

2. Thereafter, it appears that the 3rd respondent has approached the District Collector for the assignment of 2.375 cents of land. The District Collector, as per Ext.P6 ordered as follows:

- 1) The petitioner may apply for assignment of 2.375 cents of land under beneficial enjoyment to appropriate authority (i.e. Revenue Divisional Officer, Thalassery), RDO is directed process the application at the earliest.
- 2) As a temporary solution and redressal of grievance permission is hereby accorded to petitioner for the construction of a wall separating the pathway from the property where in the village office is situated.
- 3) The Tahsildar, Kannur is directed to identify and demarcate the above 2.375 cents of land with the assistance of Taluk Surveyor for constructing wall by the petitioner within 7 days.

3. The petitioner challenges Ext.P6 order before this Court. The main grievance of the petitioner is that the direction of the District Collector permitting the 3rd respondent to apply for assignment of 2.375 cents of land is unsustainable in the

light of Ext.P2 Government order. According to the petitioner, since Government itself felt that 2.375 cents shall be earmarked as a pathway for the beneficial enjoyment of 3rd respondent and others, the District Collector could not have asked the petitioner to file an application for assignment of the above land for the exclusive use by him.

4. The learned Senior Counsel appearing for the 3rd respondent would submit that 2.375 cents of land is necessary for the beneficial enjoyment of land adjacent to the above land. He further submits that the 3rd respondent has no access to his land other than 2.375 cents of land.

5. As matters stand now, Ext.P2 order has become final. The Government has in fact decided to set apart 2.375 cents of land as a pathway along with the balance 4.625 cents. In view of the above, this Court is of the view that the District Collector ought not have directed the 3rd respondent to file an application for assignment of 2.375 of land. Therefore, the direction in Ext.P6 order to the effect that the 3rd respondent shall apply for assignment of 2.375 cents of land for the beneficial enjoyment is

set aside.

6. Therefore, this Court is of the view that direction of the Government in Ext.P2 order to retain the pathway mentioned in the above order shall be implemented by the District Collector by identifying and earmarking the pathway for the common use of all including 3rd respondent

7. The District Collector shall take steps to ensure that Ext.P2 order is implemented by separating 7 cents by constructing a retaining wall on boundaries with the Village Office. The entire exercise in this regard shall be completed within a period of four months from the date of receipt of a copy of this judgment. It is made clear that this land shall be retained as public pathway, and the District Collector shall ensure that this is not obstructed by way of parking or encroachment.

Sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/