

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No.31587 of 2014 (W)

PETITIONER :

**SHIBU. R, AGED 43 YEARS,
S/O.LATE REGHUNADHAN,
KANJIRAMVILA, VENKULAM
EDAVA.P.O, VARKALA-695311.**

**BY ADVS.SRI.SHAJI P.CHALY
SMT.C.S.SINDHUKRISHNAH**

RESPONDENTS :

- 1. STATE OF KERALA
DEPARTMENT OF PUBLIC WORKS(ROADS DIVISION)
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. DISTRICT COLLECTOR,
COLLECTORATE, THIRUVANANTHAPURAM.**
- 3. EDAVA SPECIAL GRADE GRAMA PANCHAYATH,
EDAVA-695311, VARKALA, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY.**
- 4. TAHSILDAR,
CHIRAYINKEEZH TALUK OFFICE, VARKALA.**
- 5. EXECUTIVE ENGINEER,
OFFICE OF EXECUTIVE ENGINEER, PWD ROADS SECTIONS
THIRUVANANTHAPURAM-695033.**
- 6. ASSISTANT ENGINEER,
OFFICE OF ASSISTANT ENGINEER, PWD ROADS SECTIONS
THIRUVANANTHAPURAM-695033.**
- 7. ASSISTANT EXECUTIVE ENGINEER,
OFFICE OF ASSISTANT EXECUTIVE ENGINEER
ROADS SUB DIVISION, MINI CIVIL STATION, ATTINGAL.**

8. NISAMUDDIN(KHAJA),
AGED NOT KNOWN TO THE PETITIONER,
S/O.MUHAMMED EBRAHIM, PANYALA, EDAVA DESOM
VETTAKADA, VARKALA, THIRUVANANTHAPURAM.
9. KAMAL,
AGE NOT KNOWN TO THE PETITIONER, S/O SHAHUL HAMEED
OOLANVILAKAMVEEDU, EDAVA DESOM, VETTAKADA
VARKALA, THIRUVANANTHAPURAM.

ADDITIONAL R10 IMPEADED.

10. DISTRICT POLICE CHIEF,
THIRUVANANTHAPURAM,
SUO MOTO IMPEADED AS ADDITIONAL
10TH RESPONDENT AS PER JUDGMENT DATED 12.2.2015.

R1 & R2 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN (SR)
R3 BY ADV. SRI.BIJU BALAKRISHNAN
ADV. SMT.RAAKHEE V.S
ADV. SMT.PRINCY XAVIER
R8,R9 BY ADV. SRI.M.RAJENDRAN NAIR
R8,R9 BY ADV. SMT.M.SANTHY

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

VS

WP(C).No. 31587 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 : COPY OF THE TAX RECEIPT BEARING NUMBER 0709773
- EXT.P2 : COPY OF THE PHOTOGRAPHS SHOWING THE NATURE AND LIE OF THE UNAUTHORIZED CONSTRUCTION PUT UP BY RESPONDENTS 8 AND 9 ON THE PROPERTY BELONGING TO THE 1ST RESPONDENT
- EXT.P3 : COPY OF THE COMPLAINTS DATED 06/11/2013 AND 12/11/2013 OF THE PETITIONER TO THE 3RD RESPONDENT ALONG WITH ITS RECEIPT
- EXT.P4 : COPY OF THE RECEIPT OF THE COMPLAINT TO THE CHIEF MINISTERS PUBLIC GRIEVANCE REDRESSAL CELL
- EXT.P5 : COPY OF THE LETTER DATED 12/12/2013 ISSUED BY THE 3RD RESPONDENT
- EXT.P6 : COPY OF THE LETTER BEARING NUMBER A3-5737/13 DATED 03/01/2014 OF THE 3RD RESPONDENT
- EXT.P7 : COPY OF THE LETTER DATED 05/02/2014 OF THE 6TH RESPONDENT
- EXT.P8 : COPY OF THE LETTER DATED 10/07/2014 BEARING NUMBER 2417/C.M.P.G.RC/S.K/203/G.A.D
- EXT.P9 : COPY OF THE LETTER DATED 17/09/2014 OF THE 6TH RESPONDENT
- EXT.P10 : COPY OF THE APPLICATION PREFERRED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT AND ITS REPLY
- EXT.P11 : COPY OF THE NEWSPAPER REPORT DATED 22/10/2014 IN MATHRUBHUMI AND MANORAMA DAILY,TRIVANDRUM EDITION
- EXT.P12 : COPY OF THE PHOTOGRAPHS SHOWING THE TENSE SITUATIONS THAT PREVAILED WHILE PWD OFFICIALS AND POLICE OFFICIALS TRIED TO REMOVE THE UNAUTHORIZED OCCUPANCY.

RESPONDENT(S)' EXHIBITS

- EXT.R3-1 : TRUE COPY OF THE NOTICE OF DISPOSAL DATED 31.8.1991
- EXT.R3-2 : TRUE COPY OF THE PLAINT IN O.S.464/2013
- EXT.R3-3 : TRUE COPY OF PHOTOGRAPH SHOWING THE LOCATION OF THE

SHED IN ALIGNMENT WITH THE ADJOINING SHOPS.

K.HARILAL, J

W.P.C.No.31587 of 2014

Dated this the 12th day of February, 2015

JUDGMENT

The petitioner is the title holder in possession of 9.50 Ares of property comprised in Re.Sy.No.109/10 of the Edava Village, Chirayinkeezh Taluk, Thiruvananthapuram District. He has preferred Exts.P3 and P4 complaints before the 3rd respondent complaining the unauthorised occupation of the PWD road, obstructing normal ingress and egress to the above said property, by the 8th and 9th respondents. Subsequently, the third respondent conducted an enquiry, and on 2.12.2013 heard the petitioner and the respondents 8 and 9. Thereafter, by Ext.P5 letter dated 12.12.2013, the 3rd respondent informed the petitioner that in his enquiry it was found that respondents 8 and 9 are conducting their business on the PWD road Puramboke lying in front of the above said property and necessary instruction had been issued to the 7th respondent to initiate proceedings to evict them from the unauthorised occupation of PWD road Puramboke.

2. The 3rd respondent sent Ext.P6 letter dated 3.1.2014, bearing number A3-5737/13 to the 7th respondent to initiate necessary steps to evict respondents 8 and 9 from the unauthorised occupation. Consequently, the 7th respondent sought necessary police assistance from the Ayiroor Police Station, vide Ext.P7 letter to remove the said unauthorised occupation. Thereafter, the petitioner received Ext.P8 letter from the 2nd respondent stating that appropriate directions are issued to the 4th respondent to initiate necessary steps to remove the unauthorised occupation of 8th and 9th respondents. Thereafter, 6th respondent sent Ext.P9 letter to the Sub Inspector, Ayiroor Police Station, seeking necessary police assistance to remove the unauthorised occupation of 8th and 9th respondents, on 22.9.2014. But the 6th respondent has not taken steps to implement Ext.P6 on 22.9.2014 as stated in Ext.P9.

3. Later, the petitioner came to know that the implementation of Ext.P6 order is being delayed under the political influence of the 8th and 9th respondents on the 6th

respondent. Again, with an intent to make it appear that he is taking steps, the 7th respondent has given an ultimatum to the respondents 8 and 9, by Ext.P10 letter, directing them to remove the unauthorised structure on or before 20.10.2014, lest effective steps should be taken to evict them. On 21.10.2014, when PWD officials with police assistance took initiative to remove the unauthorised occupation, respondents 8 and 9 having political influence, mobilised their men and obstructed the implementation of Ext.P6 order and PWD officials and police left away, leaving the order unimplemented.

4. Thus the grievance of the petitioner is that, though the 3rd respondent has passed Ext.P6 order in the exercise of his statutory power conferred under law and the 6th respondent has further issued certain notices thereunder to make it appear that he has taken steps to implement the order, no effective steps had been taken so far to see that Ext.P6 order is implemented. It is also his case that 8th and 9th respondents are resisting implementation of Ext.P6 order passed against them by

force and the respondents have yielded to their physical force. The petitioner prayed for the issuance of a writ of mandamus order or directing the respondents 1 to 7 to remove the unauthorised occupation in the public road.

5. The 9th respondent filed a counter affidavit, admitting that they are occupying a portion of the property on the road side by erecting temporary sheds and the 9th respondent is conducting a meat vending shop in that shed. They have no case that they are licensed vendors. It is also contended that butchery activity is not conducting and sale of meat alone is being conducted for his livelihood. They have not produced any document which would show any kind of right to occupy the said portion of property as of right. They have not denied the issuance of notice requiring removal of unauthorised occupation issued by the 3rd respondent and they have no case that an opportunity of being heard was not given to them.

6. The learned counsel for the petitioner advanced arguments projecting the grievances of the

petitioner as well as the lethargic attitude of the respondents 1 to 7 to execute Ext.P6 order passed under law. The learned counsel for the 3rd respondent submits that the 3rd respondent Panchayat has passed necessary orders and directed the 7th respondent to take necessary steps to evict the 8th and 9th respondents from the unauthorised occupation of the road puramboke. But they have not given effective police assistance to implement the order so far, apprehending public protest. The petitioner has produced Ext.P12 photographs, which show that when the 7th respondent has taken steps, certain persons unlawfully assembled there and obstructed the removal of unauthorised occupation.

7. The short question that arises for consideration is whether there is any circumstance or reason warranting interference of this Court for the implementation of Ext.P6 order invoking jurisdiction under Article 226 of the Constitution of India?

8. Exts.P10 notices are issued under the Land Conservancy Act, 1957, requiring the respondents 8 and 9

to vacate their unauthorised occupation of the road puramboke by demolishing the sheds erected by them. But they have not obeyed the direction in the said notices. Ext.P6 is the order issued to the 7th respondent requiring to take steps to evict the respondents 8 and 9 from the unauthorised occupation of PWD road puramboke. Ext.P9 is the letter to the Sub Inspector of Police requesting to remove the said unauthorised occupation. Though Ext.P6 order was issued on 3/1/2014, in spite of the long lapse of more than one year, the said order has not been implemented so far.

9. Indisputably, Ext.P6 is an order issued in the exercise of power conferred under the Kerala Land Conservancy Act and the jurisdictional police was bound to render police assistance to execute the said order under Section 252 of the Kerala Panchayat Raj Act, 1994. Though the respondents 2 to 7 have passed orders one by one to make it appear that steps are being taken to implement Ext.P6 order, even after the long lapse of one year, those orders and further communication between

the officers are sleeping on papers.

10. The learned Government Pleader submitted that the order could not be implemented due to physical obstruction caused by the respondents 8 and 9 and their men and the same is evidenced by Ext.P12 photographs also.

11. I am of the opinion that, this is an alarming situation warranting interference of this Court under writ jurisdiction, as the same was caused by the failure of the government machinery to implement an order passed under Rule of law. If an order passed in the exercise of power conferred under law cannot be implemented, it would convey a wrong message to the society tending the people to take law in their own hands. I am of the considered opinion that under Rule of law no order can be left unimplemented for the reason that public may oppose the same by force. Considering the failure of the jurisdictional police to provide adequate police assistance to implement Ext.P6 order and the untenable reasons submitted by the learned Government Pleader for the said

failure, the District Police Chief, Thiruvananthapuram, will stand suo moto impleaded in this writ petition as additional 10th respondent.

12. In the result, the respondents 3 to 7 are directed to implement Ext.P6 order within a period of two weeks from the date of receipt of a copy of this judgment and the additional 10th respondent is directed to provide sufficient police assistance and protection to implement the said order. The 2nd respondent is directed to see that Ext.P6 order is implemented within the specified time, without fail.

The writ petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

/TRUE COPY/

PA TO JUDGE

VS