

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C) .No. 31977 of 2014 (V)

PETITIONER(S) :-

ANTONY P.C. @ ANTAPPAN, AGED 62 YEARS
S/O.CHEEKU, PARAKKAL HOUSE, GOTHURUTH P.O.
ERNAKULAM DISTRICT.

BY ADVS.SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENT(S) :-

1. THE DISTRICT COLLECTOR, ERNAKULAM
PIN 682030.
2. CHENNAMANGALAM GRAMA PACHAYATH
REPRESENTED BY ITS SECRETARY, CHENNAMANGALAM
PIN 683512.
3. HOLY CROSS CHURCH, REPRESENTED BY FR.JOBY KALLARAKKAL
PRIEST-IN-CHARGE, KADALVATHURUTH,
PIN - 682 351.

R2 BY ADV. SRI.S.SHANAVAS KHAN
R3 BY ADV. SRI.VIVEK VARGHESE P.J.
SRI.VARUGHESE M EASO
R1 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXHIBIT-P1: TRUE COPY OF THE COMPLAINT DATED NIL.

EXHIBIT-P2: TRUE COPY OF THE COMPLAINT DATED 19/12/2009.

EXHIBIT-P3: TRUE COPY OF THE ORDER DATED 19/12/2009 WHICH WAS
OBTAINED UNDER RIGHT TO INFORMATION ACT.

EXHIBIT-P4: TRUE COPY OF THE COMPLAINT SUBMITTED BY THE 3RD
RESPONDENT DATED 11/1/2010.

EXHIBIT-P5: TRUE COPY OF THE ORDER DATED 19/1/2010.

EXHIBIT-P6: TRUE COPY OF THE COMPLAINT ALONG WITH THE COVERING
LETTER.

EXHIBIT-P7: TRUE COPY OF THE INFORMATION DATED 25/5/2010 UNDER
RIGHT TO INFORMATION ACT.

EXHIBIT-P8: TRUE COPY OF THE JUDGMENT DATED 5/11/2013 IN W.P.
(C) 19062/2010.

EXHIBIT-P9: TRUE COPY OF THE NOTICE DATED 3/7/2014.

EXHIBIT-P10: TRUE COPY OF THE WRITTEN OBJECTION SUBMITTED BY
THE PETITIONER.

EXHIBIT-P11: TRUE COPY OF THE OBJECTION SUBMITTED BY THE
RESIDENTS IN THE LOCALITY DATED 17/7/2014.

EXHIBIT-P12: PHOTOGRAPHS SHOWING THE CONSTRUCTION.

EXHIBIT-P13: TRUE COPY OF THE ORDER DATED 22.11.2014.

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

A.M. SHAFFIQUE, J.

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**W.P.(C). No.31977 of 2014**

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Dated this the 15th day of January 2015

J U D G M E N T

The petitioner has approached this Court for a direction to consider the objections filed by the petitioner in terms of Exts.P10 and P11 while considering the application submitted by the 3rd respondent for constructing a burial ground under the Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998. During the pendency of the writ petition, it seems that the District Collector had passed an order, Ext.P13 dated 22.11.2014 permitting construction of the burial ground.

2. The petitioner has a case that Ext.P13 has been issued violating the statutory provisions as well as ignoring the objections raised by the petitioner. It is inter alia contended that the District Collector and other authorities did not care to consider the various objections raised by the petitioner as well as the people in the locality. Apparently, the order of the District Collector is appealable under Rule 6(10) of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998. Hence, the remedy of the petitioner is to

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approach the appellate authority to challenge Ext.P13 order.

3. Learned counsel for the petitioner would however submit that construction is being proceeded in terms of Ext.P13 permission granted by the District Collector. Since the petitioner has the right to file appeal, it is always open for the petitioner to prefer an appeal and also seek appropriate orders or stay of the Collector's order. Since the appeal has not been filed so far, the construction, if any made by the 3rd respondent pursuant to Ext.P13 order will be subject to the result of the appeal to be filed by the petitioner.

Under such circumstances, this Writ Petition is disposed of as under :-

- (i) that the petitioner is at liberty to file an appeal against Ext.P13 order and if there is any delay, the same shall be condoned by the appellate authority.
- (ii) the construction of the cemetery pursuant to Ext.P13 will be subject to the final orders to be passed in the appeal to be filed by the petitioner.

Sd/-
A.M. SHAFFIQUE
JUDGE