

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 32195 of 2014 (Y)

PETITIONER:

**V.D.RAPPAL, AGED 79 YEARS,
S/O.LATE DEVASSY, VADAKKETHALA AUTHUT,
NOW RESIDING AT MANGATT ROAD, EDAPPALLY,
CHUTTUPADU KARA, EDAPPALY NORTH VILLAGE,
KANAYANANNUR TALUK,
ERNAKULAM DISTRICT, KOCHI-682 024**

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENTS:

- 1. STATE OF KERALA,
REP. BY SECRETARY, DEPARTMENT OF PUBLIC WORKS,
SECRETARIAT, THIRUVANANTHAPURAM.PIN-695001**
- 2. THE ROADS AND BRIDGES DEVELOPMENT
CORPORATION OF KERALA LTD.,
2ND FLOOR, PREETHI BUILDINGS, M.V ROAD,
PALARIVATTOM, KOCHI-25, REP.BY ITS MANAGING DIRECTOR.**
- 3. THE TAHASILDAR,
KANAYANNUR TALUK, TALUK OFFICE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT, KOCHI-682 011**
- 4. THE THRIKKAKARA MUNICIPALITY,
MUNICIPAL OFFICE, THRIKKAKKARA,
REP. BY ITS SECRETARY-682 303**
- 5. KUNJU MOHAMMED, AGED 65 ABOUT YEARS,
S/O.LATE MAMMALI, POOKATT, PANAYAPPLLY,
THRIKKAKARA P.O, KAKKANADU KARA, VAZHAKALA VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT-682 303**

***ADDL.R6 TO R8 IMPEADED**

***Addl.R6. DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, CIVIL STATION, KAKKANAD
KOCHI - 682 030.**

***ADDL.R6 IS IMPEADED AS PER ORDER DATED 04.02.2015 IN IA.NO.1696/15.**

WP(C).NO.32195/2014

* Addl.R7. ALI,
S/O.LATE VALAMKOOTTIL MAMMALI,AGED 68 YEARS,
RESIDING AT VALAMKOOTTIL HOUSE, KUZHIPILLIMOOLA,
NEAR JUDGE MUKKU, THRIKKAKARA PO., PIN - 682 021.

*Addl.R8. ABDUL KHADER,
S/O.LATE VALAMKOOTTIL MAMMALI,AGED 59 YEARS,
RESIDING AT VALAMKOOTTIL HOUSE, KUZHIPILLIMOOLA,
NEAR JUDGE MUKKU, THRIKKAKARA PO., PIN - 682 021.

***ADDL.R7 & R8 ARE IMPEADED AS PER ORDER DATED 04.02.2015
IN IA.NO.1382/15.**

**R1,R3 & ADDL.R6 BY SR GOVERNMENT PLEADER SRI.JOSEPH GEORGE
R2 BY ADV. SRI.M.VIJAYA KUMAR, SC, RBDCK
R4 BY SRI.S.SHANAVAS KHAN
R5 BY ADV. SRI.P.A.ABDUL JABBAR
ADDL.R7 & R8 BY ADV. SRI.A.B.JALEEL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE PHOTOSTAT COPY OF THE COVERING LETTER OF CHEQUE ISSUED BY SPECIAL TAHASILDAR(L.A)
- P2:- TRUE PHOTOSTAT COPY OF THE APPLICATION DTD 5/2/2004 SUBMITTED TO THE 3RD RESPONDENT
- P3:- TRUE PHOTOSTAT COPY OF THE NOTICE ISSUED BY TALUK SURVEYOR AS PER ORDERS OF THE 3RD RESPONDENT
- P4:- TRUE PHOTOSTAT COPY OF INJUNCTION ORDER IN OS NO.514/2013 ON THE FILES OF SUB COURT, ERNAKULAM
- P5:- TRUE PHOTOSTAT COPY OF THE REPRESENTATION DTD 15/11/2014 SUBMITTED BY THE PETITIONER
- P6:- TRUE PHOTOSTAT COPY OF THE REGISTRATION SLIP
- P7:- TRUE PHOTOSTAT COPY OF THE ACKNOWLEDGMENT CARD SIGNED BY THE 2ND RESPONDENT
- P8:- TRUE PHOTOSTAT COPY OF THE ACKNOWLEDGMENT CARD SIGNED BY THE 4TH RESPONDENT

RESPONDENT(S)' EXHIBITS

- R2(A) COPY OF THE ORDER DATED 24/7/2000.

/TRUE COPY/

P.S.TO.JUDGE

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.32195 OF 2014

.....
Dated this the 11th February, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

"i) issue a writ, order or direction in the nature of mandamus or other appropriate writ directing the respondents 2, 3 and 4 to forthwith take action against 5th respondent and persons under him, who have installed alms box in the property acquired for sea port air port road without obtaining any permission or licences from any corner and cause removal of the same if necessary by taking proceedings under the Kerala Land Conservancy Act 1957

ii) issue a writ, order or direction in the nature of mandamus or other appropriate writ directing the respondents 2, 3, and 4 or the concerned among them to take up Ext.P5, and pass orders on the same and take consequent action after affording an opportunity to the petitioner of being heard;

iii) allow the petitioner to recover the full costs incurred for the institution and conduct of this writ petition (Civil) from the 5th respondent."

2. The specific case projected by the petitioner is that the

property concerned herein was acquired for the purpose of the widening Sea Port-Air Port Road paying compensation for the land concerned and after acquisition of the property, the 5th respondent/Kunju Mohammed does not have any right or interest in the property . In spite of this, the 5th respondent has caused to put up an 'alms box' in the acquired property now belonging to the concerned respondent and is minting money, exploiting the devotees. This made the petitioner to approach this Court by filing this writ petition with the prayers as mentioned herein before.

3. Pursuant to urgent notice on admission ordered, the 5th respondent has entered appearance and has stated that the said respondent has not put up any alms box in the property, as alleged by the petitioner. In the said circumstance, the District Collector was ordered to be impleaded in the party array, who now stands impleaded as the additional 6th respondent, as per the order in I.A.No.13696 of 2015 .

4. The version of the second respondent / Roads and Bridges Development Corporation represented by its Managing Director, as contained in the counter affidavit dated 13.01.2015,

particularly in paragraph '3' , is as follows:

"It is submitted that the petitioner has not disclosed the entire facts before this Hon'ble Court. The petitioner has a property in Sy.No.407/10. The petitioner had constructed a compound wall for the property in Sy.No.40710. Petitioner has also property outside the compound wall between the compound wall and the road. Adjacent to the petitioner's property Sri Kunju Mohammed has also property. It is seen that an alms box is placed adjacent to Kunju Mohammed's property. It cannot be ascertained whether the alms box is situated in Kunju Mohammed's property or Government Puramboke land. This has to be ascertained by the 3rd respondent Tahsildar after conducting a survey engaging Taluk Surveyor. If the Tahsildar finds the property is a Government Puramboke land, steps will be taken to demolish the same with the aid of 3rd respondent. "

An additional counter affidavit has been filed on 13.01.2015 by the very same respondent , paragraph '3' of which reads as follows:

"It is submitted that the Government by order dated 24.07.2000 handed over the

Irumpanam-Kalamassery road to the Roads and Bridges Development Corporation of Kerala Ltd., Kochi for development and improvements. The maintenance of the roads shall be done by the Corporation. True copy of the order dated 24.07.2000 is produced herewith and marked as Exhibit R2(a). The identity of the property and extent of the property was not stated in the above order dated 24.07.2000. It is not known whether the property in dispute is a Government puramboke land or a property which has been handed over to this respondent since there is no physical boundary existing at site. It is under these circumstances that the nature of the property, whether it is puramboke land or not, can be settled only after verification of the same by the Taluk Surveyor. It is submitted that this respondent has no objection in removing the alms box if it is on the Government Puramboke land. "

5. Additional respondents 7th and 8th respondents , who came to be impleaded by filing I.A.No. 1382 of 2015 have stated in paragraph '3' of the affidavit in support of the IA as follows:

"It is submitted that the property wherein the alms box is installed belongs to us Our father late Valamkottil Mammali

obtained 4 acre 12 cents of property comprised in Sy.No.550/1-C3 as per a gift deed No.3404/1107 ME executed by his father at Alangad Sub Registry. Our father died on 27.02.1979. The 5th respondent and his wife are in possession of some extent of our property after the sale of some extent and acquisition for Sea Port Air Port Road wherein the alms box is installed by the Jama ath. As disputes arose in between the petitioner herein and the 5th respondent the petitioner has filed O.S.No.514/13 before the Sub Court, Ernakulam for fixation of boundary which is pending. Measurement of the property by surveyor is over."

6. After hearing both the sides, this Court finds that the main dispute pertains to whether the 'Alms Box' which is stated as put up, is situated in the property belonging to any private party, or is it in the property belonging to the Government or the second respondent. The matter requires to be considered by the Addl.6th respondent/District Collector with reference to the relevant records . If it is found that the Alms Box has been put up in the Government property or the property of the second respondent, steps shall be taken to cause it to be seized and

removed with the assistance of police- if necessary. On such an event, the 'fund' shall go to the State exchequer. Proceeding in this regard shall be finalised with notice to the parties herein at the earliest at any rate within six weeks from the date of receipt of a copy of the judgment.

Writ petition stands disposed of

**P.R.RAMACHANDRA MENON
JUDGE**

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