

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 32273 of 2014 (H)

PETITIONER: -

NARANIPUZHA KUMMIPALAM KOLE CULTIVATORS CO-OP. SOCIETY
LTD No.M314, P.O.ERAMANGALAM, MALAPPURAM DISTRICT,
REPRESENTED BY ITS PRESIDENT, C.P.PRABHAKARAN,
S/O.KUNJUMON, AGED 52 YEARS.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

RESPONDENTS: -

1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY,
DEPARTMENT OF AGRICULTURE, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.
2. KERALA LAND DEVELOPMENT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
KOWDIAR.P.O, THIRUVANANTHAPURAM, PIN-695003.

R2 BY ADV.SRI.A.ABDULKHARIM, SC, KERALA LAND DEV.P.CORPN. .
R1 BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS : -

- EXT.P1 : TRUE COPY OF THE AGREEMENT BETWEEN THE PETITIONER
SOCIETY AND RESPONDENT DATED 26.4.2000.
- EXT.P2 : TRUE COPY OF THE LETTER DATED 5.7.2000 OF THE TAHSILDAR
PONNANI.
- EXT.P3 : TRUE COPY OF THE LETTER DATED 23.10.2001 OF THE
CONSTRUCTION ENGINEER KERALA LAND DEVELOPMENT
CORPORATION.
- EXT.P4 : TRUE COPY OF THE LETTER DATED 19.01.2001 ISSUED BY THE
PETITIONER.
- EXT.P5 : TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER
DATED 18.01.2011.
- EXT.P6 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND
RESPONDENT IN WP(C)4597/2011.
- EXT.P7 : TRUE COPY OF THE JUDGMENT IN WP(C)4597/2011 DATED
25.09.2012.
- EXT.P8 : TRUE COPY OF THE LETTER DATED 09.10.2014 ISSUED BY THE
GOVERNMENT.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 32273 of 2014

Dated this the 28th day of September, 2015

JUDGMENT

The petitioner, a Co-operative Society, comprising farmers of Malappuram District, initially secured a civil work from the second respondent: repairing and maintaining the outer bund of Naranippuzha, Kummipalam scheme. The work was assigned on 02.04.2000.

2. In the course of time, though the petitioner Society completed 90% of work, it could not proceed further owing to Exhibit P2 direction issued by the Tahsildar, who was assigned the task of enquiring into the work undertaken by the petitioner. Having completed the enquiry in about 5 years, as is evident from Exhibit P3, the Tahsildar has cleared the petitioner of the charges. But, the second respondent, according to the petitioner Society, gave no further permission to the petitioner to complete the work.

3. Under these circumstances, the petitioner filed W.P. (C) No. 4597/2011 and invited Exhibit P7 judgment, through which this Court has directed the second respondent to see

that the proceedings are completed, and the petitioner is paid the amount within a reasonable time for the work done.

4. In the light of the direction by this Court in Exhibit P7 judgment, the first respondent issued Exhibit P8 order; it required the second respondent to resume the work and complete the project by rectifying what are said to be the defects pointed out by its officials. Under those circumstances, assailing Exhibit P8, the petitioner has filed the present writ petition.

5. The principal contention on the petitioner's part, as is voiced by the learned Senior Counsel, is that the inordinate delay that has occurred cannot, at any rate, be attributed to the petitioner. In fact, the learned Senior Counsel has submitted that the Society has almost become dysfunctional; and, at this juncture, it cannot take up any further work. Its inability is notwithstanding the fact that the balance work is admittedly only 10%.

6. The learned Senior Counsel has further submitted that the petitioner could not be penalized for the delay that has already occurred owing to, initially, the Vigilance Enquiry and, later, the administrative red tape on the part of both the first

and second respondents.

7. The learned counsel for the second respondent has, on the other hand, submitted that all along the second respondent, especially going by the instructions of the first respondent, has been insisting on the petitioner to complete the balance work. The second respondent, avers the learned counsel, has made it clear that otherwise it is not in a position to pay the amounts for the work so far done. According to him, it is the first respondent that has to release the funds even if the second respondent Society is inclined to pay the petitioner for the work that has been done so far.

8. At this juncture, the learned Senior Counsel has submitted that this Court may dispose of the writ petition without adverting to the merits of the matter, but by making it clear that the petitioner can agitate the whole issue before the first respondent, who, after hearing the second respondent as well as the petitioner, can take appropriate decision.

9. The learned Government Pleader, on instructions, has submitted that the Government does not have any objection to considering the petitioner's case on merits, provided the petitioner Society submits a suitable representation in that

regard.

10. In the facts and circumstances, having regard to the submissions of the learned Senior Counsel for the petitioner, the learned counsel for the second respondent, as well as the learned Government Pleader, this Court, without adverting to the merits of the matter, disposes of the writ petition making it clear that the petitioner is at liberty to make a suitable representation before the first respondent.

11. On receipt of such representation as is to be filed by the petitioner, the first respondent shall consider it objectively and pass appropriate orders thereon in accordance with law, after affording an opportunity of hearing to all parties concerned.

Needless to observe that given the delay that has already occurred, and especially given the projected precarious financial position of the petitioner Society, the Government may take an expeditious decision in this regard. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-