

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 32320 of 2014 (L)

PETITIONER:

**P. BHASKARAKURUP, AGED 65 YEARS,
S/O.RAMAN NAIR, PATTYATH HOUSE,
PAVANDOOR. P.O., NANMENDA,
KAKKOOR VILLAGE, KOZHIKODE.**

**BY ADVS.SRI.A.RANJITH NARAYANAN,
SRI.S.K.SAJU,
SMT.A.SIMI.**

RESPONDENTS:

- 1. THE REVENUE DIVISIONAL OFFICER/
SUB DIVISIONAL MAGISTRATE,
KOZHIKODE, OFFICE OF THE SDM/R.D.O.,
CIVIL STATION, KOZHIKODE-673 001.**
- 2. KAKKOOR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
KAKKOOR PANCHAYATH OFFICE,
KAKKOOR, KOZHIKODE-673 673.**
- 3. P.P. SURENDRAN, S/O.RAMAN,
POTHUKKUDI PARAMBATH, RAMANILAYAM,
PAVANDOOR. P.O, KOZHIKODE-673 673.**
- 4. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO
DEPARTMENT FOR LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**

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**5. TALUK SURVEYOR,
KOZHIKODE TALUK, KOZHIKODE-673 001.**

R1, R4 & R5 BY GOVT. PLEADER SRI.GIKKU JACOB.

R2 BY ADVS. SRI.K.M.FIROZ

SMT.M.SHAJNA

SRI.S.KANNAN

R3 BY ADVS. SRI.V.V.SURENDRAN,

SRI.P.A.HARISH.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 07/04/2004.
- EXT.P2 TRUE COPY OF SKETCH SHOWING THE NATURE AND LIE OF THE PUBLIC LANE AND PROPERTIES.
- EXT.P3 TRUE COPY OF THE ORDER DATED 22/02/2011.
- EXT.P4 TRUE COPY OF THE FINAL ORDER DATED 13/04/2012 PASSED BY THE R.D.O., KOZHIKODE.
- EXT.P5 TRUE COPY OF CORRECTION REQUEST DATED 28.06.2012 SUBMITTED TO THE RDO, KOZHIKODE.
- EXT.P6 TRUE COPY OF THE REPRESENTATION DATED 03.09.2012 SUBMITTED TO THE KOZHIKODE DISTRICT COLLECTOR.
- EXT.P7 TRUE COPY OF THE PROCEEDINGS/ORDER OF CORRECTION OF RESURVEY NUMBER TO R.S. NO.24/2A OF PAVANDOOR TALUK.
- EXT.P8 TRUE COPY OF THE ORDER DATED 15.11.2012 PASSED IN O.P.819/2012 BY THE HON'BLE OMBUDSMAN FOR LSGI, THIRUVANANTHAPURAM.
- EXT.P9 TRUE COPY OF THE REPRESENTATION DATED 04.02.2013 TO THE HON'BLE CHIEF MINISTER.
- EXT.P10 TRUE COPY OF THE COMMUNICATION DATED 18.02.2013 SENT BY THE STATE COMMISSIONERATE FOR PERSONS WITH DISABILITIES TO THE 1ST RESPONDENT RDO, KOZHIKODE WITH COPY TO THE 2ND RESPONDENT KAKKOOR GRAMA PANCHAYATH AT SECRETARY.
- EXT.P11 TRUE COPY OF THE LETTER DATED 11.04.2013 ISSUED BY THE SECRETARY TO THE STATE OF KERALA.
- EXT.P12 TRUE COPY OF THE REPLY SENT BY THE PETITIONER DATED 22.04.2013.
- EXT.P13 TRUE COPY OF THE ORDER AND JUDGMENT IN WP(C).NO.14113/2013 DATED 05/06/2014 PASSED BY THIS HONOURABLE COURT.

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**EXT.P14 TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT
SDM/RDO DATED 20/09/2014.**

RESPONDENT'S ANNEXURES:-

**ANNEXURE R2A COPY OF THE DECISION NO.5 OF 2015 DATED 13/01/2015
TAKEN BY THE PANCHAYATH COUNCIL OF KAKKOOR
GRAMA PANCHAYATH.**

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 32320 of 2014

Dated this the 8th day of October, 2015

J U D G M E N T

The issue in this writ petition pertains to the obstruction to the public pathway. The Sub Collector, by Ext.P4 order, found that there is no obstruction to the pathway and dismissed the petitioner's complaint under Section 133 of the Cr.P.C. Petitioner challenges this order in this writ petition.

2. However, it is to be noted in the first para of the earlier order passed by the Sub Collector as per Exts.P3 wherein it is stated as follows:-

“Anjali.P. filed a petition before this court regarding the stagnation of water in the pathway due to the filling of soil in the adjacent land. Village Officer, Kakkur has submitted his report in the matter and Village Officer reported that the applicant is not able to walk without help as she is stricken with cerebral palsy disease. Village Officer has also reported that the pathway is used by so many people and part of the pathway was filled with soil by Surendran, the respondent herein. He had specified

that almost 20 cents of land was filled with soil by the respondent. ”

Ext..P3 was a provisional order and thereafter, final order (Ext.P4) was passed, wherein it is stated as follows:-

“Village Officer's report dtd.1.6.10 has clarified that the land of the respondent is wet land. It is also very clear that the land has been converted unauthorisedly by the respondent. Sections 3 and 11 of Kerala Conservation of Paddy land and Wet land Act,2008 has banned unauthorised conversion of paddy land and wet land. Hence the respondent had not constructed proper drainage system so far. As the respondent's act of conversion of his land is in construction of the existing law, he is directed to remove the soil deposited in his land comprised in R.S.No.24/1B of Pavandoor Desom of Kakkur Village. The respondent is also directed to construct a sufficient drainage system to facilitate the flow of water. The Secretary, Kakkur Grama Panchayat also directed to consider the issue of pathway, to find a possible solution in the matter.”

According to the petitioner, Ext.P4 has become final. Therefore, there is a clear finding that the width of the pathway has been reduced by filling up of soil by the party respondents.

3. The obstruction in this context is to be understood by reduction

of the width of public pathway. The Panchayath, as directed by this Court, appears to have inspected and filed a report. It is stated in the report that there is no encroachment.

4. This Court is of the view that essentially this is a matter arising out of the context to a proceedings under Section 133 and the Sub Collector has to ensure the earlier order to be implemented. Therefore, he has to verify whether the width of pathway has been reduced consequent upon filling up of soil by the third respondent. Necessary orders shall be passed afresh after hearing the petitioner, the third respondent and the Panchayath. in the light of the findings in Exts.P3 and P4 and also to verify the village records. Needful shall be done within two months from the date of receipt of a copy of this judgment.

This writ petition is disposed of as above.

MBS/

A.MUHAMED MUSTAQUE,
Judge

