

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 33459 of 2014 (F)

PETITIONER:

**MUHAMMED, AGED 68 YEARS
S/O.KUNHABDULLA, PULPARAMBIL HOUSE, KUTTIPALAKKAL
THAZHEKODE AMSOM DESOM, MUKKOM.P.O.
KOZHIKODE-673 602.**

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

RESPONDENT(S):

- 1. DISTRICT SURVEY SUPERINTENDENT, KOZHIKODE
COLLECTORATE, CIVIL STATION
KOZHIKODE-673 020.**
- 2. DISTRICT COLLECTOR
KOZHIKODE, COLLECTORATE, CIVIL STATION
KOZHIKODE-673 020.**
- 3. VILLAGE OFFICER
THAZHEKODE VILLAGE, MUKKOM.P.O., KOZHIKODE-673 602.**
- 4. ADDITIONAL TAHSILDAR
KOZHIKODE-673 020.**
- 5. TALUK SURVEYOR
KOZHIKODE, TALUK OFFICE, KOZHIKODE-673 020.**
- 6. STATE OF KERALA
REPRESENTED BY SECRETARY, REVENUE DEPARTMENT
THIRUVANANTHAPURAM-695 001.**

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7. SURVEY DIRECTOR
SURVEY BHAVAN, VAZHUTHAKAD.P.O.
THIRUVANANTHAPURAM-14.

8. SURVEY VIGILANCE
SURVEY BHAVAN, VAZHUTHAKAD.P.O.
THIRUVANANTHAPURAM-14.

9. REGIONAL JOINT DIRECTOR
SURVEY LAND RECORDS, CIVIL STATION, KOZHIKODE-673 020.

10. ANOOP, AGED 35 YEARS
CIVIL POLICE OFFICER, S/O APPUTTI, PULPARAMBIL HOUSE
NAYARKUZH, R.E.C, KOZHIKODE-673 601.

ADDL. RESPONDENTS*

11. PATTIKAJATHI COLONY VIKASANA SAMITHI
AFRA TOWER, MATHU ROAD, MUKKOM P.O
KOZHIKODE - 673 602, REPRESENTED BY ITS
SECRETARY, T.T KANNANKUTTY
(*IMPLEADED AS PER ORDER DATED 23.01.2015 IN I.A NO.956/15)

R10 BY ADV. SRI.T.G.RAJENDRAN
RADDL.11 BY ADV. SRI.CIBI THOMAS
R1,R9 BY ADV. GOVERNMENT PLEADER SRI. MANOJ P. KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1- TRUE COPY OF FORM NO.20 DATED 12.04.2007 ISSUED BY THE ADDITIONAL TAHSILDAR, KOZHIKODE.
- EXT.P2- TRUE COPY OF THE DEED OF ASSIGNMENT DATED 11.04.2007 ISSUED BY THE 2ND RESPONDENT, THE THEN DISTRICT COLLECTOR.
- EXT.P3- TRUE COPY OF THE RECEIPT NO.25 DATED 16.09.1992 ENTERED IN BOOK NO.705 ISSUED BY THE VILLAGE OFFICER.
- EXT.P4- TRUE COPY OF THE RECEIPT DATED 28.04.2008 FOR ISSUANCE OF POKKUVARAVU FEES.
- EXT.P5- TRUE COPY OF THE TAX RECEIPT DATED 28.04.2008.
- EXT.P6- TRUE COPY OF THE TAX RECEIPT DATED 15.07.2010.
- EXT.P7- TRUE COPY OF THE TAX RECEIPT DATED 5.05.2011.
- EXT.P8- TRUE COPY OF THE TAX RECEIPT DATED 3.08.2012.
- EXT.P9- TRUE COPY OF THE TAX RECEIPT DATED 12.06.2013.
- EXT.P10- TRUE COPY OF THE TAX RECEIPT DATED 20.05.2014.
- EXT.P11- TRUE COPY OF THE POSSESSION CERTIFICATE DATED 15.09.2008.
- EXT.P12- TRUE COPY OF THE POSSESSION CERTIFICATE DATED 22.08.2014 ISSUED BY THE VILLAGE OFFICER.
- EXT.P13- TRUE COPY OF THE SAID C.M.P.NO.3874/2013 DATED 29.10.2013 PENDING BEFORE THE LEARNED JFMC II, THALASSERY.
- EXT.P14- TRUE COPY OF THE COMPLAINT DATED 08.10.2013 FILED BY THE PETITIONER BEFORE THE VILLAGE OFFICER.
- EXT.P15- TRUE COPY OF THE REQUISITION DATED 26.05.2014 UNDER THE RTI ACT.
- EXT.P16- TRUE COPY OF THE REPLY DATED 20.06.2014.
- EXT.P17- TRUE COPY OF THE NEWS REPORT WHICH CAME IN MADHYAMAM DAILY ON 20.10.2014.

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EXT.P18- TRUE COPY OF THE COMPLAINT DATED 22.10.2014.

EXT.P19- TRUE COPY OF THE NOTICE DATED 26.11.2014.

RESPONDENT(S)' EXHIBITS

EXT.R11(a) TRUE COPY OF THE PHOTOGRAPH OF THE RELEVANT
PORTION OF THE ROAD BY THE SIDE OF WHICH THE
PURAMBOKE IS SITUATED.

EXT.R11(b) TRUE COPY OF THE REPORT OF THE TALUK SURVEYOR DATED
11.07.2014.

EXT.R1(a) TRUE COPY OF THE MASS PETITION DATED 30.07.2014 FILED
BY PUTTATT KANNAN KUTTY T.T.AND OTHERS.

EXT.R1(b) TRUE COPY OF THE 1ST RESPONDENT REPORT.

EXT.R1(c) TRUE COPY OF THE 1ST RESPONDENT SKETCH.

// TRUE COPY //

PA TO JUDGE.

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K. VINOD CHANDRAN, J.

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W.P.(C) No.33459 of 2014 - F

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Dated this the 13th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P19 notice, which obviously has been issued on an application made by the petitioner himself at Ext.P18. The petitioner made the 7th respondent a party herein and contended that the said respondent is encroaching upon the property, against which the petitioner had filed Ext.P14 application before the Village Officer as also Ext.P18 before the various authorities seen thereunder.

2. The petitioner in the writ petition claimed that by Ext.P19 notice, the District Survey Superintendent has called the petitioner for a hearing and if the survey is conducted by the District Survey Superintendent, then necessarily, the petitioner would loose the appellate remedy as provided under the Kerala Survey and Boundaries Act, 1961 (for brevity 'the Act of 1961)

and the Rules framed thereunder.

3. Ext.P14 is an application filed by the petitioner himself before the Village Officer. Subsequently the petitioner has moved Ext.P18 before the various officers. It is on the basis of Ext.P18, probably on the same being passed over to the District Survey Superintendent for consideration, that a hearing notice was issued. There can be no objection raised by the petitioner that survey cannot be conducted in the area. The objection of the petitioner is only that the District Survey Superintendent may not conduct the survey insofar as taking away the petitioner's appellate remedy. There is no indication of any survey as per Ext.P19.

4. The 7th respondent and the additional 8th respondent represents the interests of the other assignees in the area, who were assigned land along with the petitioner's mother. They too require a survey to be undertaken since the petitioner is said to have obstructed a pathway passing through the colony.

5. In any event, the representation has to be considered by the District Survey Superintendent and if at all a survey is necessitated, it would have to be conducted by the Taluk Surveyor as enjoined upon in the Act of 1961. In such circumstance, on such survey being conducted, merely because the survey was directed by the District survey Superintendent on an application of the petitioner, the appellate remedy would not be taken away. The writ petition is a mere ruse to stall the survey, which the petitioner himself demanded.

The writ petition would stand dismissed as unnecessary. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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// true copy //

P.A to Judge.