

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 34671 of 2015 (H)

PETITIONER(S):

**KONSTONTAYYAN @ BAIJU,
1172, THOPPIL, KOLLAM,
PRESENTLY RESIDING AT JOSMI BHAVAN, PADAPPAKARA P.O.,
MULAVANA VIA, KOLLAM - 691 503.**

BY ADV. SRI.P.SIVARAJ

RESPONDENT(S):

**1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, STATE SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**

**2. KOLLAM CORPORATION,
REP. BY ITS SECRETARY, KOLLAM - 690 001.**

*** ADDITIONAL R3 IMPEADED**

**3. S.SAHASRANAMAN, S/O.SIVANANDHAN,
AGED 64 YEARS, RESIDING AT 'LAL AND RAJESH BHAVANAM',
120, NAKSHATHRA NAGAR, CHAMPAKULAM,
KALLUMTHAZHAM P.O., KILIVALLUR,
KOLLAM - 691 004.**

*** IS IMPEADED AS PER ORDER DTD.27.11.2015 IN IA.17218/2015.**

*** ADDITIONAL R4 IMPEADED**

**4. SMT.AJITHAKUMARI, W/O.BALACHANDRAN,
SALINIMANDIRAM, KILIKOLLUR VILLAGE, KOLLAM.**

*** IS IMPEADED AS PER ORDER DTD.27.11.2015 IN IA.17277/2015.**

**R1 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN
R2 BY ADV. SRI.M.K.CHANDRA MOHAN DAS,SC,KOLLAM MPT
R3 BY ADV. SRI.L.RAJESH NARAYAN
R4 BY ADV. SRI.T.R.RAJAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF THE NOTICE DT. 08.09.2015 OF THE 2ND RESPONDENT.

P2 - TRUE COPY OF THE NOTICE DT. 23.09.2015 OF THE 2ND RESPONDENT.

P3 - TRUE COPY OF THE RECEIPT DT. 30.09.2015 OF THE 2ND RESPONDENT GIVEN
TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF REPLY NOTICE.

EXT.P4: TRUE COPY OF THE APPLICATION FOR ASSIGNMENT OF LAND SUBMITTED
BY THE PETITIONER ALONG WITH HIS WIFE DTD.23.11.2015 BEFORE THE
DISTRICT COLLECTOR, KOLLAM.

EXT.P4(a): TRUE COPY OF THE RECEIPT ACKNOWLEDGING THE RECEIPT OF EXT.P4.

RESPONDENT(S)' EXHIBITS:

EXT.R3(a): TRUE COPY OF THE SPOT MAHAZZER DTD.16.11.2015.

IA.NO.17218/2015 IN WP(C) NO.34671/2015

EXT.R3(a): TRUE COPY OF THE ORDER DTD.25.3.2013 ISSUED BY THE ADDITIONAL
TAHSILDAR, KOLLAM.

EXT.R3(b): TRUE COPY OF THE ORDER DTD.10.11.2014 OF THE HONOURABLE
OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN
ORIGINAL PETITION NO.1094/2014.

EXT.R3(c): TRUE COPY OF THE INTERIM ORDER DTD.25.5.2015.

EXT.R3(d): TRUE COPY OF THE REQUEST DTD.17.7.2015 BEFORE THE
1ST RESPONDENT.

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 34671 of 2015

Dated this the 27th day of November, 2015

JUDGMENT

The petitioner has approached this Court challenging Ext.P2 notice issued by the Secretary–Municipal Corporation, Kollam. By Ext.P2, the petitioner has been directed to remove the illegal encroachment of footpath in 45th Division of the Kollam Municipal Corporation near St.Joseph Convent–The District Hospital.

2. The petitioner's case is that he is in possession of this place for a long period and he cannot be evicted.

3. The order was issued on 23/09/2015. It is to be noted that the writ petition was filed before this Court in W.P.(C).No.23033/2015 by one Sahasranaman alleging illegal encroachment of footpath. This Court directed the

Municipal Corporation to hear the petitioner as well as Sahsranaman, in the complaint raised by Sri. Sahasranaman. The petitioner received notice, produced as Ext.P1 for hearing, thereafter, the petitioner has been directed to remove the encroachment as per Ext.P2 on being satisfied with the objection raised by the petitioner is untenable. The petitioner did not implead Sri. Sahsranaman in the writ petition in spite of reference has been made in Ext.P2 notice. The aforesaid Sahsranaman as well as another person namely Smt. Ajitha Kumari got impleaded by separate applications.

4. It is submitted by the learned counsel for the impleaded respondent as well as counsel for the Corporation that the petitioner has been evicted on 16/11/2015 before the status quo order passed by this Court on 17/11/2015. Smt. Ajitha Kumari has also produced Mahazar as R3(a) to show that the eviction has been completed.

5. The learned counsel for the petitioner would submit that the petitioner has preferred an application for

assignment of land vide Ext.P4. Ext.P4(a) is the acknowledgment. Therefore, he shall be permitted to continue in the same place. It is to be noted that the application for assignment of land has been acknowledged only on 23/11/2015.

Considering the facts and circumstances, the writ petition is disposed of with the following directions :

- i) Status quo as on 16/11/2015 shall be maintained.
- ii) The application for assignment of land preferred by the petitioner, shall be considered by the District Collector, Kollam, in accordance with law, within three months after giving notice to the petitioner as therein.

Sd/-

**A. MUHAMED MUSTAQUE
JUDGE**

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