

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYASHTA, 1937

WP(C).No. 35425 of 2014 (C)

PETITIONER:

**P.J.ANTONY, AGED 42 YEARS,
S/O. P.K. JOSEPH, PALLIPARAMBIL HOUE,
MOOLAMKUZHI, KOCHI-682002.**

BY ADV. SRI.P.A.ABDUL JABBAR

RESPONDENT(S):

- 1. THE ADDITIONAL TAHSILDAR,
FORT KOCHI, KOCHI-682001.**
- 2. THE VILLAGE OFFICER, RAMESWARAM VILLAGE,
PALLURUTHY, KOCHI-682006.**
- 3. THE REVENUE DIVISIONAL OFFICER,
FORT COCHIN, KOCHI-682001.**
- 4. THE SECRETARY,
CORPORATION OF COCHIN, ERNAKULAM.**

***ADDL. R4 & R5 IMPEADED**

- 5. K.J.JOSEPH, AGED 60 YEARS, S/O.JOSEPH,
KURISINKAL HOUSE, 15/386, MOOLAMKUZHI, KOCHI - 62.**
- 6. PETER D.F, AGED 42 YEARS, S/O.FRANCIS,
DEVASWAM PARAMBU HOUSE, MOOLAMKUZHI, KOCHI-2.**

**ADDL.R5 AND R6 ARE IMPEADED AS PER ORDER
DATED 26.05.2015 IN IA 4475/15.**

**R1 TO R3 BY ADV. GOVERNMENT PLEADER SMT.C.K.SHERIN
R4 BY SRI.P.K.SOYUZ,SC
BY ADV. SRI.E.D.GEORGE
ADDL R5 & R6 BY ADVS. SRI.SABU GEORGE
SRI.NIDHI BALACHANDRAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1. TRUE COPY OF THE JUDGMENT DATED 30-5-2014 IN WRIT PETITION NO. 13642/2014.
- P2. TRUE CPY OF THE ORDER DATED 7-8-2014 ISSUED BY THE 1ST RESPONDENT AND SERVED ON 5-9-2014.
- P3. TRUE COPY OF THE APPEAL DATED 17-9-2014 ALONG WITH THE STAY APPLICATION.
- P4. TRUE COPY OF THE JUDGMENT IN WPC 31010/2014 DATED 20-11-14.
- P5. TRUE COPY OF THE HEARING NOTICE ISSUED TO THE PETITIONER.
- P6. TRUE COPY OF THE INTERLOCUTORY APPLICATION WHICH WAS EVEN REFUSED TO BE NUMBERED BY THE OFFICE OF THE 3RD RESPONDENT.
- P7. TRUE COPY OF THE I.A. NO. 17282/2014 IN WPC NO. 31010/14.
- P8. TRUE COPY OF THE ORDER DATED 18-12-14 IN I.A. NO. 17282/2014 IN WPC NO. 31010/2014.
- P9. TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 12-12-14.
- P10. TRUE COPY OF THE SKETCH OF THE PROPERTY.
- P11. TRUE COPY OF THE PROPERTY TAX RECEIPT IN RESPECT OF THE PETITIONER'S BUILDING.
- P11(A). TRUE COPY OF THE PROPERTY TAX RECEIPT IN RESPECT OF THE PETITIONER'S BUILDING.
- P11(B). TRUE COPY OF THE PROPERTY TAX RECEIPT IN RESPECT OF THE PETITIONER'S BUILDING.
- P12. TRUE COPY OF THE STATEMENT RECEIVED FROM THE VILLAGE OFFICE.
- P13. TRUE COPY OF THE COMPLAINT SUBMITTED BEFORE THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

K. VINOD CHANDRAN, J.

W.P.(C) No. 35425 of 2014

Dated this the 11th day of June, 2015

J U D G M E N T

The petitioner is concerned with Ext.P9 order with regard to eviction from an encroachment alleged to have been made by the petitioner over the land which allegedly vests with the Corporation. The petitioner contends that he has two items of property, having an extent respectively of 9.673 and 7 cents, which lie together and in which the petitioner has already constructed a building. Additional respondents 5 and 6 vehemently refute the said contention and contends that the encroachment was carried on recently and a building is being constructed even now in the encroached portion.

2. The brief facts to be noticed are that the petitioner was earlier issued with a notice for eviction, which was challenged for reason of no notice being issued.

As per the judgment of this Court produced at Ext.P1, the petitioner was issued with a notice and the Additional Tahsildar passed an order dated 7.8.2014, produced at Ext.P2, directing eviction of the petitioner from 00.61 Ares, out of a total of 02.02 Ares in Survey No.1951 of Rameshwaram Village. The specific allegation was that the petitioner's encroachment resulted in obstruction of a 'thodu' and the free flow of water was interdicted. After Ext.P2 order was passed, the petitioner filed an appeal before the Revenue Divisional Officer, Fort Kochi. The appeal is said to have been filed within time on 16.9.2014. The petitioner was threatened of eviction on 19.11.2014; when the petitioner rushed to this Court. This Court by Ext.P4 judgment directed disposal of the appeal within a period of two months, with an opportunity of hearing being granted to the petitioner as also the 4th respondent therein and directed status quo to be maintained till then.

3. The petitioner's specific allegation is that on 2.12.2014, the petitioner was issued with a notice produced at Ext.P5. According to the petitioner, the same was served on him at 4.45 p.m. on 2.12.2014. An endorsement to that effect is also seen in Ext.P5. On 3.12.2014, the petitioner is said to have approached the R.D.O. and filed Ext.P6, wherein two weeks' time was sought. The R.D.O. declined the same and passed Ext.P9 order dated 12.12.2014. The petitioner also had sought for time to produce certain documents. However, the R.D.O. is said to have heard the petitioner and passed orders on 12.12.2014.

4. When this Court directed an opportunity of hearing to be afforded to the petitioner, the same definitely ought to have been a reasonable opportunity. In an appeal pending for long before the R.D.O. and in which this court had issued specific directions to dispose of within two months, the R.D.O. is said to have issued a notice dated

20.11.2014, which is said to have been served on the petitioner only on 2.12.2014. In this context, it is to be specifically noticed that the notice said to have been issued on 20.11.2014 would not be in compliance with the judgment in Ext.P4, since the judgment is also of the same date. The service made is definitely after that date, but the same was served on the petitioner, according to him, only on the previous day. There is no denial of such specific averment made in the writ petition in the statement/counter affidavit filed by the State. Further, when this Court had directed an opportunity for hearing and the petitioner had specifically sought for two weeks' time and sought for permission to produce materials also, the R.D.O. ought to have, in all reasonableness, allowed the prayer.

5. In such circumstance, for the short reason of violation of principles of natural justice, Ext.P9 would be set aside. The petitioner shall appear before the office of the

Revenue Divisional Officer on **22.6.2015** and produce whatever materials he wishes to rely upon before the R.D.O. on the said date. The R.D.O's office shall indicate a date of hearing to the petitioner which shall be within one month from the date of his appearance. The petitioner shall not be issued with any separate notice in post and the office shall ensure that the petitioner's endorsement is received on the notice issued on 22.6.2015. The R.D.O. shall consider the matter afresh and pass orders, after also hearing the additional respondents 5 and 6 within a period of one month from the date of hearing. It is made clear that additional respondents 5 and 6 also shall be present before the R.D.O. on 22.6.2015 and shall be intimated of the date of hearing. The writ petition stands disposed of making it clear that this Court has not gone into the merits of the matter, which would have to be considered by the R.D.O. In the context of the rival contentions the petitioner shall not make any construction in the property till the R.D.O. passes an order.

The petitioner shall also be served with the order passed, with acknowledgment obtained and shall also be given two weeks time from the date of service before any eviction proceedings are initiated.

Writ Petition is disposed of. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE