IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 11TH DAY OF DECEMBER 2020 / 20TH AGRAHAYANA, 1942

WP(C).No.29320 OF 2019(L)

PETITIONERS:

1 GRACIOUS KURIAKOSE, AGED 61 YEARS
SENIOR ADVOCATE, S/O. KURIAKOSE RESIDING AT
NAMBIAPARAMBIL HOUSE, SHENOY ROAD, KALOOR,
ERNAKULAM DISTRICT.

2 RAVI KUMAR, AGED 66 YEARS, ADVOCATE,
S/O. LATE KANAKADAS , RESIDING AT UDAYA NAGAR,
KALOOR, ERNAKULAM DISTRICT.

3 P.P. AHAMMED, AGED 82 YEARS, S/O. LATE PAKKAR,
RESIDING AT MUNDETH HOUSE , HOUSE NO. SKRA 33,
VTH AVENUE, K.K. ROAD, KALOOR, ERNAKULAM DISTRICT.

4 JOHNSON.T., AGED 91 YEARS, S/O. LATE JOHN THOAMAS,
RESIDING AT SHELTER VTH AVENUE, K.K. ROAD,
KALOOR, ERNAKULAM DISTRICT.

5 BASKARAN, AGED 82 YEARS, S/O. LATE K. KRISHNAN,
RESIDING AT CHAYA VTH AVENUE, K.K. ROAD,
K.K. ROD, KALOOR ERNAKULAM DISTRICT.

BY ADVS.
SRI.LAL GEORGE
SRI.SEBASTIAN VARGHESE

RESPONDENTS:

1 CORPORATION OF COCHIN
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, ERNAKULAM 682 011.

2 THE MAYOR, CORPORATION OF COCHIN,
CORPORATION OFFICE, ERNAKULAM, 682 011.

3 THE DISTRICT COLLECTOR, COLLECTORATE
KAKKANADU ERNAKULAM, 682 030.

4 THE TAHSILDAR, KANAYANNUR TALUK OFFICE,
ERNAKULAM, PN-682011.

5 ADDL.R5.RAJENDRAN, AGED 63, S/O. GOPALAN, AMEPPADATH HOUSE, SRRA 119, SHENOY ROAD, KALOOR, KOCHI-17.

6 ADDL.R6. JYOTHI THOMAS, AGED 68, W/O. THOMAS JACOB, SRRA 25,SHENOY ROAD, KALOOR, KOCHI-17.

7 ADDL.R7. A.I. JOSEPH, AGED 75, S/O. LATE ITTYARA, SRRA 96, SHENOY ROAD, KALOOR, KOCHI-17.

8 ADDL.R8. RAJAMMA SASI, AGED 64, W/O. SASI, SRRA 118,SHENOY ROAD, KALOOR, KOCHI-17.

9 ADDL.R9. PHILOMINA GEORGE, AGED 64, W/O. GEORGE LONAPPAN, SRRA 96,SHENOY ROAD, KALOOR, KOCHI-17. (ADDL.R5 TO R9 ARE IMPLEADED AS PER ORDER DATED 3-7-2020 IN IA NO. 3/2020).

10 ADDL.R10. THE KERALA WATER AUTHORITY REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR, JALA BHAVAN, VELLAYAMBALAM, THIRUVANANTHAPURAM-695010.

11 ADDL.R11. EXECUTIVE ENGINEER, KERALA WATER AUTHORITY, PALLIMUKU, ERNAKULAM-682011. (ADDL. RESPONDENTS 10 AND 11 ARE IMPLEADED AS PER ORDER DATED 21-10-2020 IN IA 5/2020).

12 ADDL.R12. THOMAS JACOB.M. MOTHI, (ARCHITECH), AGED ABOUT 60 YEARS, SRRA 25,, 'MOTHI', SHENOY ROAD, KALOOR-682017. (ADDL. R12 IS IMPLEADED AS PER ORDER DATED 28-10-2020 IN IA 2/2020 IN WP(C).

BY ADVS.
SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
SHRI.S.SUDHEESH KUMAR, SC, KOCHI MUNICIPAL CORPORATION
SRI. MANU ROY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

By efflux of time and through the various interim orders granted in this case, I am of the certain opinion that nothing survives in this Writ Petition for further consideration.

2. Broadly, the petitioners have sought that the 'Seena thodu', within the territory of the Corporation of Kochi, be directed to be maintained; that its width be ensured to be at least one meter at all places; that the silt and debris from it be removed; and finally that a culvert be constructed at the 'Kathrikadavu' junction, so as to allow the flow of water without obstruction.

3. Considering the petitioners' contentions and prayers, this Court has passed several orders in this Writ Petition, out of which, 3 or 4 deal with their grievances specifically.

4. As regards the removal of silt and

debris from the canal is concerned, through the order dated 02.12.2019 this Court has directed the Corporation to remove all the obstructions in the canal, as also certain cross-walls constructed therein unauthorisedly and am told that all these works have been now completed. The corporation has also reported that the silt and debris from it has been removed; and consequently, all that now require is that they be directed to ensure that this is done every year or as and when it is required.

5. As far as the culvert at 'Kathrikadavu' is concerned, it may not be necessary for this Court to issue any further orders for such purpose because, through two other orders, namely order dated 27.07.2020 and order dated 14.10.2020, the Corporation has been directed to construct a culvert at the 'Shenoy Road' and the Water Authority has

been directed to raise the height of the water pipes at the 'Kathrikadavu' Junction, so that water through the canal can flow without any impediment. These two orders and the subsequent order dated 28.10.2020 record that necessary fund has been given to the Water Authority by the Corporation for the removal of pipes at the 'Kathrikadavu' junction; while the necessary financial out-lay has already been sanctioned and approved for the construction of culvert at 'Shenoy Road'.

6. In fact, I had fixed three months' time on 14.10.2020 for the construction of culvert at the 'Shenoy Road' and the Water Authority today informs this Court that they will complete the work, with respect to the increase of height of the pipes at 'Kathrikadavu' junction, within a period of four months from the date of receipt of a copy of this judgment.

7. Therefore, what remains from among the prayers of the petitioners is that the 'Seena thodu' be directed to have a width of one meter at all places. Sri.Lal George, learned counsel for the petitioners, asserts that the canal has a width of one meter almost at all places, except at three, where its width is attenuated to almost 40 cms. He says that the owners next to these spots are willing to give their consent for the widening and therefore, that the Corporation may be directed to complete such work also within a time frame.

8. The learned Standing Counsel for the Corporation of Kochi – Sri.S.Sudheesh Kumar, submitted that if the petitioners are able to get the consent of the owners at these spots, the Corporation can certainly consider the enhancement of the width of the 'Seena thodu' as per law.

In the afore circumstances, I order this

Writ Petition in the following manner:

a) The petitioners are at liberty to obtain the consents of the land owners at the spots where the width of the 'Seena thodu' is only 40 cms or so; and on them producing the same before the Corporation, necessary steps shall be taken by them to enhance the width to the extent possible, after following due procedure. The work in this regard shall be completed not later than three months from the date on which consents are produced before the Corporation by the petitioners.

b) The Water Authority is directed to complete the work of increasing of the height of the pipes at 'Kathrikadavu' junction not later than four months from the date of receipt of a copy of this judgment.

c) The Corporation, though was directed to complete the work of construction at 'Shenoy Road' within three months from

14.10.2020, I deem it appropriate to grant them time till the end of March 2021 for this purpose. It is so ordered.

d) The Corporation of Kochi is directed to ensure that periodic maintenance is done to the 'Seena thodu', to ensure that all silt and debris that may become deposited in future are removed as and when it becomes necessary, so as to enable the flow of water through it without any impediment/obstruction.

Sri.Lal Geroge, at this time, brought to my attention that this Court has already passed an order dated 27.07.2020, directing the Corporation to construct a drain through the property owned by respondents 5 and 7, but that no work has been done on it until now.

When I go through the said order, I see that the Corporation had been directed to construct the drain through the property of respondents 5 and 7 with the same width as the

drain which approaches it, within a period of one month from 27.01.2020, however, clarifying that the land through it will remain the ownership and possession of respondents 5 and 7 until the Corporation recover it as per law. I had also directed the Corporation to cover this drain with slabs. Since I am told that this work has not even begun, I further direct the Corporation to ensure that this work is completed not later than February 2021.

Needless to say, the Corporation shall treat all the afore directions to be peremptory in nature and any violation of the time frames will be viewed seriously by this Court.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

RR

APPENDIX OF WP(C) 29320/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	PHOTOSTAT COPY OF THE ONE OF THE SUCH REPRESENTATION DATED 18.05.2010 WHICH IS AVAILABLE IN THE FLIES AND SUBMITTED BEFORE THE CORPORATION.
EXHIBIT P2	PHOTOSTAT COPY OF THE JUDGMENT DATED 07.09.2005 IN WPC NO. 6436/2005.
EXHIBIT P3	PHOTOSTAT COPY OF THE SAID LAWYER NOTICE DATED 05.12.2011.
EXHIBIT P4	PHOTOSTAT COPY OF THE COMMUNICATION DATED 28.10.2019 MADE AVAILABLE TO THE PETITIONERS.
EXHIBIT P5	TRUE COPY OF THE PICTURE TAKEN AFTER DEMOLITION DATED 26.05.2020
EXHIBIT P6	TRUE PHOTOGRAPH OF THE DRAIN PORTION AFTER RECONSTRUCTION