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Elizabeth Jose Vs. Chief Engineer

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Court : Kerala

Decided On : Oct-07-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Elizabeth Jose

Respondent : Chief Engineer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON MONDAY,THE7H DAY OF OCTOBER201315TH ASWINA, 1935 WP(C). No. 22914 of 2013 (L) ---------- PETITIONER: ---------- ELIZABETH JOSE, AGED48YEARS W/O. P.M. JOSE, PLAMMOTTIL VILLA, KAIPUZHA MURI KULANADA VILLAGE, PANDALAM. BY ADVS. SRI. BECHU KURIAN THOMAS SMT. TINA ALEX THOMAS RESPONDENTS: ---------- 1. CHIEF ENGINEER KERALA PUBLIC WORKS DEPARTMENT KERALA STATE TRANSPORT PROJECT (KSTP) PROJECT MANAGEMENT TEAM, TC471795, II FLOOR RAJADHANI COMPLEX, OPPOSITE TO PRS HOSPITAL KILLIPPALAM, . KARAMANA PO THIRUVANANTHAPURAM695002.

2. EXECUTIVE ENGINEER KERALA PUBLIC WORKS DEPARTMENT KERALA STATE TRANSPORT PROJECT, PULAMON P.O. KOTTARAKKARA691531. BY GOVERNMENT PLEADER SMT. K.T. LILLY THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON0710-2013, THE COURT ON THE

SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 22914 of 2013 (L) ---------- APPENDIX PETITIONER'S EXHIBITS:- ---------- EXHIBIT P1 - COPY OF THE

JUDGMENT

IN AS NO.59/2011 ON THE FILES OF THE DISTRICTR COURT, PATHANAMTHITTA. EXHIBIT P2 - COPY OF THE REPRESENTATION DATED612/12 SUBMITTED BY THE PETITIONER BEFORE THE2D RESPONDENT EXHIBIT P3 - COPY OF THE REPLY DATED2112/2012 EXHIBIT P4 - COPY OF THE REPRESENTATION DATED22/2013 EXHIBIT P5 - COPY OF THE REPLY DATED272/2013 ISSUED BY THE2D RESPONDENT EXHIBIT P6 - PHOTOGHRAPH OF THE ENTRANCE TO PETITIONER'S PROPERTY WHICH WAS TAKEN AFTER THE INSTALLATION OF CRASH BARRIER EXHIBIT P6(A) - PHOTOGRAPH OF SIMLIARLY SITUATED PROPERTY ADJACENT TO PETITIONER'S PROPERTY EXHIBIT P6(B) - PHOTOGHRAPH SHOWING ENTRANCE PROVIDED TO AN ADJACENT PROPERTY EXHIBIT P6(C) - ENLARGED PHOTOGRAPH OF THE OPENING/ENGRANCE PROVIDED TO THE PROPERTY SHOWN IN EXT.P6(b) EXHIBIT P6(D) - ENLARGED PHOTOGRAPH OF THE OPENING/ENTRANCE PROVIDED TO THE PROPERTY SHOWN IN THE EXT P6 (b) EXHIBIT P7 - COPY OF REPRESENTATION DATED254/2012 EXHIBIT P8 - COPY OF THE REPLY DATED57/2013 RESPONDENTS' EXHIBITS:- ---------- ANNX. R2(a) - COPY OF THE PETITION FILED ON2809.2013. //TRUE COPY// P.A. TO JUDGE sp P.R. RAMACHANDRA MENON, J.

---------- W.P.C.No.22914 OF2013---------- Dated this the 7th day of October, 2013.

JUDGMENT

The petitioner, who is the owner of the property having M.C. Road frontage, is aggrieved of the Metal Crash Barriers erected on the side of the Road, preventing entry to the property from the Road and in turning down the request to cut open a portion of the barrier to have entry, vide Ext.P3,P5 and P8 orders passed by the 2nd respondent.

2. The 2nd respondent has filed a statement dated 23.09.2013, seeking to justify the course of action and highlighting the necessity to erect and maintain Metal Crash Barriers on the side of the road, to avoid accidents, more particularly since it is an 'accident prone area' with curve and such other relevant aspects. It is also stated that, existence of the property of the petitioner on the side of the road and the necessity to have access, was not brought to the notice of the concerned authorities and no identifiable pathway was seen in existence, when the Crash Barrier was erected. It is also stated in W.P.C.No.22914 OF20132 paragraph 4 of the statement that, the 2nd respondent had personally inspected the site on 19.09.2013, but it was seen that the Crash Barriers, having a length of five meters, had already been cut and removed without permission and on noting the highhanded activity, the same has been reported to the Enath Police Station, for further action.

3. When the matter came up for consideration before this Court on the last occasion, the learned counsel for the petitioner sought to rebut the allegation and asserted that no such activity has ever been pursued by the petitioner; when the 2nd respondent was asked to file an affidavit. Now, an affidavit dated 30.09.2013 has been filed by the 2nd respondent, conceding that the submission made as given in paragraph 4 of the statement earlier, was a mistake, due to wrong identification of the property and that the correct factual position was conveyed to the Police vide Annexure R2(a) dated 28.09.2013, pointing out that the concerned party, who cut the Metal Barrier, had subsequently turned up and satisfied liquidated damages. As such, the Circle Inspector of Police was requested to drop all further proceedings pursuant to the complaint dated 19.09.2013, W.P.C.No.22914 OF20133 preferred by the 2nd respondent.

5. After hearing the learned counsel for the petitioner and the learned Government Pleader at length, this Court finds that the factum of existence of property on the side of the road and the factum of denial of right of access from the road are not disputed from the part of the respondents. The factual position is also discernible from Ext.P6 series photographs and the existence of a 'gate' is also very much revealed therefrom. Ext.P6 series photographs also reveal the existence of cutting/opening of the Crash Barrier at different places so as to provide access

from the road to the properties situated on the side of the Road. Necessity to put up Metal Crash Barriers for avoiding accidents, because the topography of the land and the lie and location of the Road, is not doubted or liable to be interfered by this Court. However, this does not give any green card to the respondents to deny the right of access to the owner of the property situated on the side of the road. As such, the respondents are directed to cut and remove the barrier in front of the gate put up by the petitioner as shown in Ext.P6 series photographs, to an extent of 12 feet ,so as to provide access to the property of the petitioner. This shall W.P.C.No.22914 OF20134 be done at the earliest, at any rate, within 'two weeks' from the date of receipt of a copy of this judgment. Writ petition is allowed to the said extent. Considering the persuasive submissions made by the learned Government Pleader, this Court reluctantly spares the 2nd respondent from meeting the cost. P.R. RAMACHANDRA MENON, JUDGE sp

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