

Kanaran Vs. the Additional District Magistrat

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Court : Kerala

Decided On : Dec-18-2013

Judge : Honourable Mr.Justice C.K.Abdul Rehim

Appellant : Kanaran

Respondent : The Additional District Magistrat

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM WEDNESDAY, THE 18TH DAY OF DECEMBER 2013 27TH AGRAHAYANA, 1935 WP(C).No. 25460 of 2013 (F)

----- PETITIONER(S): ----- KANARAN
AGED 62 YEARS S/O.KUNHIKANNAN, KUNIKKUTHAZHA, PALLIKKARA
THIKKODI, KOZHIKODE BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA RESPONDENT(S): ----- 1. THE
ADDITIONAL DISTRICT MAGISTRATE KOZHIKODE 673001 2. THE EXECUTIVE
ENGINEER KERALA STATE ELECTRICITY BOARD, KOYILANDY 673305 3.
ASSISTANT ENGINEER, KERALA STATE ELECTRICITY BOARD, THIKKODI
KOZHIKODE 673524 4. VINODAN, POOZHUKUNI HOUSE, THIKKODI P.O,
KOZHIKODE 673524 ADDL. RESPONDENTS (*ADDL. RESPONDENTS R5 TO
R9 IMPEADED) R5. SMT. PADMAVATHY AMMA, KALATHIL MEETHIL
HOUSE, P.O. PALLIKKARA, THIKKODI KOZHIKODE-673522 R6. SMT. SINI,
D/O. PADMAVATHY AMMA, KALATHIL MEETHIL HOUSE P.O. PALLIKKARA,
THIKKODI, KOZHIKODE-673522 CONTD....2 ..2.. R7. SMT. SANDHYA, D/O.

PADMAVATHY AMMA, KALATHIL MEETHIL HOUSE P.O PALLIKKARA, THIKKODI, KOZHIKODE-673522 R8. SRI.SAJI, S/O PADMAVATHY AMMA, KALATHIL MEETHIL HOUSE P.O PALLIKKARA, THIKKODI, KOZHIKODE-673522 R9. SRI. NARAYANAN, VDAKKAYIL THAZHE HOUSE P.OPALLIKKARA, THIKKODI KOZHIKODE-673522 (* ADDL. RESPONDENTS ARE IMPEADED AS PER

ORDER

DT. 15.11.2013 IN I.A. NO. 15233/13) R4 BY ADV. SRI.V.V.SURENDRAN R4 BY ADV. SRI.P.A.HARISH R9 BY ADV. DR.GEORGE ABRAHAM R(ADDL.R5 TO8 BY ADV. SRI.NOEL JOSEPH R(ADDL.R5 TO8 BY ADV. SMT.MERIL MUTHU P.JOHN R BY GOVERNMENT PLEADERSRI. SHYSON P.MANGUZHA R BY SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1812-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 25460 of 2013 (F)

----- APPENDIX PETITIONER(S)' EXHIBITS :
----- EXHIBIT P1 TRUE COPY OF THE SALE DEED NO17241997 DATED2006-97 EXHIBIT P2 TRUE COPY OF THE COMMUNICATION2702-2012 ISSUED BY THE2D RESPONDENT EXHIBIT P3 TRUE COPY OF THE OBJECTION SENT BY THE PETITIONER TO THE2D RESPONDENT ON33-2012 WITH POSTAL ACKNOWLEDGEMENT EXHIBIT P4 TRUE COPY OF THE NOTICE DATED311-2012 ISSUED BY THE1T RESPONDENT EXHIBIT P5 TRUE COPY OF THE OBJECTION DATED21-2013 WITH SKETCH OF THE PROPERTY EXHIBIT P6 TRUE COPY OF THE

JUDGMENT

DATED181-2013 IN WPC12832013 EXHIBIT P7 TRUE COPY OF THE

ORDER

NO201252019/11/D2 OF THE1T RESPONDENT DATED1803-2013 EXHIBIT P8 TRUE COPY OF THE

JUDGMENT

DATED17-2013 IN WPC31922013 EXHIBIT P9 TRUE COPY OF THE

ORDER

NO201252019/11/D2/K.DIS DATED2809-2013 EXHIBIT P10 TRUE COPY OF THE

ORDER

PASSED BY THE 1ST RESPONDENT DTD. 19.10.2013 RESPONDENT(S)' EXHIBITS: ----- EXHIBIT R9(a) TRUE COPY OF THE PARTITION DEED DTD. 14.1.1977 EXHIBIT R9(b) TRUE COPY OF ROUGH SKETCH SHOWING THE BUILDING OF THE 9^H RESPONDENT AS WELL AS THE BUILDING OF THE WRIT PETITIONER. // TRUE COPY // P.A TO JUDGE SB C.K ABDUL REHIM, J.

----- W.P.(C) No. 25460/2013 ----- On this the 18th Day of December, 2013

JUDGMENT

This is the third round of litigation in which the petitioner is approaching this court aggrieved by the decision taken by the 1st respondent in exercise of power vested under Section 16 (1) of the Indian Telegraph Act, 1885. In the first round, the petitioner filed W.P.(C) No. 1283/2013 raising apprehension that an electric line will be drawn through his property in implementation of the order passed by the 1st respondent, even without serving him a copy of the order. In Ext. P6 judgment this Court directed the 1st respondent to issue a copy of order, dated 18.1.2013, alleged to have been passed permitting drawing of the line through the property of the petitioner. Implementation of the order was directed to be kept in abeyance for a period of 2 weeks. On the basis of Ext. P6 judgment, a copy of the order passed by the 1st respondent was served on the petitioner (Ext. P7). The petitioner again approached this W.P.(C) No. 25460/2013 2nd Court in W.P.(C) No. 3192/2013 challenging Ext. P7. This Court noticed that, the Assistant Executive Engineer had proposed three routes for drawing of the line. The route which is marked as 'ABCD' was stiffly objected by the petitioner. But the 1st respondent permitted drawing of line through the said route, solely depending on a report submitted by the Assistant Executive Engineer. It was contended that even a copy of that report was not furnished to the petitioner and the 1st respondent had totally failed in considering feasibility of other 2 routes suggested. Disposing the said writ petition

this court observed that, while exercising power vested under Section 16 (1) the 1st respondent is discharging a quasi-judicial function and all principles of natural justice has to be strictly adhered to. Feasibility of all the three routes ought to have been examined and adjudicated on the basis of an enquiry conducted by the 1st respondent. It is suggested that the 1st respondent can seek assistance of any W.P.(C) No. 25460/2013 3 independent authority for arriving at a just conclusion on the basis of site inspection. The legal principles enunciated in various decisions of this Court, such as Harison Malayalam Ltd. v. Kerala State Electricity Board [1988 (2) KLT248 and Valsamma Thomas v. Additional District Magistrate [1997(2) KLT979, were specifically referred to in the said judgment. The 5 guidelines to be followed by the District Magistrate, as enumerated in Valsamma Thomas' case (supra) was extracted in Ext. P8 judgment. Quashing Ext. P7 order, the matter was remanded for fresh disposal by the 1st respondent. It was specifically directed that, if it is found necessary, the 1st respondent should conduct a personal inspection at site or shall obtain a report from any competent officer other than an official of the K.S.E.B and a final decision shall be taken on the basis of observations contained in the said judgment.

2. Ext. P9 is the consequential order passed by W.P.(C) No. 25460/2013 4 the 1st respondent. It is revealed that the 1st respondent issued direction to the Tahsildar to conduct a site inspection and to submit a report. It is mentioned in Ext. P9 that, from the report obtained from the Tahsildar, the 1st respondent became convinced that the route already permitted is the most feasible. Therefore without adverting to any other circumstances, or without making any discussion about feasibility of other two routes, the 1st respondent observed that the earlier order is restored, because it suffers from no infirmity.

3. It is challenging Ext. P9 the present writ petition is filed. During pendency of this writ petition the 1st respondent had passed yet another order, copy of which is produced as Ext. P10 along with the Reply affidavit. In the said order the operative operation contained in Ext. P9 is slightly modified to the extent of observing that, the route proposed by the Assistant Executive Engineer is the most feasible and hence drawing of line is permitted through the W.P.(C) No. 25460/2013 5 said route. But the said order also does not contain any discussions about comparative

feasibility of the two other routes suggested. Nor it contains any discussion about any of the disadvantages pointed out by the Tahsildar with respect to other 2 routes.

4. On the basis of the circumstances prevailing and on considering contentions raised by the parties in this writ petition, the Government Pleader was directed to make available the files from the office of the 1st respondent, relating to the impugned proceedings. The records produced contain a report received from the Tahsildar, which is dated 05.09.2013. The report does not indicate the date on which the Tahsildar had conducted the site inspection. Nor it discloses anything to show that the inspection was conducted with notice to the parties. Surprisingly, this court takes note of the fact that, the Tahsildar has not recommended drawing of line through any particular route. The Tahsildar had only enumerated W.P.(C) No. 25460/2013 6 details of the properties through which the line has to be drawn in each of the three proposed routes. He had also produced different sketches with respect to all the three routes. The report only indicates the length of the routes and the distance of the line from nearby residences in each of the routes. But it does not indicate anything to show that the Tahsildar had evaluated comparative feasibility of the different routes suggested or that had made any suggestion as to which of the routes is the more feasible or short or less expensive.

5. Under the above mentioned circumstances, the statement contained in Ext. P9 to the effect that the Tahsildar had reported that the 1st proposal is the most suitable, is totally false and is made in a totally dishonest manner, by the 1st respondent. Such a finding in Exts. P9 & P10 is made without furnishing copy of the report of the Tahsildar to any one of the parties. It can only be presumed that the 1st respondent was acting in a totally W.P.(C) No. 25460/2013 7 prejudiced manner against the petitioner, merely because he had approached this Court on two occasions. The attitude taken by the 1st respondent in this regard is totally unbecoming of an Additional District Magistrate, who is discharging functions of the Executive District Magistrate.

6. When this Court had issued specific directions in Ext. P8 judgment enumerating guidelines with respect to the manner in which the matter has to be dealt with, the

1st respondent ought to have followed those guidelines and the observations contained in the said judgment, meticulously. Instead a dishonest attitude has been taken in the matter, which clearly indicate that a quasi-judicial function was discharged on the basis of clear malis and bias. This court feels that action need be initiated at the departmental level against the incumbent in office of the 1st respondent, who had issued Exts. P9 and P10, if the Government is satisfied that the above factual aspects will constitute grave official misconduct and insubordination in totally disobeying and W.P.(C) No. 25460/2013 8 disregarding orders of the court of law.

7. Under the above mentioned circumstances, this writ petition is allowed and Exts. P9 and P10 orders are hereby quashed. This court is of the considered opinion that there is no purpose in remanding the matter again to the 1st respondent. The District Collector, Kozhikode (District Magistrate) is hereby given specific directions to deal with the application submitted by the Assistant Executive Engineer and to exercise powers of District Magistrate vested under Section 16 (1) of the Indian Telegraph Act, to dispose of the said application afresh, untrammelled by any of the observations contained in the earlier orders passed by the 1st respondent or untrammelled by any observations contained in the reports submitted by the Tahsildar or the Assistant Executive Engineer. The District Collector shall conduct a site inspection personally. He shall afford reasonable opportunity of personal hearing to all parties concerned. The parties in this writ petition, W.P.(C) No. 25460/2013 9 who are represented through their counsel, are directed to appear before the District Collector at 11 am on 31.12.2013. The District Collector will be at liberty to fix up further dates of hearing in the matter. The matter shall be dealt with and appropriate order shall be issued at the earliest possible, at any rate within a period of 6 weeks from the date of receipt of a copy of this judgment.

8. The Government Pleader is directed to return the records directly to the District Collector along with a copy of this judgment.

10. The State Government is directed to examine this judgment and the copies of all relevant documents in the matter and to take a decision regarding the need of

disciplinary action to be initiated against the incumbent in the office of the 1st respondent, who had issued Exts. P9 & P10 orders, on the basis of the observations contained herein above, for the totally dishonest, biased and malicious acts on his part and for the gross violation of the directions W.P.(C) No. 25460/2013 10 contained in Ext. P8 judgment. The Registrar General of this Court will forward a copy of this judgment to the Secretary to Government, Revenue Department, State of Kerala, for necessary action, along with a covering letter requesting him to furnish an action taken report in this matter, within a period of two months from the date of receipt of a copy of this judgment. Such Report should be placed on the judicial side for considering further directions if any required. C.K ABDUL REHIM, JUDGE SB

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