

Dr.Dilip Mathai Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1159719

Court : Kerala

Decided On : Jul-31-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Dr.Dilip Mathai

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR THURSDAY, THE 31ST DAY OF JULY 2014 9TH SRAVANA, 1936 WP(C).No. 19254 of 2013 (F)

----- PETITIONERS: -----

1. DR.DILIP MATHAI S/O.P.J.MATHAI, MATHAI MANOR, 34 KUNANAN ROAD KALAKSHETRA COLONY, CHENNAI 600090, TAMILNADU 2 KOSHY REJU THOMAS S/O.V.A THOMAS, 32/2394, VADAKKEPARAMBIL HOUSE KOMATHPARAMBIL HOUSE, KOMATH LANE, PALARIVATTOM ERNAKULAM 682025 BY ADVS.SRI.THAMPAN THOMAS SRI.B.V.JOY SANKER SRI.SHAFFIE THOMAS SMT.JANCY ALEX SRI.SANEESH KUNJUNJH
RESPONDENTS: -----

1. THE STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY FOR LOCAL SELF GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001

2. THE MAYOR, CORPORATION OF COCHIN, KOCHI682011

3. THE SECRETARY, CORPORATION OF COCHIN, KOCHI68201

4. SECRETARY, GREATER COCHIN DEVELOPMENT AUTHORITY,
KADAVANTHARA COCHIN682020

5. THE SENIOR TOWN PLANNER, REGIONAL TOWN PLLANING OFFICE,
KADAVANTHARA, ERNAKULAM COCHIN682620 R2,R3 BY ADV.
SRI.RAAJESH S.SUBRAHMANIAN,SC,COCHIN CORPORATION BY
SRI.P.K.SOYUZ,SC,COCHIN CORPORATION R4 BY
SMT.K.R.KRISHNAKUMARI, SC, GREATER COCHIN DEVELOPMENT
AUTHORITY BY GOVERNMENT PLEADER SRI.SOJAN JAMES THIS WRIT
PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON3107-2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 19254 of 2013
(F) ----- APPENDIX PETITIONER(S)' EXHIBITS
----- EXHIBIT P1 :TRUE COPY OF THE SITE PLAN EXHIBIT P2
:TRUE COPY OF THE RESOLUTION DATED0311-1973 OF THE
CORPORATION OF COCHIN EXHIBIT P3 :TRUE COPY OF THE DEED OF
EXCHANGE DATED2504-1974 EXHIBIT P4 :TRUE COPY OF THE
REPRESENTATION DATED2212-2009 FILED BY THE1T PETITIOENR EXHIBIT
P5 :TRUE COPY OF THE RECEIPT DATED2312-2009 FROM THE
DEPARTMENT OF URBAN PLANNING EXHIBIT P6 :TRUE COPY OF THE
RECEIPT DATED2312-2009 FROM THE GREATER COCHIN DEVELOPMENT
AUTHORITY EXHIBIT P7 :TRUE COPY OF THE REPRESENTATION
DATED1402-2012 FILED BY THE LOCAL PEOPLE EXHIBIT P8 :TRUE COPY
OF THE REQUEST DATED2505-2012 SENT BY THE1T PETITIONER TO
THE2D RESPONDENT EXHIBIT P9 :TRUE COPY OF THE LETTER
DATED2409-2012 SENT BY THE2D RESPONDENT TO THE COCHIN
SHIPYARD LTD EXHIBIT P10 :TRUE COPY OF THE REPRESENTATION SENT
BY THE PETITIONERS ON0206-2013 TO THE2D AND3D
RESPONDENTS(WITHOUT ANNEXURES) EXHIBIT P11 :TRUE COPY OF THE
LETTER DATED1510-2011 SENT TO THE CORPORATION EXHIBIT P12 :TRUE
COPY OF THE REPLY DATED1011-2011 SENT BY THE CORPORATION

RESPONDENT(S)' EXHIBITS:NIL ----- //TRUE COPY// P.A TO
JUDGE A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).No.19254 of 2013
..... Dated this the 31st day of July, 2014

JUDGMENT

The petitioners are the land owners of low lying lands situated in between two divergent railway tracks one of which leads to Willingdon Island and other to the Cochin Shipyard Limited cutting across the M.G road between Atlantis and Thevara Bus stops. The case of the petitioners in the writ petition is that while they had surrendered portions of their property in 1974 to the Corporation of Cochin for the purposes of constructing a public road of 20 feet width for the benefit of the public including the petitioners, and the arrangement between the petitioners, and the Corporation with regard to exchange of lands was evidenced by a deed of exchange dated 25.04.1974, the respondent Corporation has not complied with its obligations under the agreement between the parties. It is pointed out, in particular, that various persons, most of them illegal occupants of the land, have encroached upon the land that was the subject matter of the deed of exchange and the inaction on the part of the respondent Corporation, to evict the said persons from their unauthorised occupation of the land, has resulted in a stalemate with regard to the arrangement between the petitioners and the Corporation. The land which is situated in a prime area, within the limits of the Cochin Corporation, is now in the hands of illegal encroachers and this, it is pointed out, is a cause of great concern W.P.(C).No.19254 of 2013 2 for not only the petitioners but also the general public. Although, the writ petition has been filed seeking various reliefs including a direction to the respondents to declare that the petitioners are entitled for a right of way, free from all encroachments on the public road that was sought to be constructed by the Corporation as per the agreement with the petitioners, considering the stand of the Corporation that there are numerous hurdles in the way of the Corporation in effecting eviction of the unauthorised occupants, the petitioner would now confine its prayer in the writ petition to a direction to the respondent Corporation to consider and pass

appropriate orders on Ext.P10 representation preferred by them before the said Corporation.

2. I have heard the learned counsel for the petitioners as also the learned Standing counsel for the respondent Corporation.

3. It is brought to my notice by the respondent Corporation, which has filed a counter affidavit in the matter, that although they had been taking steps to remove the encroachments on the public road, they have been facing difficulties on account of various orders passed by Courts staying the proceedings initiated against the said encroachers. Be that as it may, I feel the present writ petition can be disposed of with a direction to the respondent W.P.(C).No.19254 of 2013 3 Corporation to consider and pass orders on Ext.P10 representation submitted by the petitioner before the said Corporation. While disposing the representation, the respondent Corporation shall clearly state the reason if any, for the delay in completing the proceedings for eviction of illegal occupants over the land belonging to or vested in the Corporation. The respondent Corporation shall also enumerate the steps taken by it thus far, and its proposals for the future, and the time limit within which they propose to go ahead with the eviction proceedings so as to enable the petitioners to get some clarity with regard to the future course of action proposed to be adopted by the Corporation in this matter. The Corporation shall pass orders on the representation of the petitioners within a period of three months from today. Considering the nature of the issue that is projected in the representations, it will be in the interest of the Corporation to afford an opportunity of hearing to the petitioners prior to passing final orders on the representations submitted by the petitioners. With these directions the writ petition is disposed.

A.K.JAYASANKARAN NAMBIAR JUDGE mns/ W.P.(C).No.19254 of 2013 4