

Omana Sasi vs Kumar

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Court : Kerala

Decided On : Feb-29-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/24689/2015

Appellant : Omana Sasi

Respondent : KUMAR

Judgement :

WP(C) NO. 24689 OF 2015 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA,
1945 WP(C) NO. 24689 OF 2015

PETITIONER/S: OMANA SASI FRANCIS VILASOM, PERINGAMALA,
KALLIYOOR, THIRUVANANTHAPURAM. BY ADVS.
SRI.P.PUSHPARAJAN SRI.S.RAVINDRAN NAIR RESPONDENT/S: 1
KUMAR CHINCHU BHAVAN, KIZHAKKARUKKU, THETTIVILA,
PERINGAMALA, THIRUVANANTHAPURAM - 695 563. 2 KALLIYOOR

GRAMA PANCHAYATH REPRESENTED BY ITS SECRETARY, KALLIYOOR, THIRUVANANTHAPURAM- 695 042. BY ADVS. SRI.ABRAHAM VARUGHESE SRI.R.GOPAN SRI.MATHEW PAUL SRI.P.M.MOHAMMED SHIRAZ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 24689 OF 2015 2

P.V.KUNHIKRISHNAN, J ----- W.P.(C.) No. 24689 of 2015 ----- Dated this the 29th day of February, 2024

JUDGMENT

This writ petition is filed with the following prayers: (i) To direct the 1st respondent to remove the illegal construction of the compound wall and if he fails, to remove the same by the 2 nd respondent within a period to be fixed by this Hon'ble Court by quashing Exhibit P4.

(ii) Such other reliefs which the petitioner may ask for during the course of proceedings and which this Hon'ble Court may deem fit and necessary in the interest of justice. [sic]

2. The petitioner is the widow of a B.S.F Jawan, who died

in a bomb blast while serving the nation. In 1992, a memorial tomb was constructed in the property of the petitioner, is the WP(C) NO. 24689 OF 2015 3 submission. The 1st respondent -the adjacent eastern property owner, has deliberately caused his compound wall to fall on the tomb and it was partly damaged, is the submission. Based on the petition submitted by the petitioner, the 2 nd respondent directed to re-construct the wall. It is submitted that the 1 st respondent illegally and by violating the Building Rules & the Kerala Panchayat Raj Act, constructed the compound wall to more that 10 feet height and connected the same with the sunshade of his building, which according to the petitioner, so as to make the flow of rain water on the tomb. The petitioner again filed Exhibit-P1

before 2nd respondent but the same is not considered. Ext.P2 is the reply. Therefore, the petitioner approached the Ombudsman with Ext.P3 petition. But the Ombudsman also dismissed the petition as per Ext.P4. Aggrieved by the same, this writ petition is filed.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. WP(C) NO. 24689 OF 2015 4

4. The petitioner is aggrieved by Ext.P4. This Court

perused Ext.P4 order. Ombudsman decided the matter mainly based on the statement given by the Grama Panchayat Secretary. The Grama Panchayat Secretary after inspecting the property found that the grievance of the petitioner regarding the damages to the boundary wall is correct and hence, directed Sri.Jayakumar to reconstruct the boundary wall. It is also an admitted fact that the boundary wall is reconstructed. The present grievance of the petitioner is that the compound wall is constructed with 10 feet height connecting the same with the sunshade of the 2nd respondent. Now, the surviving grievance of the petitioner is that the water is flowing to the tomb because of the way in which the construction is made. I am of the considered opinion that these are matters to be redressed by the petitioner before appropriate civil court. The Panchayat may not be able to issue any direction in this regard. I see no reason to interfere with Ext.P4. The liberty is granted to the petitioner to redress the surviving WP(C) NO. 24689 OF 2015 5 grievance through civil court. Granting such liberty, this writ petition is disposed of. Sd/- P.V.KUNHIKRISHNAN JUDGE SMV/SKS WP(C) NO. 24689 OF 2015 6 APPENDIX OF WP(C) 24689/2015 PETITIONER EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 07/11/2014., EXHIBIT-P2-TRUE COPY OF THE REPLY ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT DATED EXHIBIT-P3-TRUE COPY OF THE PETITION BEFORE THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT KERALA VIDE O.P. NO. 57/2015 DATED EXHIBIT-P4-TRUE COPY OF THE O.P NO. 57/2015 DATED 02/07/2015 OF THE OMBUDSMAN.