

Radhamoni, vs the District Collector,

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Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/31466/2019

Appellant : Radhamoni,

Respondent : The District Collector,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945
WP(C) NO. 31466 OF 2019 PETITIONER/S: RADHAMONI, AGED 74
YEARS D/O.JANAKI, MATHAMVELL, UDAYAMPEROOR P.O.,
ERNAKULAM DISTRICT, PIN-682307. BY ADV C.N.SAMEER
RESPONDENT/S:

1 THE DISTRICT COLLECTOR, ERNAKULAM CIVIL STATION,
KAKKANAD, THRIKKAKARA P.O., PIN-682023. 2 UDAYAMPEROOR
GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY,
UDAYAMPEROOR P.O., ERNAKULAM-682307. 3 THE ASSISTANT

EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD,
THRIPUNITHURA, ERNAKULAM-682301. 4 THE ASSISTANT
ENGINEER, KERALA STATE ELECTRICITY BOARD,
UDAYAMPEROOR, UDAYAMPEROOR P.O., PIN-682307. BY ADVS.
GOVERNMENT PLEADER C.G.BINDU- SC -PANCHAYAT
A.ARUNKUMAR -SC - KSEB DHEERAJ A.S, - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01.02.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: WP(C) NO. 31466 OF 2019 2

JUDGMENT

The petitioner is aged 79 and a widow. The petitioner claims to be the co-owner in absolute possession of properties having a total extent of 48 cents comprised in Re.Survey Nos.481/3 and 481/2 of Manakunnam village, Kanayannur Taluk, by virtue of Exts.P1 and P2 documents. According to the petitioner, in October 2012, the petitioner found two concrete lampposts erected in the middle of the said property. When the petitioner approached the 2nd respondent and the officials of the Kerala State Electricity Board (KSEB), the petitioner was informed by the Panchayat that the Panchayat had not instructed the KSEB to place any electric posts. The 4 th respondent informed the petitioner that the said electric posts were erected under the local area development Scheme (MP- LADS) of the Member of Parliament representing the Constituency within which the property is situated. The petitioner approached this Court by filing W.P.(C.) No.27240 of 2012, which is disposed of by Ext.P11 judgment, directing as follows:-

4. It is evident that property covered under Exhibits P1 and P3 documents and Exhibits P2 and P4 tax receipts belongs to the petitioner and others. It seems that there exist a dispute regarding existence of a pathway through the property in question. It is further evident that 2 electric poles were erected in the property as part of a development scheme for putting up

street lights under the 'MP LAD funds'. Respondents 1 and 2 are not entitled to erect such electric poles unless it is established that there exist a public pathway, which vests in the Grama Panchayat by virtue of the relevant provisions. Therefore the 3rd respondent Grama Panchayat is directed to intimate respondents 1 and 2 as to whether any pathway exist in the property or as to whether such pathway is included in the Register maintained by the Grama Panchayat with respect to the public roads vested with them. Necessary intimation in this regard shall be issued by the 3rd respondent Panchayat to respondents 1 and 2, immediately on receipt of this judgment, at any rate within two weeks thereafter. If the stand taken by the Panchayat is to the effect that there is no pathway vested in the Panchayat existing through the property in question, the respondents 1 and 2 shall take immediate steps to remove the electric poles already erected. Necessary steps in this regard shall be taken by respondents 1 and 2 at the earliest possible, at any rate within a period of two weeks from the date of receipt of any such letter.

5. In case it is found that there exist a pathway which is

vested in the Panchayat and if the respondents are taking the stand that they are entitled to draw electric line through any such pathway, the petitioner will be at liberty to raise dispute before appropriate civil court to redress her grievances, if any.

Pursuant to the directions contained in Ext.P11 judgment, the Committee of the Udayamperoor Grama Panchayat passed a resolution as Ext.P13, taking the stand that the property upon which the electric posts were installed is an existing pathway vested with the Panchayat. The petitioner thereafter filed Ext.P15 representation before the District Collector, Ernakulam, raising a complaint that the electric lamp posts were placed upon the petitioner's property. She also filed W.P.(C.) No.3403 of 2013 before this Court, which was disposed of by Ext.P16

judgment directing the Assistant Executive Engineer, KSEB, to

consider the grievance raised by the petitioner. It was also WP(C) NO. 31466 OF 2019 4 observed that nothing in the judgment will disable the petitioner from moving the competent authority under the Indian Telegraph Act to shift the electric posts in question. The petitioner filed Writ Appeal No.261/2013 against Ext.P16

judgment of this Court. The Division Bench, by Ext.P17

judgment, disposed of the appeal with the following directions:-

3. The appellant's main contention is that the Electricity Board could have drawn the electricity line through another route or at least through the boundaries of the appellant's property. We are of opinion that the said contention is worth considering. But since the line has already been drawn, now only the claim of the appellant for shifting of the line can be considered. That can be considered by the District Collector while disposing of Ext.P15. We are satisfied that the District Collector should consider the same. Therefore, instead of the 1 st respondent, we direct the 4 th respondent-District Collector to consider and pass orders on Ext.P15, after affording an opportunity of being heard to all persons concerned. This shall be done as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. The writ appeal is disposed of as above.

The petitioner also filed an application before the District Magistrate, Ernakulam, under the provisions of the Indian Telegraph Act. By Ext.P19 proceedings dated 19.04.2013, the Additional District Magistrate, Ernakulam, found no reason to interfere with the act of the KSEB in placing the lamp posts in question upon the property. The petitioner challenged Ext.P13 resolution by approaching the Tribunal for Local Self- Government Institutions. The Tribunal for Local Self- Government Institutions, by Ext.P21 order, set aside Ext.P13. WP(C) NO. 31466 OF 2019 5 The said order of the Tribunal for Local Self-Government Institutions has become final. The petitioner, along with other co-owners, also filed O.S. No.346 of 2013

before the 2 nd Additional Munsiffs Court, Ernakulam, seeking the following reliefs:-

Pass a decree of permanent prohibitory injunction against the defendants, their men and agents and restrain them from trespassing into plaint scheduled properties or altering the present nature and condition of the plaint scheduled properties. The suit was dismissed. However, the petitioner and the other

co-owners filed A.S. No.55 of 2015 before the Subordinate Judges Court, Ernakulam. The Subordinate Judges Court, by Ext.P22 judgment dated 22.09.2017, allowed the appeal, set aside the judgment and decree in O.S. No.346 of 2013 and decreed the suit restraining the respondents/defendants from trespassing into the plaint schedule property or altering its present nature and lie. The 2nd appeal filed by the Panchayat against A.S. No.55 of 2015 is pending before this Court as S.A. No.662 of 2018. The petitioner had also challenged Ext.P19 proceedings of the Additional District Magistrate, Ernakulam, by filing W.P.(C.) No.24002 of 2013, which was disposed of by

judgment dated 06.02.2014, holding as follows:-

11. In order to safeguard the interests of the petitioner, it shall be sufficient to clarify that the findings entered by the 1 st respondent in Ext.P21 shall be purely provisional and shall be subject to the judgment that the WP(C) NO. 31466 OF 2019 6

Munsiff's Court may render in O.S.No.346 of 2013. If the petitioner succeeds in the said Suit, needless to observe that, he would be at liberty to move the 1 st respondent for removal of the disputed electric posts that are installed. For the aforesaid reasons, the Writ Petition is disposed of with the above directions.

The judgment in W.P.(C.) No.24002 of 2013 is on record as Ext.P30. Following the judgment in A.S. No.55 of 2015, the petitioner filed Ext.P24 representation before the District Collector, Ernakulam. This representation is stated to be one filed in

compliance with the directions contained in the

judgment in W.P.(C.) No.24002 of 2013 [though the reference in

Ext.P24 appears to be a judgment dated 03.12.2012 in WPC 27240 of 2012 (Ext.P11)]. By Ext.P25 order dated 26.09.2019, the Additional District Magistrate, Ernakulam, has found that the petitioner had admitted that there is a pathway through the property and had agreed to shift the pathway to one end of the property in question. It is also ordered that the KSEB line and lamp post shall be shifted to the pathway to be newly formed, and the expenses for the same shall be met by the land owners, including the petitioner.

2. Learned counsel appearing for the petitioner would

submit that Ext.P25 order is completely contrary to the findings of the competent civil court in A.S. No.55 of 2015 and that the Additional District Magistrate, Ernakulam has practically re WP(C) NO. 31466 OF 2019 7 written the order of the competent civil court. It is, therefore, submitted that Ext.P25 order is liable to be set aside, also taking

into consideration the fact that this Court, in the judgment

dated 06.02.2014 in W.P.(C.) No.24002 of 2013, had made it clear that the earlier proceedings of the District Magistrate, Ernakulam, shall be subject to the proceedings before the civil court.

3. The learned counsel appearing for the 2 nd

respondent-Panchayat would refer to the counter affidavit filed in this case to contend that the claim of the petitioner on the basis of the judgment in A.S.No.55 of 2015 cannot be considered at present, as a second appeal filed by the Panchayat as RSA No.662 of 2018 is pending consideration before this Court. It is submitted that the pathway, which is the subject matter of this writ petition, is included in the Asset Register of the Panchayat. A copy of the Asset Register is placed on record as Ext.R2(a). A rough sketch of the property, including the pathway, has been placed on record as Ext.R2(b) and a copy of the memorandum

of appeal in RSA No.662 of 2018 is placed on record as Ext.R2(c). It is submitted that Ext.P25 proceedings cannot be interfered with, as Ext.P25 appears to have been issued on the basis of submissions made by the petitioner herself before the Additional WP(C) NO. 31466 OF 2019 8 District Magistrate, where she has admitted that, though there is no pathway as per records, there is a pathway existing on the property and that she is willing to shift the pathway to one end of the property so as to prevent the pathway from dividing the property into two. It is submitted that the petitioner had also agreed to bear the cost of shifting the electrical line/lamp post in question. It is submitted that in such circumstances, the petitioner is not entitled to any relief under Article 226 of the Constitution of India. It is submitted that notwithstanding the condition in Ext.P25 order that the petitioner has to bear the cost of shifting the pathway and the electrical lines, in the overall facts and circumstances of the case, the Panchayat is ready and willing to bear the cost of such shifting. Learned counsel for the Panchayat would also submit that since O.S No.346 of 2013 was a suit for injunction simplicitor and since the Appellate Court has only decreed the suit by granting an injunction restraining the respondents/defendants (including the Panchayat and the Government) from trespassing into the plaint schedule property or altering its present nature and lie, the petitioner cannot, on the basis of the judgment of the Appellate Court, seek any relief from the Writ Court so as to convert the said suit into a suit for mandatory injunction. WP(C) NO. 31466 OF 2019 9

4. Learned counsel appearing for the petitioner, in

reply, would submit that the sketch produced along with the counter affidavit of the 2nd respondent as Ext.R2(b) is not the correct sketch. It is submitted that Ext.P28 produced along with the reply affidavit of the petitioner, is the correct sketch of the property.

5. Having heard the learned counsel for the petitioner,

learned Government Pleader, learned counsel for the 2 nd respondent-Panchayat and the learned Standing Counsel appearing for the Kerala State Electricity Board, I am of the opinion that the petitioner is entitled to succeed. The petitioner is a senior citizen and a widow aged 79. It is not seriously disputed before me that the

electrical line/lamp post in question is placed on a pathway stated to be formed through the property of the petitioner covered by Exts.P1 and P2. While the petitioner would assert that there is no such pathway either by grant or relinquishment of a portion of the property, it is the specific case of the Panchayat that the said pathway has existed for many years and is included in the Asset Register of the Panchayat. It is in this background that it is necessary for this Court to examine the findings of the Appellate Court in A.S WP(C) NO. 31466 OF 2019 10 No.55 of 2015. The Appellate Court in Ext.P22 formulated the following points for determination:

1. Whether the trial court went wrong in arriving deduction on the side of the appellants of their property to form a public road through the plaint schedule property? 2.Whether the appellants claim of exclusive possession of the plaint schedule property is correct? 3.Whether the trial court went wrong in dismissing the suit? 4.Whether the impugned judgment and decree are liable to be interfered with?

5. Reliefs and Costs.

After analysing the evidence in the suit and after considering the documents produced before the court, the Appellate Court while disposing of A.S No.55 of 2015 held as follows:

xxxx xxxx xxxx So existence of a public road through the plaint schedule property cannot be safely arrived by relying on the entries in Ext.B2 asset register which is not a document to be relied upon safely. The trial court went wrong in giving much weightage to those entries in Ext.B2 asset register to conclude that a public road is passing through the plaint schedule property particularly when the appellants had preferred an application to prosecute the panchayath officials for forging that document. In the present appeal also, the appellants have preferred application to sent the Ext.B2 register to expert examination to ascertain age of relevant entries recorded therein with respect to disputed way and

that application was happened to be dismissed on the ground that such facility to ascertain age of handwriting is not available in any of the Forensic Science Laboratory in India. The testimony of DW1 to conclude about public user of the way is also not convincing particularly when this claim about formation of said pathway is by way of surrender by land owners on the strength of surrendering kaicheet. The trial court went wrong in relying much on the evidence of DW1 coupled with documentary evidence of Ext.B1 and B2 to hold that a public pathway is passing through the plaint schedule property.

WP(C) NO. 31466 OF 2019 11 Though the learned counsel appearing for the Panchayat has referred to the written statement filed by the Panchayat in O.S No.346 of 2013 to contend that the Panchayat has taken a specific contention that there is a grant in favour of the Panchayat by one of the co-owners of the property, the Appellate Court has clearly found that the Trial Court went wrong in placing reliance on Ext.P2 Asset Register and the entries therein to hold that there was vesting of the property forming the pathway in the Panchayat. It was specifically found that such a claim was never raised in any earlier proceeding by the Panchayat, and the Asset Register in question had not been produced in any earlier proceeding before the authorities. It was also found that the Asset Register, which was relied on by the Panchayat, is one approved by the governing body of the Panchayat by resolution dated 28-01-2006 and that the property in question was surrendered (according to the Panchayat) in the year 2002. The Appellate Court also found that the entries in the Asset Register are seen entered in different handwritings, and the Panchayat did not explain the said discrepancies by examining the maker of the register. Therefore the Appellate Court found that nothing turns on the entries in the Asset Register. It is thus that the Appellate Court found that there WP(C) NO. 31466 OF 2019 12 was nothing on record, either in the form of oral or documentary evidence, to find that there was a dedication of the pathway in question by surrender to the 2 nd respondent - Panchayat. Coming to the findings entered into by the Additional District Magistrate in Ext.P25 order, I am of the view that there is considerable merit in the contention taken by the learned counsel for the petitioner that the Additional District Magistrate has proceeded to re-adjudicate matters settled by a competent

Civil Court, where the District Collector was also a party. In other words, the revenue authorities were bound by the findings in Ext.P22 judgment in A.S No.55 of 2015, and they could not

have rendered findings contrary to the findings in the judgment

of the Appellate Court while deciding the matter afresh as directed by this Court by judgment dated 06-02-2014 in WP(C)No.24002 of 2013.

6. The contention of the learned counsel appearing for

the 2nd respondent-Panchayat that the suit was one filed for injunction simplicitor and the Appellate Court has only decreed the suit by granting an injunction, and that too against trespass cannot be accepted. It is clear from the judgment of this Court in WP(C)No.24002 of 2013 that the earlier proceedings of the Additional District Magistrate under the Telegraph Act were WP(C) NO. 31466 OF 2019 13 expressly made subject to the orders to be passed by the Civil Court. It was also directed that the earlier proceedings of the Additional District Magistrate shall be treated as provisional and shall be subject to the findings of the Civil Court. This Court, in the judgment in WP(C)No.24002 of 2013, had also found that if the petitioner succeeds in the civil proceedings, he would be at liberty to move the 1st respondent (The District Collector/ The District Magistrate) for removal of the disputed electrical post. When the petitioner approached the District Magistrate armed with the judgment and decree of the Appellate Court, the Additional District Magistrate had no jurisdiction whatsoever to render findings contrary to the judgment of the Civil Court. I therefore categorically reject the submission of the learned counsel for the Panchayat that the petitioner derives no benefit whatsoever from the proceedings before the Civil Court, as the decree obtained by the petitioner is only one for injunction simplicitor. In the light of the above findings, this writ petition is allowed. The respondents shall forthwith take steps to remove the electrical post and electrical lines drawn through the property of the petitioner, which was subject matter of Ext.P22

judgment in A.S. No.55 of 2015. Ext.P25 order will stand

WP(C) NO. 31466 OF 2019 14 quashed. I make it clear that this will be however subject to any order, interim or final, the 2nd respondent may obtain in RSA No.662 of 2018 pending before this Court. Sd/- GOPINATH P. JUDGE ats/ajt WP(C) NO. 31466 OF 2019 15 APPENDIX OF WP(C) 31466/2019 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE PARTITION DEED NO.1557/54

DATED 10.04.1954 , REGISTERED WITH SRO , VAIKOM EXHIBIT P2 TRUE COPY OF THE SALE DEED NO.417/95 OF SRO TRIPUNITHURA. EXHIBIT P3 TRUE COPY OF THE NOTICE DATED 16.10.2012 ISSUED TO 2ND RESPONDENT. EXHIBIT P4 TRUE COPY OF THE REQUEST DATED 10.10.2012

SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT. EXHIBIT P5 TRUE COPY OF THE REQUEST DATED 10.10.2012 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT. EXHIBIT P6 TRUE COPY OF THE APPLICATION DATED 12.11.2012 UNDER RTI ACT SUBMITTED BEFORE THE 4TH RESPONDENT BY THE PETITIONER. EXHIBIT P7 TRUE COPY OF THE APPLICATION DATED 12.11.2012 UNDER RTI ACT SUBMITTED BEFORE THE 2ND RESPONDENT BY THE PETITIONER. EXHIBIT P8 TRUE COPY OF THE LETTER DATED 25.10.2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER. EXHIBIT P9 TRUE COPY OF THE REPLY DATED 26.11.2012 BY THE 4TH RESPONDENT UNDER RTI ACT. EXHIBIT P10 TRUE COPY OF THE REPLY DATED 10.12.2012 UNDER RTI ACT GIVEN TO THE PETITIONERS TO HER EXT.P16 APPLICATION. EXHIBIT P11 TRUE COPY OF THE JUDGMENT DATED 3.12.2012 IN W.P.(C) NO.27240/2012(D). EXHIBIT P12 TRUE COPY OF THE COVERING LETTER DATED 21.1.2013 SENT TO THE 2ND RESPONDENT BY THE PETITIONER. EXHIBIT P13 TRUE COPY OF THE RESOLUTION NO.5(12) DATED 18.12.2012 OF THE 2ND RESPONDENT. EXHIBIT P14 TRUE COPY OF THE LETTER DATED NIL ISSUED TO THE PETITIONER BY THE 4TH RESPONDENT. EXHIBIT P15 TRUE COPY OF THE

REPRESENTATION DATED 17.1.2013 SUBMITTED BEFORE THE 1ST RESPONDENT BY THE PETITIONER. EXHIBIT P16 TRUE COPY OF THE JUDGMENT DATED 05.02.2013 IN W.P.(C) NO.3403/2013 PASSED BY THIS HONOURABLE COURT.

WP(C) NO. 31466 OF 2019 16 EXHIBIT P17 TRUE COPY OF THE JUDGMENT DATED 13.02.2013

IN W.A.NO.261/2013 IN W.P.(C) NO.3403/2013 PASSED BY THIS HONOURABLE COURT. EXHIBIT P18 TRUE COPY OF THE WRITTEN SUBMISSION MADE BY THE PETITIONER BEFORE THE 1ST RESPONDENT. EXHIBIT P19 TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 19.4.2013 PASSED BY THE 3RD RESPONDENT. EXHIBIT P20 TRUE COPY OF THE REPORT DATED 31.01.2013 OF THE 3RD RESPONDENT SUBMITTED BEFORE THE 1ST RESPONDENT. EXHIBIT P21 TRUE COPY OF THE ORDER DATED 22.03.2014 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS. EXHIBIT P22 TRUE COPY OF THE JUDGMENT IN A.S.NO.55/2015 DATED 22.09.2017 PASSED BY THE SUBORDINATE JUDGE'S COURT, ERNAKULAM. EXHIBIT P23 TRUE COPY OF THE DECREE DATED 22.09.2017 IN A.S.NO.55/2014 RESTRAINING THE RESPONDENTS 1 AND 2 FROM TRESPASSING TO THE PETITIONER'S PROPERTY. EXHIBIT P24 TRUE COPY OF THE REPRESENTATION DATED 27.05.2018 SUBMITTED BEFORE THE 1ST RESPONDENT BY THE PETITIONER. EXHIBIT P25 TRUE COPY OF THE PROCEEDINGS DATED 26.09.2019 OF THE 1ST RESPONDENT. EXHIBIT P26 TRUE COPY OF THE REQUEST DATED 06/02/2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. EXHIBIT P27 TRUE COPY OF THE RECEIPT DATED 06/02/2020 ISSUED TO PETITIONER FROM THE OFFICE OF THE 1ST RESPONDENT. EXHIBIT P28 TRUE COPY OF THE ROUGH SKETCH PREPARED BY THE PETITIONER FOR THE EASY REFERENCE OF THIS HONOURABLE COURT. EXHIBIT P29 TRUE

COPY OF GUIDE LINES ON MPLADS PUBLISHED BY GOVERNMENT OF INDIA, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION OF AUGUST 2012. Exhibit P30 COPY OF CERTIFIED COPY OF JUDGMENT IN WPC 24002 OF 2013

RESPONDENT EXHIBITS EXHIBIT R2 (a) TRUE COPY OF THE ASSET REGISTER OF THE RESPONDENT PANCHAYAT. EXHIBIT R2 (b) TRUE COPY OF THE ROUGH SKETCH PRODUCED IN A.S. NO.55/2015 SHOWING THE SO CALLED KOOTTUMUKHOM -KURUPPASSERY ROAD AND THE LOCATION OF ELECTRIC POST. WP(C) NO. 31466 OF 2019 17 EXHIBIT R2 (c) TRUE COPY OF THE MEMORANDUM OF R.S.A. NO.662/2018 DATED 07.03.2018 Annexure R 2 (d)-Copy plaint in OS 346/2013 of the Hon'ble Munsiff's Court Ernakulam Annexure R 2 (e)-Copy written statement in OS 346/2013 of the Munsiff's Court Ernakulam

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