

Abdul Akbar vs the Assistant Executive Engineer

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Court : Kerala Orders

Decided On : Jan-27-2023

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(C)/6911/2022

Appellant : Abdul Akbar

Respondent : The Assistant Executive Engineer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 27TH DAY OF JANUARY 2023 / 7TH MAGHA, 1944 WP(C) NO. 6911 OF 2022 PETITIONER/S: ABDUL AKBAR AGED 52 YEARS SON OF MOOSA, AGED 52 YEARS, PULLOT, KADANNAMANNA P.O., MANKADA VILLAGE, PERINTHALMANNA TALUK, MALAPPURAM DISTRICT, PIN - 679324 BY ADVS. P.M.ZIRAJ IRFAN ZIRAJ RESPONDENT/S: 1 THE ASSISTANT EXECUTIVE ENGINEER PUBLIC WORKS DEPARTMENT (ROADS), OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER, PERINTHALMANNA, MALAPPURAM DISTRICT, PIN - 679322 2 ASSISTANT ENGINEER PUBLIC WORKS DEPARTMENT (ROADS), MELATOOR, MALAPPURAM DISTRICT, PIN - 679325 3 THE STATE OF KERALA

REPRESENTED BY SECRETARY TO GOVERNMENT PUBLIC WORKS DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - ADDL. R4 IMPEADED 4 ANIL CHENDRATHIL AGED 50 YEARS, S/O. SANKARANARAYANAN NAIR, RESIDING AT CHENDRATHIL HOUSE, THIROORKADU.P.O., MALAPPURAM-679321. (IMPEADED AS PER ORDER DATED 16-6-2022 IN IA1/2022).

BY ADVS. ALEX.M.SCARIA SARITHA THOMAS ALLEN J. CHERUVIL OTHER PRESENT: GP AMMINIKUTTY K THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.09.2022 ALONG WITH W.P.(C) No. 17815 OF 2022, THE COURT ON 27.01.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 27TH DAY OF JANUARY 2023 / 7TH MAGHA, 1944 WP(C) NO. 17815 OF 2022 PETITIONER: ANIL CHENDRATHIL AGED 50 YEARS S/O.SANKARANARAYANAN NAIR, RESIDING AT CHENDRATHIL HOUSE, THIROORKADU P.O., MALAPPURAM - 679 321. BY ADVS. ALEX.M.SCARIA A.J.RIYAS SARITHA THOMAS RESPONDENTS: 1 THE DISTRICT COLLECTOR MALAPPURAM, CONFERENCE HALL, COLLECTORATE ROAD, UP HILL, MALAPPURAM - 676 505.

2 THE TAHSILDAR TALUK OFFICE, SHANTI NAGAR, PERINTHALMANNA, MALAPPURAM - 679 322. 3 THE TAHSILDAR (LR) TALUK OFFICE, SHANTI NAGAR, PERINTHALMANNA, MALAPPURAM - 679 322. 4 VILLAGE OFFICER MANKADA, KADANNAMANNA P.O., MALAPPURAM - 679 324. 5 ASSISTANT ENGINEER PWD MELATTUR, MALAPPURAM - 679 326. 6 THE TALUK SURVEYOR TALUK OFFICE, SHANTI NAGAR, PERINTHALMANNA, MALAPPURAM - 679 322. 7 ABDUL AKBAR, AGED 52 YEARS S/O.MOOSA, PULLOT HOUSE, KADANNAMANNA P.O., MALAPPURAM - 679 324.

8 REVENUE DIVISIONAL OFFICER REVENUE DIVISIONAL OFFICE, SHANTI NAGAR, PERINTHALMANNA, MALAPPURAM - 679 322. BY ADVS. P.M ZIRAJ IRFAN ZIRAJ(K/001614/2021) GP SMT. AMMINIKUTTY K THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.09.2022 ALONG WITH W.P.(C) No. 6911 OF 2022, THE COURT ON 27.01.2023 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 27th day of January, 2023 The petitioner in W.P.(C) No. 6911 of 2022 is challenging the notice issued by the Assistant Executive Engineer, Public Works Department requiring him to vacate from the alleged encroached portion of the Thiroorkadu - Anakkayam road. W.P.(C) No. 17815 of 2022 is filed seeking further action based on the very same notice. The essential facts for deciding the lis involved are narrated hereunder, with the parties and the documents described as in W.P.(C) No. 6911 of 2022; The petitioner claims to be the owner of 3.64 ares of land with a residential building comprised in Sy. No. 51/1 in Mankada Village. According to the petitioner, the residential building was constructed more than 65 years back and the compound wall, about 50 years back. The Thiroorkadu - Anakkayam road lies beyond the southern compound wall of the petitioner's property. The petitioner was taken by surprise, on being served with Ext.P3 notice of the Assistant Executive Engineer PWD (Roads)/first respondent, requiring him to vacate from an alleged encroachment over the road. It was also threatened that unless the petitioner vacates voluntarily, the compound wall will be demolished and the encroachment vacated forcibly. The petitioner asserts that there is no encroachment and also questions the authority of the first respondent to issue Ext. P3 notice.

2. According to the official respondents, the area

mentioned in Ext. P3 is part of Thiroorkadu - Anakkayam road (MDR-113) chainage 0/000 to 13/440, which is within the jurisdiction of PWD (Roads) Sub Division Office, Perinthalmanna. Based on a complaint regarding encroachment received from the fourth respondent, re-survey was conducted and a sketch and report prepared through the Taluk Surveyor. The sketch and report showed that

the petitioner had encroached over approximately 2 cents of road puramboke. Hence, notice was issued to the petitioner through special messenger and was served by way of affixture. Thereupon, the petitioner's wife Smt. Shifanath preferred an appeal before the Revenue Divisional Officer, Perinthalmanna and further action based on the notice was deferred. In the meanwhile, the fourth respondent preferred a review petition seeking urgent action to evict the petitioner from the area encroached upon. After considering the records, the RDO directed the first respondent to take further steps. Accordingly, Ext. P3 notice was issued.

3. Learned Counsel for the fourth respondent submitted

that the complaint alleging encroachment by the petitioner was filed way back in the year 2018. After much dilly-dallying the revenue authorities and PWD authorities sought a report from the Taluk Surveyor. Accordingly the area was measured and Ext.R4(e) report and sketch prepared. On measurement and demarcation it was found that the petitioner had encroached over two cents of road puramboke. On receipt of Ext.R4(e), the Village Officer forwarded the same to the Tahsildar under Ext. R4(g) communication. The Tahsildar, in turn, forwarded the report, sketch and related documents to the first respondent for initiating action under the Highway Protection Act. Thereupon, the first respondent issued Exts. R4(i) and R4(j) notices to the petitioner, directing to remove the encroachment within seven days. As the notice could not be served on any adult member of petitioner's family, it was served by way of affixture. Thereafter, the petitioner's wife filed Ext R4(k) representation before the Tahsildar pointing out that Ext.R4(l) application has been submitted before the Revenue Divisional Officer, challenging the proceedings. Based on Ext.R4(l) application the Sub Collector called for reports from the Tahsildar and the first respondent and directed to maintain status quo. Later, the first respondent addressed Ext. R4(r) letter to the Sub Collector requesting to withdraw the order of status quo. After a lot of inter-office communications, the Sub Collector issued Ext.R4(z) letter to the first respondent clarifying that no stay is pending in the matter and appropriate steps could be taken for removing the encroachment. Thereupon, Ext. P3 impugned notice was issued.

4. It is submitted that, all throughout, the petitioner was

aware of the proceedings and had even filed an appeal through his wife. Surprisingly, in the writ petition these material facts are suppressed. As the property was demarcated and the encroachment identified, the official respondents are bound to take emergent follow up action. Instead of doing that, the official respondents are finding out ways and means to drag the proceedings.

5. In reply, learned Counsel for the petitioner submitted

that the petitioner was not aware of the notice served on his wife and she had filed the appeal based on wrong legal advice. In any event, petitioner being the owner of the property ought to be served with notice before the alleged encroachment is vacated.

6. The documents produced by the fourth respondent

reveals that the proceedings for getting the encroachment cleared had commenced from 2018 onwards. During the course of such proceedings, the Taluk Surveyor had measured and demarcated the encroached area. Thereafter, notice was issued to the petitioner and his wife had filed an appeal and further proceedings were kept in suspended animation for a long time due to the pendency of appeal. After all this, the petitioner cannot seek to interdict the proceedings by feigning ignorance about the notices and the appeal filed by his wife. Having suppressed material facts in the writ petition, the petitioner cannot plead equity. The proceedings for evicting the encroachment cannot be interfered at the instance of a person, who has approached this Court with unclean hands. On the other hand, delay in getting the encroachment cleared, will be against public interest. In the result, W.P.(C) 6911 of 2022 is dismissed. W.P.(C) No. 17815 of 2022 is disposed of directing the first respondent to finalize the proceedings based on Ext. P3 within two months of receipt of a copy of this judgment. Sd/- V.G.ARUN JUDGE sb APPENDIX OF WP(C) 6911/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE TAX RECEIPT DATED 23.10.2019 IN CONNECTION WITH THE PROPERTY OF PETITIONER Exhibit P2 TRUE PHOTOGRAPHS OF THE PRESENT CONDITION OF THE

RESIDENTIAL PROPERTY AND COMPOUND WALL OF THE PETITIONER
RESPONDENT EXHIBITS Exhibit R4(a) True copy of the complaint dated 04/04/2018 filed by this respondent before the Tahsildar, Perinthalmanna.
PETITIONER EXHIBITS Exhibit P3 TRUE COPY OF THE NOTICE DATED 8.2.2022 ISSUED BY THE FIRST RESPONDENT
RESPONDENT EXHIBITS Exhibit R4(b) True copy of the letter dated 02/05/2018 bearing No. B2-3104/2018 by the Tahsildar sent to the Village Officer, Mankada. Exhibit R4(c) True copy of the letter dated 27/07/2018 bearing No. 167/2018 by the Village Officer, Mankada, to the Tahsildar, Perinthalmanna. Exhibit R4(d) True copy of the letter dated 12/10/2018

bearing No. A3/ENC/2018 by the Assistant Engineer, PWD Melattur to the Taluk Surveyor, Perinthalmanna.

Exhibit R4(e) True copy of the report dated 17/11/2018 by the Tahsildar (LR), Perinthalmanna. Exhibit R4(f) True copy of the letter dated 18/12/2018 bearing No. A3/2320/2018 issued by the Assistant Engineer, PWD Melattur to this respondent. Exhibit R4(g) True copy of the letter dated 10/01/2019 bearing No. 03/19 issued by the Village Officer, Mankada to the Tahsildar, Perinthalmanna. Exhibit R4(i) True copy of the letter dated 28/02/2019 bearing No. A3/ENC/2019 issued by the Assistant Engineer, PWD Melattur to the petitioner. Exhibit R4(k) True copy of the representation dated petitioner before the Tahsildar. Exhibit R4(l) True copy of the representation dated petitioner before the RDO, Perinthalmanna. Exhibit R4(h) True relevant copy of the letter dated the Tahsildar (LR), Perinthalmanna to the Village Officer, Mankada. Exhibit R4(j) True copy of the letter dated 11/03/2019 bearing No. A3/ENC/2019 issued by the Assistant Engineer, PWD Melattur to the petitioner. Exhibit R4(m) True copy of the direction dated 21/03/2019 issued by the RDO to the Tahsildar and Assistant Engineer, PWD Melattur. Exhibit R4(u) True copy of the letter dated 16/09/2019 issued by the RDO to the Tahsildar. Exhibit R4(n) True copy of the representation dated petitioner before the Assistant Engineer, PWD Melattur. Exhibit R4(o) True copy of the letter dated 30/03/2019

bearing No. A6/1726/2019 issued by the Executive Engineer, Road Division, PWD Manjeri to the Assistant Engineer, PWD Melattur.

Exhibit R4(p) True copy of the letter dated 08/04/2019 bearing No. B2-3104/2018 issued by the Tahsildar (LR) to the RDO. Exhibit R4(q) True copy of the letter dated 26/04/2019 bearing No. A3/ENC/2018 addressing the Tahsildar by the Assistant Engineer, PWD Melattur. Exhibit R4(r) True copy of the letter dated 06/07/2021 bearing No. A3/ENC/2019 by the Assistant Engineer, PWD Melattur. Exhibit R4(s) True copy of the letter dated 22/07/2019 bearing No. A3/ENC/2019 addressing to the RDO by the Assistant Engineer, PWD Melattur. Exhibit R4(t) True copy of the letter dated 03/08/2019 bearing No. B2-3104/2019 (1) of the Tahsildar (LR). Exhibit R4(v) True copy of the letter dated 03/02/2020 by the RDO to the Tahsildar. Exhibit R4(aa) True copy of the letter dated 08/02/2022 bearing No. A3/ENC/2021 issued by the Assistant Engineer, PWD Melattur to the petitioner. Exhibit R4(w) True copy of the letter dated 16/03/2020 bearing No. RDOPTM219/2019-A1 issued by the RDO to the District Collector. Exhibit R4(x) True copy of the letter dated 26/11/2021 bearing No. B2-3104/2018 (1) (Kdls) by the Tahsildar (LR) to the Assistant Engineer, PWD Melattur. Exhibit R4(y) True copy of the letter dated 22/12/2021 bearing No. A3/ENC/2 by the Assistant Engineer, PWD Melattur, to the Tahsildar (LR). Exhibit R4(z) True copy of the letter dated 24/01/2022 bearing No. RDOPTM/431/2022-A1 issued by the RDO.

APPENDIX OF WP(C) 17815/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE COMPLAINT DATED 04/04/2018 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. Exhibit P2 TRUE COPY OF THE LETTER DATED 02/05/2018 BEARING NO.B2-3104/2018 BY THE 2ND RESPONDENT SENT TO THE 4TH RESPONDENT. Exhibit P3 TRUE COPY OF THE LETTER DATED 27/07/2018 BEARING NO.167/2018 BY THE 4TH RESPONDENT SENT TO THE 2ND RESPONDENT. Exhibit P4 TRUE COPY OF THE LETTER DATED 12/10/2018 BEARING NO.A3/ENC/2018 BY THE 5TH RESPONDENT TO THE 6TH RESPONDENT. Exhibit P5 TRUE COPLY OF THE REPORT DATED 17/11/2018 BY THE 3RD RESPONDENT. Exhibit P6 TRUE COPY OF THE LETTER DATED 18/12/2018 BEARING NO.A3/2320/2018 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER. Exhibit P7 TRUE COPY OF THE LETTER DATED 10/01/2019 BEARING NO.03/19 ISSUED BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT. Exhibit P8 TRUE RELEVANT COPY OF THE LETTER DATED THE 3RD RESPONDENT TO THE 5TH RESPONDENT. Exhibit

P9 TRUE COPY OF THE LETTER DATED 28/02/2019 BEARING NO.A3/ENC/2019 ISSUED BY THE 5TH RESPONDENT TO THE 7TH RESPONDENT. Exhibit P10 TRUE COPY OF THE LETTER DATED 11/03/2019 BEARING NO.A3/ENC/2019 ISSUED BY THE 5TH RESPONDENT TO THE 7TH RESPONDENT. Exhibit P11 TRUE COPY OF THE REPRESENTATION DATED Exhibit P12 TRUE COPY OF THE REPRESENTATION DATED Exhibit P13 TRUE COPY OF THE DIRECTION DATED 21/03/2019 ISSUED BY THE 8TH RESPONDENT TO RESPONDENTS 2 & 5. Exhibit P14 TRUE COPY OF THE REPRESENTATION DATED RESPONDENT. Exhibit P15 TRUE COPY OF THE LETTER DATED 30/03/2019 BEARING NO.A6/1726/2019. Exhibit P16 TRUE COPY OF THE LETTER DATED 08/04/2019 BEARING NO.B2/3104/2018 ISSUED BY THE 3RD RESPONDENT ADDRESSED TO THE 8TH RESPONDENT. Exhibit P17 TRUE COPY OF THE LETTER 26/04/2019 BEARING NO.A3/ENC/2018 ADDRESSING THE 2ND RESPONDENT BY THE 5TH RESPONDENT. Exhibit P18 TRUE COPY OF THE LETTER DATED RESPONDENT. Exhibit P19 TRUE COPY OF THE LETTER DATED 22/07/2019 BEARING NO.A3/ENC/2018 ADDRESSING TO THE 8TH RESPONDENT BY THE 5TH RESPONDENT. Exhibit P20 TRUE COPY OF THE LETTER DATED 03/08/2019 BEARING NO.B2-3104/2019(1) OF THE 3RD RESPONDENT. Exhibit P21 TRUE COPY OF THE LETTER DATED 16/09/2019 ISSUED BY THE 8TH RESPONDENT TO THE 2ND RESPONDENT. Exhibit P22 TRUE COPY OF THE LETTER DATED 03/02/2020 BY THE 8TH RESPONDENT TO THE 2ND RESPONDENT. Exhibit P23 TRUE COPY OF THE LETTER DATED 16/03/2020 BEARING NO.RDOPTM219/2019-A1 ISSUED BY THE 8TH RESPONDENT TO THE 1ST RESPONDENT. Exhibit P24 TRUE COPY OF THE LETTER DATED 26/11/2021 BEARING NO.B2/3104/2018(1) (KDIS) BY THE 3RD RESPONDENT TO THE 5TH RESPONDENT. Exhibit P25 TRUE COPY OF THE LETTER DATED 22/12/2021 BEARING NO.A3/ENC/2 BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT. Exhibit P26 TRUE COPY OF THE LETTER DATED 24/01/2022 BEARING NO.RDOPTM/431/2022-A1 ISSUED BY THE 8TH RESPONDENT. Exhibit P27 TRUE COPY OF THE LETTER DATED 08/02/2022 BEARING NO.A3/ENC/2021 ISSUED BY THE 5TH RESPONDENT TO THE 7TH RESPONDENT. Exhibit P28 TRUE COPY OF THE REPORT DATED 15/07/2021

ISSUED BY THE 6TH RESPONDENT Exhibit P29 TRUE COPY OF THE
SKETCH ISSUED BY THE 6TH RESPONDENT

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