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Pothen Thomas vs the Executive Engineer, Highway Administration

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Court : Kerala

Decided On : Nov-09-2023

Judge : Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : WP(C)/340/2014

Appellant : Pothen Thomas

Respondent : The Executive Engineer, Highway Administration

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN THURSDAY, THE 9TH DAY OF NOVEMBER 2023 / 18TH KARTHIKA, 1945 PETITIONER: POTHEN THOMAS, S/O.POTHEN, ALAVALIL HOUSE, MANARCAD P.O., KOTTAYAM-686 019. BY ADV SRI.ABRAHAM GEORGE JACOB RESPONDENTS: 1 THE EXECUTIVE ENGINEER, HIGHWAY ADMINISTRATION HIGHWAY ADMINISTRATION, NH(R) DIVISION, MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN-686 651. 2 THE ASSISTANT EXECUTIVE ENGINEER (PWD), NH SUB DIVISION, KANJIRAPPALLY, KOTTAYAM, PIN-686 507. 3 THE REVENUE DIVISION OFFICER, MINI CIVIL STATION, KOTTAYAM-686 001. 4 THE TAHSILDAR, TALUK OFFICE,

KOTTAYAM-686 001. 5 THE TALUK SURVEYOR, OFFICE OF THE TALUK SURVEYOR, KOTTAYAM-686 001.

6 THE SUPERINTENDANT OF SURVEY AND LAND RECORDS, COLLECTORATE BUILDING, COLLECTORATE P.O., KOTTAYAM-686 002. 7 NATIONAL HIGHWAY AUTHORITY OF INDIA G 5&6, SECTOR-10, DWARKA, NEW DELHI-110 075, REPRESENTED BY ITS CHAIRMAN. -2- 8 UNION OF INDIA REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA IN THE MINISTRY OF SHIPPING ROAD TRANSPORT, HIGHWAYS, NEW DELHI-110 075. SRI.GEORGE ZACHARIA, CGC SMT. VINITHA B., SENIOR GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

JUDGMENT

Dated this the 9th day of November, 2023 The above writ petition is filed seeking for a direction to the respondents not to take any action pursuant to Ext.P1 notice against the property of the petitioner in Survey No.582/7 of Manarcad Village in Kottayam District. The petitioner is a resident of Manarcad Village and is conducting a small tea shop adjacent to his residence. The petitioner has been residing in the said house from 1929 onwards. The petitioner received Ext.P1 notice stating that the petitioner had encroached into 16.8 square meters of land that forms part of NH 220 in Survey No.582/7 of Manarcad Village.

2. It is submitted that based on the report of the

Taluk Surveryor, Ext.P1 notice was issued. Thereafter, the petitioner filed Ext.P2 representation before the RDO, Manarcad. Thereafter, Exts.P4 and P5 letters were issued by the Tahsildar in which it is stated that the petitioner has to approach the District Survey -4- Superintendent by way of appeal. Accordingly, Ext.P6 appeal was filed before the District Survey Superintendent, Kottayam on 23.11.2013. Since no orders were passed on Ext.P6, the petitioner has approached this Court with the above writ petition.

3. The learned Government Pleader, on

instructions, submits that Ext.P6 appeal was not received in the office of the District Survey Superintendent, Kottayam. However, the writ petition was filed in the year 2014 and Ext.P6 representation was filed along with the writ petition. On consideration of the entire facts of the case, I am of the opinion that the writ petition can be disposed of by giving a direction to the 6 th respondent to consider and pass orders on Ext.P6 on petitioner producing a copy of Ext.P6 along with the writ petition before the 6th respondent for consideration. Accordingly, this writ petition is disposed of with the following directions:- i) The 6th respondent is directed to consider Ext.P6 filed along with the writ petition within -5- two months from the date of receipt of a copy of this judgment.

ii) Before passing any such orders, the 6 th respondent shall afford the petitioner an opportunity of being heard. iii) The petitioner shall produce a certified copy of this judgment along with a copy of the writ petition and the Exhibits therein before the 6 th respondent for compliance. iv) Till any such orders are passed by the 6 th respondent, Ext.P1 notice shall be kept in abeyance.

Sd/- SHOBA ANNAMMA EAPEN JUDGE bpr -6- APPENDIX OF WP(C) 340/2014 PETITIONER'S EXHIBITS EXHIBIT P1 TRUE COPY OF THE NOTICE DT.9-9-2013 NO.E1-1394/2013(2) ISSUE BY THE FIRST. EXHIBIT P2 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BY THE R1 DATED 12-9-2012. EXHIBIT P3 TRUE COPY OF THE REPORT OF THE TALUK SURVEYOR DATED 1-8-2013. EXHIBIT P4 TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE R3 RDO DATED 21-10-2013. EXHIBIT P5 TRUE COPY OF THE LETTER DATED 15-11-2013 ISSUED BY R3. EXHIBIT P6 TRUE COPY OF THE APPEAL FILED BEFORE R6 DATED 23-11-2012.

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