

K.T.Shareefa vs the Chief Engineer

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Court : Kerala

Decided On : Mar-15-2022

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/1927/2022

Appellant : K.T.Shareefa

Respondent : The Chief Engineer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 15TH DAY OF MARCH 2022 / 24TH PHALGUNA, 1943 WP(C) NO. 1927 OF 2022 PETITIONER: K.T.SHAREEFA AGED 61 YEARS W/O. ABOOBACKER, RAHATH HOUSE, CANAL ROAD, NARATH BAZAR, P.O.NARATH, KANNAR, PIN-670601. BY ADVS. ABDUL RAOOF PALLIPATH E.MOHAMMED SHAFI K.R.AVINASH (KUNNATH) RESPONDENTS:

1 THE CHIEF ENGINEER IRRIGATION DEPARTMENT, PAZHASSI CANAL, PROJECT CIRCLE (IRRIGATION), KANNUR-670002. 2 THE SPECIAL TAHSILDAR (LA) GENERAL, 3RD FLOOR, MINI CIVIL

STATION, THALASSERY, KANNUR DISTRICT-670101. 3 THE DISTRICT COLLECTOR, KANNUR, DISTRICT COLLECTOR'S OFFICE, THAVAKKARA ROAD, KANNUR-670002. 4 THE SECRETARY, NARATH GRAMA PANCHAYATH, P.O.NARATH, KANNUR-670601. 5 THE TALUK SURVEYOR, KANNUR, NEAR CIVIL STATION, KANNUR-670002. 6 TAHSILDAR, TALUK OFFICE, KANNUR, NEAR GANDHI CIRCLE, SOUTH BAZAR, KANNUR-670002. 7 THE STATE OF KERALA REPRESENTED BY ITS SECRETARY, WATER AND IRRIGATION DEPARTMENT, SECRETARIAT, TRIVANDRUM-695001. BY ADV SHRI.K.C.SANTHOSH KUMAR, SC, NARATH GRAMA

WP(C) NO. 1927 OF 2022 2 PANCHAYATH OTHER PRESENT: SMT.K.AMMINIKUTTY SR.G.P. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 1927 OF 2022
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JUDGMENT

The petitioner impugns Ext.P4 proceedings of the District Collector, Kannur, on various grounds, primarily that it has been issued without properly considering the relevant and germane facts.

2. The afore allegation of Shri.Abdul Raoof P. -

learned counsel for the petitioner were met by Shri.K.C.Santhoshkumar - learned Standing Counsel for the 4th respondent - Grama Panchayat, saying that a counter affidavit has been filed, wherein, they have explained that the Panchayat has no intention to trespass into the property of the petitioner, which is comprised of in Resurvey No.42/7, or to make any construction therein; and that they are only making such constructions in their own property, which is

included in Survey No.42/15, based on Ext.P2 order

obtained by the petitioner herself. Shri.Santhoshkumar submitted that, therefore, this writ petition is unnecessary, particularly because the properties are distinct and different.

3. The learned Senior Government Pleader -

WP(C) NO. 1927 OF 2022 4 Smt.K.Ammunikutty, submitted that Ext.P4 was issued by the District Collector because it was noticed that the property claimed by the petitioner is in the possession and ownership of the Panchayat and that they intended to make a construction on it for a public purpose. She submitted that this controversy appears to have arisen

because the properties are not properly identified. She, therefore, prayed that this writ petition be dismissed.

4. When I hear the learned Senior Government

Pleader on the afore lines, I find some force in what she says. The fact remains that if the properties are distinct and different as conceded by the Panchayat, then the District Collector must take necessary steps to identify them and then complete proceedings as per the request of the petitioner for assignment of the extent claimed by her.

In the afore perspective, I order this writ petition and set aside Ext.P4; with a consequential direction to the District Collector to reconsider the application of the petitioner for assignment of the land in question, after causing an enquiry through a WP(C) NO. 1927 OF 2022 5 competent Authority to identify the two properties involved in this case, taking note of the specific averments of the Panchayat in their counter affidavit. During this process, the District Collector, or the competent Authority, will be at liberty to hear the petitioner as also the concerned official of the Panchayat and if the properties are found to be distinct and separate, then necessary action on the petitioner's application, subject to her entitlement in law, will be completed by the District Collector as expeditiously as is possible, but not later than 6 months from the date of receipt of a copy of this

judgment.

Since the Panchayath says that they are making the construction in a property which is different from the one claimed by the petitioner, I allow them to continue with the same, subject to the decision to be taken by the District Collector but solely at their risk, cost and responsibility.

Sd/- DEVAN RAMACHANDRAN JUDGE MC/15.3 WP(C) NO. 1927 OF 2022 6
APPENDIX OF WP(C) 1927/2022 PETITIONER EXHIBITS Exhibit P1 TRUE
COPY OF AWARD NOTICE NO.C1049/82 DATED 30.3.1982 ISSUED BY
SPECIAL THASILDAR, LA (PP) KODALI. Exhibit P2 THE TRUE COPY OF
INJUNCTION ORDER DATED 9.4.2021 IN I.A.02/2021 IN OS.103/2021 OF THE
PRINCIPAL MUNSIF COURT, KANNUR. Exhibit P3 THE TRUE COPY OF
OBJECTION MADE BY THE PETITIONER DATED 23.12.2021 BEFORE THE
RESPONDENTS 5 & 6. Exhibit P4 TRUE COPY OF THE ORDER NO.613/2020
S.B.M.M. DATED 2.11.2020 ISSUED BY THE 3RD RESPONDENT. Exhibit P5
TRUE COPY OF APPLICATION DATED 6.9.2021 BEFORE THE
RESPONDENTS 1, 2 & 3. Exhibit P6 THE TRUE COPY OF THE REPORT
REF.E-1707/21 DATED 13.9.2021 ISSUED BY 2ND RESPONDENT.

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