

Ashokan vs the State of Kerala

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Court : Kerala

Decided On : Jun-06-2022

Judge : Honourable Mr. Justice T.R.Ravi

Appeal No. : WP(C)/2097/2022

Appellant : Ashokan

Respondent : The State of Kerala

Judgement :

W.P.(C)No.2097/2022 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI MONDAY,
THE 6TH DAY OF JUNE 2022 / 16TH JYAISHTA, 1944 WP(C) NO.
2097 OF 2022 PETITIONERS:

1 ASHOKAN AGED 54 YEARS S/O.KRISHNANKUTTY,
PALLATHUPARAMBIL HOUSE, ELINJPRA DESOM, KODASSERY
VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680 721.
2 BINDU AGED 46 YEARS W/O.RATHEESH, KANAKKASSERY
HOUSE, ELINJPRA DESOM, KODASSERY VILLAGE, CHALAKUDY

TALUK, THRISSUR DISTRICT, PIN - 680 721. 3 OMANA AGED 57 YEARS D/O.KANDUNNY, ERUVEETIL HOUSE, ELINJPRA DESOM, KODASSERY VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680 721. 4 USHA AGED 56 YEARS W/O.SREEDHARAN, AIKKARAPARAMBIL HOUSE, ELINJPRA DESOM, KODASSERY VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680 721. 5 PRASANTH P.P. AGED 35 YEARS S/O.PANKAJAKSHAN, PALLATHU PARAMBIL HOUSE, ELINJPRA DESOM, KODASSERY VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680 721. BY ADV N.L.BITTO

RESPONDENTS: 1 THE STATE OF KERALA REP. BY THE SECRETARY TO THE GOVERNMENT, REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 THE OMBUDSMAN (LSGD) SAFLYAN COMPLEX, PALAYAM, UNIVERSITY P.O., THIRUVANANTHAPURAM DISTRICT, PIN - 695 034. W.P.(C)No.2097/2022 2

3 THE DISTRICT COLLECTOR, THRISSUR COLLECTORATE, AYYANTHOLE, THRISSUR, PIN - 680 003. 4 KODASSERY GRAMA PANCHAYATH REP. BY SECRETARY, KODASSERY P.O., CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680 721. 5 VIJAYAN AGED 66 YEARS S/O.RAVUNNY, PALLATHUPARAMBIL HOUSE, ELINJPRA DESOM, KODASSERY VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680 721. 6 MANAGING DIRECTOR RELIANCE JIO INFOCOM LTD., P.K.TOWERS, 1ST FLOOR, MAMANGALAM P.O., NEAR YATHRINIVAS, PALARIVATTOM P.O., ERNAKULAM DISTRICT - 682 025. BY ADVS. R1 TO R3 BY SRI B.S.SYAMANTHAK, GOVT.PLEADER R4 BY SMT.DAISY A.PHILIPOSE SRI JAI GEORGE R6 BY G.HARIKUMAR (GOPINATHAN NAIR) AKHIL SURESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14.3.2022, THE COURT ON 06.06.2022 DELIVERED THE FOLLOWING: W.P.(C)No.2097/2022 3

T.R. RAVI, J.

----- W.P.(C)No.2097 of 2022
----- Dated this the 6th day of June, 2022

JUDGMENT

The petitioners, who claim to be residents of Ward No.17 of Kodassery Panchayat, have approached this Court being aggrieved by the proposal of respondents 5 and 6 to construct a telecommunication tower in Sy.No.22/1 in Elinjipra Village. According to the petitioners, the construction is sought to be made in a property that is retained as a Panchayat Puramboke.

2. The petitioners initially preferred a complaint before the

District Collector on 14.3.2019 which is produced as Ext.P3. Thereafter, on coming to know that respondents 5 and 6 have been issued a building permit for the construction of the mobile tower, they preferred Ext.P4 appeal before the Panchayat

Committee on 24.4.2019. On 1.7.2019, the Secretary of the Panchayat issued Ext.P5 order directing respondents 5 and 6 to stop further construction based on the building permit granted to them. The order Ext.P5 was taken up in appeal before the Tribunal for Local Self Government Institutions, Thiruvananthapuram by the 6th respondent and by Ext.P7 order, the appeal was allowed setting aside Ext.P5 order as well as the decision dated 10.6.2019 of the

W.P.(C)No.2097/2022 4

Panchayat Committee. The Tribunal allowed the 6th respondent to carry out the construction of the telecommunication tower based on the permit issued in their favour on 14.2.2019. The petitioners have challenged Ext.P7 order of the Tribunal

in this writ petition. The main contention raised by the petitioners is that there was a Panchayat well situated in the property which had been closed pursuant to Ext.P1 decision taken by the Panchayat on 24.9.1994. It is submitted that in Ext.P1 it was decided to retain the area

where the well was situated, as Panchayat puramboke. According to the petitioners, the 5th respondent had annexed the above property as his own and it is in the said property that the mobile tower is being constructed. The petitioners further submitted that the fact that there is a Panchayat well is also clear from Ext.P2 document dated 15.5.2009 which shows the northern boundary as Panchayat well.

3. The 6th respondent has filed a counter-affidavit. The contentions of the petitioners that there has been trespass into the Panchayat Puramboke and that construction is being carried out in

the trespassed area is denied. It is pointed out that there is nothing on record to show that the property covered by Ext.P1 is the very same property where the 6th respondent intends to construct the mobile tower. It is further submitted that the 4th respondent has issued the building permit after inspecting the site W.P.(C)No.2097/2022 5

and has not noticed any community well or any encroachment by the 6th respondent or the 5th respondent into Panchayat property. The 6th respondent submits that the petitioners have not proved the existence of the well in the property chosen for the erection of the tower. It is further submitted that the area where the tower is sought to be put up is part of a larger extent of land in the lawful

possession of the 5th respondent. The 6th respondent has also produced the minutes of the District Telecom Committee (DTC) dated 22.2.2022 whereby the DTC has dismissed the complaint filed by the petitioners.

4. The 4th respondent has also filed a counter affidavit. It

is pointed out that the 4th respondent had requested the Village Officer, Elinjipra to inspect the site and provide a report as to whether any Puramboke is included in

the property in which the 6th respondent proposes to construct the tower. Ext.R4(a) letter from the Village Officer has been produced which shows that there is no

such Puramboke included in the property. The 4th respondent further submits that this matter was reported to the District Collector on 24.11.2021. It is also submitted that on 12.1.2022, the 4th respondent has submitted a report before the District Collector stating that the survey number of the property and the village where it is situated is not mentioned to facilitate identifying the property where the Panchayat well was situated as alleged. It

W.P.(C)No.2097/2022 6 is also stated that no records were available to verify whether Panchayat fund was utilised for constructing such a well.

5. Heard Sri N.L.Bitto, on behalf of the petitioner, Sri Harikumar G. Nair, on behalf of the 6th respondent, Smt.Daisy A.Philipose on behalf of the 4th respondent and Sri B.S.Syamanthak, Government Pleader on behalf of respondents 1 to 3.

6. It is seen from Ext.P7 that the petitioners had put forward their complaint regarding encroachment by the 5th and 6th respondent into the area where there was a public well, before the

Tribunal as well. The Tribunal specifically found that on site inspection, the existence of any public well was not noticed. The Tribunal also noticed that the building permit has been issued by the Secretary after complying with the statutory requirements and as such there can be no contention that there is an encroachment. It cannot hence be said that the said contention was not

considered by the Tribunal. It can be seen from the counter affidavit filed by the 4th respondent that all possible steps to identify whether there was such a well and whether there was any encroachment into Puramboke, had been got verified through the revenue authorities as well and it was found that there is no such encroachment. The Tribunal found that there was no material available to show the existence of any such well in the property W.P.(C)No.2097/2022 7

where the mobile tower is being constructed. It can be seen from Ext.R6(a) proceedings of the DTC that even before the Committee, the above allegation regarding public well was taken up. It can be seen that the Panchayat had, after referring to their asset register, specifically submitted before the Committee that the property in question is not included in the asset register of the Panchayat. It is in the above circumstances that the Committee found that since it has not been proved that there is a public well situated in the property and that the property is a Panchayat Puramboke and since the Panchayat also does not lay a claim to this property, the 6th respondent can continue with the construction of the mobile

tower. Coming to the documents relied on by the petitioners, Ext.P1 says that a representation had been submitted by one

Pallathu Paramban Pankajakshan and another stating that a Panchayat well is not being used by the local residents and that it is lying in a dangerous condition, likely to cause accidents where children may fall into the well and also seeking permission for closing the well at the cost of the public. The decision taken was to permit the closing of the well on condition that the person who comes forward to take up the work gives an undertaking to the Panchayat that the property where the well is situated will be

retained as Panchayat Puramboke and they will not

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nothing further in Ext.P1 to distinctly connect the property where the said well referred to is situated and the property where the mobile tower is constructed. The only other document that is relied on is Ext.P2 which is a sale deed executed by the 5th respondent in favour of one Pankajakshan and Asokan. It can be seen from the recitals that what is transferred is a property of extent of 370/100 cents equivalent to 0.15 Ares and the northern

boundary is shown as Panchayat well. It cannot be concluded from Ext.P2 that what is referred to as Panchayat well is the very same property that is referred to in Ext.P1. If as a matter of fact, Ext.P1 decision had been taken to the logical conclusion and the well was closed as early as in 1994, there cannot be any reference to the said property as Panchayat well in a document executed 15

years later. As such, Ext.P2 also does not lead to any inference that there was a well in the property where the 6 th respondent proposes to construct the mobile tower. Even though this Court is not expected to go into such factual aspects, reference is made only since much of the arguments were based on these documents.

7. This Court is well aware that a proceeding under Article

226 of the Constitution is not intended to be an appellate remedy over any orders passed by the statutory authorities or Tribunals. This Court is sitting only in a supervisory jurisdiction and the W.P.(C)No.2097/2022 9

purpose is only to ensure that the orders issued do not suffer from any illegality, impropriety, or irregularity or are irrational apart from ensuring that no fundamental rights or statutory rights are affected. I do not find any reason to interfere with the reasonings contained in Ext.P7. Moreover, the concerned statutory authority who is the DTC has also considered the grievance of the petitioners and rejected the same in Ext.R6(a) order. No grounds are made out warranting interference of this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

The writ petition fails and is dismissed. Sd/- T.R. RAVI JUDGE ds
W.P.(C)No.2097/2022 10 APPENDIX OF WP(C) 2097/2022 PETITIONER
EXHIBITS Exhibit P1 A TRUE COPY OF THE DECISION TAKEN BY THE
PANCHAYATH DATED 24/9/1994. Exhibit P2 A TRUE COPY OF THE DOC
NO.1743 OF 2009 OF THE CHALAKUDY SRO DATED 15/5/2009. Exhibit P3 A
TRUE COPY OF THE COMPLAINT LAUNCHED BY THE PETITIONERS
BEFORE THE DISTRICT COLLECTOR DATED 14/3/2019. Exhibit P4 A TRUE
COPY OF THE APPEAL FILED BY THE PETITIONERS BEFORE THE
PANCHAYATH COMMITTEE DATED 24/4/2019. Exhibit P5 A TRUE COPY OF
THE ORDER PASSED BY THE SECRETARY DATED 1/7/2019. Exhibit P6 A
TRUE COPY OF THE APPLICATION FILED BY THE PETITIONERS TO
RESTORE THE WELL DATED Exhibit P7 A TRUE COPY OF THE ORDER
PASSED BY THE OMBUDSMAN (LSGD) THIRUVANANTHAPURAM DATED
RESPONDENT EXHIBITS Exhibit R4(a) A TRUE COPY OF THE LETTER NO.A2-

4170/2021 DATED 02/11/2021, ISSUED BY THE 4TH RESPONDENT TO THE VILLAGE OFFICER, ELINJIPRA. Exhibit R4(b) A TRUE COPY OF THE LETTER NO.190/2021 DATED 20/11/2021, ISSUED BY THE VILLAGE OFFICER, ELINJIPRA TO THE 4TH RESPONDENT. Exhibit R4(c) A TRUE COPY OF THE LETTER NO.A2-5312/2021 DATED 24/11/2021, ISSUED BY THE 4TH RESPONDENT TO THE DISTRICT COLLECTOR. Exhibit R4(d) A TRUE COPY OF THE LETTER NO.K5-4358/2021 DATED 20/11/2021, ISSUED BY THE DISTRICT COLLECTOR TO THE 4TH RESPONDENT. Exhibit R4(e) A TRUE COPY OF THE LETTER NO.A2-5312/2021 DATED 12/01/2022, ISSUED BY THE 4TH RESPONDENT TO THE DISTRICT COLLECTOR. EXT.R6(A): TRUE COPY OF MINUTES OF MEETING OF DTC DT.22.2.2022.

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