SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Joseph vs State of Kerala

Joseph vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1518488

Court : Kerala

Decided On : Oct-28-2022

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(C)/26316/2022

Appellant : Joseph

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 28TH DAY OF OCTOBER 2022 / 6TH KARTHIKA, 1944 WP(C) NO. 26316 OF 2022 PETITIONER: JOSEPH, AGED 71 YEARS S/O LATE JOB, NEDUMTHANATHU HOUSE, VAZHAPALLY WEST P.O., CHANGANASSERY, KOTTAYAM DISTRICT, PIN- 686103. BY ADV K.S.HARIHARAPUTHRAN RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY, GOVT. SECRETARIATS, TRIVANDRUM -695001. 2 SUPERINTENDING ENGINEER, KERALA STATE RURAL ROADS DEVELOPMENT AGENCY, LOCAL ADMINISTRATION (RD) DEPARTMENT, GOVT. OF KERALA, 5TH FLOOR, SWARY BHAVAN, NANTHANCODE,

KAWADIAR P.O., TRIVANDRUM, 695003. 3 CHIEF ENGINEER, KERALA STATE RURAL ROADS DEVELOPMENT AGENCY, LOCAL ADMINISTRATION (RD) DEPARTMENT, GOVT. OF KERALA, 5TH FLOOR, SWARYBHAVAN, NANTHANCODE, KAWADIAR P.O., TRIVANDRUM, 695003. 4 EXECUTIVE ENGINEER, PROGRAMME IMPLEMENTATION UNIT (PIU), PRADHANAMANTHRI GRAM SODAK YOJANA (PMGSY), LOCAL SELF GOVERNMENT (RD) DEPARTMENT, GOVT. OF KERALA, DISTRICT PANCHAYATH, KOTTAYAM - 686002. 5 SECRETARY, KOTTAYAM, DISTRICT PANCHAYATH, DISTRICT PANCHAYATH OFFICE, COLLECTRATE P.O., KOTTAYAM, PIN - 686002.

BY ADV SHRI.JUSTINE JACOB, SC, KOTTAYAM DISTRICT PANCHAYAT OTHER PRESENT: GP P.S.APPU THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 28th day of October, 2022 The petitioner is residing on the southern side of the newly constructed Karikattoor - Pulikkallu road. The petitioner alleges that, for constructing the road, the land adjacent to his residence was dug up to an extent of almost 18 feet, resulting in the petitioner's property losing its lateral support. The petitioner is apprehensive about the damages that will result by reason of the loss of lateral support. According to the petitioner, the Contractor who had undertaken the road work had promised to provide retaining wall for the petitioner's property. Unfortunately, the contractor died before the wall was constructed. Faced with such a situation, the petitioner approached the Human Rights Commission and obtained Ext. P11 order. Considering that the Kerala State Rural Roads Development Agency had submitted an estimate for Rs.21,23,421/- for construction of the retaining wall and the same is pending before the Government, the complaint was disposed of, directing construction of the retaining wall immediately on sanction of the estimate amount and leaving it open for the petitioner to agitate his grievances, if any subsisting, after such

construction. The writ petition is filed aggrieved by the failure of the respondents to construct the retaining wall in spite of the Human Rights Commission's direction.

2. Learned Counsel for the petitioner submitted that the

petitioner's residence and appurtenant land is under imminent danger of sliding down due to the excavation of the adjacent land. It is contended that having done the excavation, the State is under an obligation to provide lateral support.

3. Learned Government Pleader submitted that the

amount sanctioned for road construction work was expended fully and the Government had incurred additional expenditure also. As such, no funds are available for carrying out the construction and the proposal for construction work is pending before the Government.

4. Having heard the learned Counsel on either side, I am

of the opinion that the Government should consider the proposal seriously, particularly in view of the Human Rights Commission's direction. The writ petition is hence disposed of, directing the 1 st respondent or a duly authorised officer to consider the proposal submitted by the Kerala State Rural Development Agency, mentioned in Ext.P11 order of the Human Rights Commission, within four months of receipt of a copy of this

judgment.

Sd/- V.G.ARUN JUDGE sb APPENDIX OF WP(C) 26316/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE BASIC TAX RECEIPT, DATED 12-042021, ISSUED TO THE PETITIONER BY THE VILLAGE OFFICER MANIMALA. Exhibit P2 TRUE COPY OF THE LETTER NO. A1 - 3298/2022 DATED 28 -08-2016, ISSUED BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT. Exhibit P3 TRUE COPY OF THE LETTER NO. 31-3948/2013 DATED 09-09-2016. Exhibit P4 TRUE COPY OF THE ORDER DATED 04-04-2017 IN H.R. M.P. NO. 5885/16/KTM OF THE KERALA STATE HUMAN RIGHTS COMMISSION Exhibit P5 TRUE COPY OF THE AFFIDAVIT DATED 29-06 -

2019, SUBMITTED BY THE 4TH RESPONDENT BEFORE THE STATE HUMAN RIGHTS COMMISSION. Exhibit P6 TRUE COPY OF THE LETTER NO. A1-3639/2012 DATED 0511- 2019, ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER. Exhibit P7 TRUE COPY OF THE CONSENT LETTER DATED 08-11- 2019 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT. Exhibit P8 TRUE COPY OF THE LETTER NO. A 976/2013/PIU DATED 17 -06 - 2021, ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER. Exhibit P9 TRUE COPY OF THE INTIMATION NO. RESPONDENT BEFORE THE KERALA STATE HUMAN RIGHTS COMMISSION DATED 28.5.22. Exhibit P10 TRUE COPY OF THE REPRESENTATION DATED 08-07- 2022, SUBMITTED TO THE KERALA STATE HUMAN RIGHTS COMMISSION. Exhibit P11 TRUE COPY OF THE ORDER DATED 8.7.2022, OF THE KERALA STATE HUMAN RIGHTS COMMISSION. RESPONDENT EXHIBITS EXHIBIT R4(a) A true copy of letter no.

DB2/Complaint/PMGSY/86/2016-17/344 dated 02- 06-2017 issued to the Executive Engineer , Programme Implementation Unit (PIU) PMGSY , District Panchayath Kottayam by the Deputy Chief Engineer , Electrical Circle , Kottayam EXHIBIT R4(b) A true copy of the sketch providing details of additional area of land required EXHIBIT R4(c) A true copy of the photographs of the road and the adjoining property of the petitioner

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com