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**S.Krishnakumar vs the District Collector,**

**S.Krishnakumar vs the District Collector,**

**SooperKanoon Citation** : sooperkanoon.com/1733400

**Court** : Kerala Orders

**Decided On :** Aug-26-2020

**Judge** : Honourable Mr. Justice Anil K.Narendran

**Appeal No.** : WP(C)/1713/2019

**Appellant** : S.Krishnakumar

**Respondent** : The District Collector,

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN WEDNESDAY, THE 26TH DAY OF AUGUST 2020 / 4TH BHADRA, 1942 W.P.(C)No.1713 OF 2019(L) PETITIONER/S: S.KRISHNAKUMAR, AGED 51 YEARS S/O. LATE SANKARA PILLAI, CHENNANKARA PUTHEN VEEDU, MANJADITHARA, PALLIKAL (P.O.), KAYAMKULKAM, ALAPPUZHA (DISTRICT), PIN - 690 503 REPRESENTED BY POWER OF ATTORNEY HOLDER SMT. RAJASREE, AGED 44 YEARS, W/O.S.KRISHNAKUMAR, CHENNANKARA PUTHEN VEEDU, MANJADITHARA, PALLICKAL (P.O.), KAYAMKULAM, ALAPPUZHA (DISTRICT), PIN - 690 503.

BY ADV. SRI.C.C.PADMAKUMAR RESPONDENT/S: 1 THE DISTRICT COLLECTOR, COLLECTORATE, ALLEPPEY (DISTRICT), PIN - 688 001. 2 THE SUPERINTENDENT OF SURVEY AND LAND RECORDS, COLLECTORATE, ALLEPPEY (DISTRICT), PIN - 688 001. 3 THE THAHASILDAR, MAVELIKARA, ALLEPPEY (DISTRICT), PIN - 690 101. 4 THE TALUK SURVEYOR, TALUK OFFICE, MAVELIKARA, ALLEPPEY (DISTRICT), PIN - 690 101. W.P.(C)No.1713 of 2019 -2- 5 THE VILLAGE OFFICER, VILLAGE OFFICE, BHARANIKAVU, ALLEPPEY (DISTRICT),PIN - 690 503.

6 BHARANIKAVU GRAMA PANCHAYAT, PALLICKAL, ALAPPUZHA (DISTRICT), PIN - 690 503, REPRESENTED BY ITS SECRETARY. R1-3 BY GOVERNMENT PLEADER R6 BY ADV. SRI.VINCENT JOSEPH OTHER PRESENT: SMT K.AMMINIKUTTY-SENIOR GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C)No.1713 of 2019 -3-

## JUDGMENT

The petitioner, who is the owner in possession of 6.40 Ares of property in Re.Sy.No.382/3 (old Sy.No.262/14A) in Bharanikavu Village of Mavelikkara Taluk, covered by Sale Deed No.2213/1995 dated 29.09.1995, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P10 notice dated 10.12.2018 issued by the Secretary of the 6 th respondent Bharanikavu Grama Panchayat; a writ of mandamus commanding the 6 th respondent to number the building constructed by the petitioner in the property in Re.Sy.No.382/3 of Bharanikavu Village; and a writ of mandamus commanding the 2 nd respondent Superintendent of Survey and Land Records, Alappuzha to consider and dispose of Ext.P12 appeal, within a time frame fixed by this Court.

2. On 21.01.2019, when this writ petition came up for

admission, the learned Government Pleader took notice for respondents 1 to 5 and sought time to get instructions. Urgent notice by speed post was ordered to the 6 th respondent, W.P.(C)No.1713 of 2019 -4- returnable within two weeks. This Court granted an interim

**order to the effect that coercive action pertaining to Ext.P10**

notice dated 10.12.2018 shall be put on hold for a period of three weeks. The said interim order, which was extended from time to time, was extended until further orders on 11.04.2019.

3. A statement has been filed by the 3 rd respondent Tahasildar, Mavelikara, opposing the reliefs sought for in this writ petition. Paragraphs 3 to 7 of the said statement read thus:

> 3. The petitioner has constructed a commercial building having area of 1235.80sq.mtr. which was assessed by the 3rd respondent and tax was levied under the Kerala Building Tax Act, 1975. While constructing the commercial building, the petitioner has encroached into the Kulam Puramboke by an extent of 1.24sq.mtr. Notices were served to petitioner's power of attorney and she was present at the time of demarcation.

4. On demarcation, the 4th respondent found that the

petitioner has encroached into the Government Kulam by an extent of 1.24sq.mtr. and since the Kulam Puramboke is vested in the Panchayath, the 3 rd respondent requested the 6th respondent to initiate the W.P.(C)No.1713 of 2019 -5- eviction process, under the Kerala Land Conservancy Act.

5. It is pointed out that it was on 15.10.2016 that the

> Bharanikavu Village Officer has reported that there is an encroachment into the Kulam Puramboke comprised in Sy.No.382/4. It was thus that the Taluk surveyor was directed to verify the matter. As stated above, the Taluk surveyor demarcated the Puramboke on 29.09.2018 and reported that the petitioner in this case has encroached into an extent of 1.24sq.mtr. of the Puramboke Kulam.

6. The survey was conducted after issuing notice to the parties, and the 4th respondent has not violated the provisions of the Kerala Survey and Boundaries Act.

7. It is pointed out that the building was assessed under

the Kerala Building Tax Act 1975 and the numbering of the Building has to be done by the 6th respondent. It is reiterated that the petitioner has unauthorisedly encroached into 1.24sq.mtr. of puramboke land. (underline supplied)

4. The 6th respondent Grama Panchayat has also filed counter affidavit opposing the reliefs sought for in this writ petition. The petitioner has also filed a reply affidavit.

5. On 13.08.2020, the petitioner has filed I.A. No.1 of 2020 seeking an order to withdraw this writ petition. The said petition reads thus: W.P.(C)No.1713 of 2019 -6-

> The above writ petition has been filed by the petitioner challenging Ext.P10 notice issued by the 5 th respondent. It is respectfully submitted that the petitioner is not interested to proceed with the above writ petition and petitioner is hereby withdrawing the writ petition unconditionally. In the above circumstances, it is humbly prayed that this Hon'ble Court may be pleased to allow the petitioner to withdraw the above writ petition as not pressed.

6. Heard the learned counsel for the petitioner, the learned Senior Government Pleader for respondents 1 to 5 and also the learned counsel for the 6 th respondent Grama Panchayat.

7. The learned counsel for the petitioner would submit

that the petitioner is not interested in proceeding with this writ petition further, since he proposes to demolish the construction made by encroaching upon 1.24sq.mtr. of puramboke kulam, thereby complying with Ext.P10 notice. Therefore, this writ petition may be dismissed as withdrawn.

8. Recording the aforesaid submission made by the

learned counsel for the petitioner and taking note of the averments in I.A. No.1 of 2020, this writ petition is dismissed W.P.(C)No.1713 of 2019 -7- as withdrawn.

9. Consequently, the interim order granted by this

Court on 21.01.2019, to the effect that coercive action pertaining to Ext.P10 notice dated 10.12.2018 shall be put on hold for a period of three weeks (which was extended until further orders by order dated 11.04.2019) is vacated. In view of this judgment, I.A. No.1 of 2020 is closed. Sd/- ANIL K. NARENDRAN JUDGE das W.P.(C)No.1713 of 2019 -8- APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.2516/2507 DATED 17.11.2004 ISSUED BY THE SUB REGISTRAR, BHARANIKAVU. EXHIBIT P2 TRUE COPY OF THE BUILDING PERMIT RENEWED UPTO 7.12.2020 NO.A2. 5243/14- 6TH RESPONDENT TO THE PETITIONER EXHIBIT P3 TRUE COPY OF THE ORDER OF ASSESSMENT UNDER THE KERALA BUILDING TAX ACT, 1975 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER. EXHIBIT P4 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 1.12.2016. EXHIBIT P5 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 8.9.2016. EXHIBIT P6 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 9.03.2017. EXHIBIT P7 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 5.6.2017. EXHIBIT P8 TRUE COPY OF THE NOTICE DATED 17.9.2018 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER. EXHIBIT P9 TRUE COPY OF THE APPLICATION DATED 8.10.2018 SUBMITTED BY PETITIONER TO THE 4TH RESPONDENT. EXHIBIT P10 TRUE COPY OF THE NOTICE DATED 10.12.2018 ISSUED BY THE 6TH RESPONDENT TO THE PETITIONER. W.P.(C)No.1713 of 2019 -9- EXHIBIT P11 TRUE COPY OF THE APPLICATION DATED 28.12.2018 SUBMITTED TO THE 6TH RESPONDENT. EXHIBIT P12 TRUE COPY OF THE APPEAL MEMORANDUM SUBMITTED BY THE PETITIONER TO 2ND RESPONDENT. EXHIBIT P13 TRUE COPY OF THE POSTAL RECEIPT DATED 29.12.2018. RESPONDENT'S/S EXHIBITS: EXHIBIT R6(A) THE COPY OF SHOW CAUSE NOTICE DATED EXHIBIT R6(B) THE COPY OF REPLY BY THE PETITIONER DATED 21/12/2017. EXHIBIT R6(C)

THE COPY OF THE LETTER DATED

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