

Udaya Kumar vs Executive Engineer,Kerala Water Authority,

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SooperKanoon Citation : sooperkanoon.com/1833488

Court : Kerala

Decided On : Feb-14-2020

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WP(C)/30339/2011

Appellant : Udaya Kumar

Respondent : Executive Engineer,Kerala Water Authority,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY FRIDAY, THE 14TH DAY OF FEBRUARY 2020 / 25TH MAGHA, 1941 WP(C).No.30339 OF 2011(S) PETITIONER: UDAYA KUMAR, S/o.KUMARAN, AGED 31 YEARS, THUNDIPARAMBIL HOUSE,ST.JAMES CHURCH ROAD,, CHERANALLOOR PO, PIN 682 034. BY ADV. SRI.BIJU M.JOHN RESPONDENTS: 1 EXECUTIVE ENGINEER,KERALA WATER AUTHORITY, PH DIVISION, ALUVA, 683 101. 2 THE DISTRICT COLLECTOR, OFFICE OF COLLECTOR, KAKKANAD, ERNAKULAM 682 030. 3 THE SECRETARY,

THRIKKAKARA MUNICIPALITY KAKKANADU 682 030. ADDL. THE SECRETARY, R4 KOCHI MUNICIPAL CORPORATION KOCHI. ADDL. THE SECRETARY, R5 KALAMASSERY MUNICIPALITY KALAMASSERY.

ADDL. R4 AND R5 ARE SUO MOTU IMPEADED AS PER ORDER

DATED 20.11.2019 ADDL. K.E. ALI, R6 S/O.ESMAIL, KALAPPURAKAL HOUSE, THRIKKAKARA, COCHIN-682 021. ADDL. A.P. KHADAR PILLA, R7 S/O.PAREETH, ANJIKKATTIL HOUSE, THRIKKAKARA P.O., COCHIN-682 021. WP(C).No.30339 OF 2011 2

ADDL. P.B. SHAMSU, R8 S/O.BAVA, PARVITHIKKAL HOUSE, THRIKKAKARA P.O., COCHIN-682 021. ADDL. R6 TO R8 ARE IMPEADED AS PER ORDER DATED ADDL. THRIKKAKARA PIPELINE ROAD RESIDENTS ASSOCIATION R9 NASEEM ARCADE, PIPELINE JUNCTION, THRIKKAKARA KOCHI - 682 021 REPRESENTED BY ITS SECRETARY NISTHAR P.M., S/O.LATE METHEEN, AGED 54 YEARS, RESIDING AT PUTHENPURAKKAL, PIPELINE ROAD, THOPPIL, THRIKKAKARA.P.O., THRIKKAKARA NORTH (PART) ERNAKULAM, KERALA - 682 021. ADDL.R9 IS IMPEADED AS PER ORDER DATED 14.2.2020IN I.A.NO.1 OF 2020 R1 BY SRI.SAJI VARGHESE KAKKATTUMATTATHIL R2 BY SENIOR GOVERNMENT PLEADER SRI.TEK CHAND R3 BY ADV. SRI.G.G.MANOJ, SC, THRIKKAKARA MUNICIPALITY R4 BY ADV. SHRI.S.SUDHEESH KUMAR, SC, KOCHI MUNICIPAL CORPORATION R5 BY SRI.M.K.ABOOBACKER,SC KALAMASSERY MUNICIPALITY R6 TO R8 BY SRI.T.M.MOHAMMED YOUSEF R9 BY ADV. JOLLY JOHN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No.30339 OF 2011 3 C.R

JUDGMENT

This Public Interest Litigation is filed by a Social worker basically contending that the main pipeline starting from water treatment plant at Aluva and ends at Thammanam Booster tank laid through the pipeline road, maintained by the Kerala Water Authority is under danger due to plying of heavy vehicles. It is submitted that since the pipeline is drawn underground, the Kerala Water Authority published a notice prohibiting plying of vehicles through the pipeline road. The pipeline road is maintained by the Kerala Water Authority and the plying of heavy vehicles through the pipeline road is restricted by putting up barricades at the entrance of pipeline junction at Palarivattom and at the entrance of National Highway - 47 and other areas of the road interceptions. According to the petitioner, number of godowns are functioning by the side of the pipeline road and large number of loaded lorries are plying through the pipeline road for the purpose of loading and unloading goods at the godowns situated by the side of the pipeline road. Exts.P1 and P2 are the photographs showing the restriction imposed by the Water Authority and the plying of lorries and existence of godowns. Therefore, according to the petitioner, due to the plying of heavy loaded lorries, there is likelihood of breakage of the main

WP(C).No.30339 OF 2011 4

pipeline, through which water is pumped from the river Periyar at Aluva and to the Booster tank situated at Tammanam within the limits of the Cochin Corporation. It is also pointed out that the pipeline road is passing through the Choornikkara Panchayat, Aluva Municipality, Kalamassery Municipality, Thrikkakara Municipality and the Cochin Corporation limits. It is the contention of the petitioner that the Kerala Water Authority as well as respective local bodies are not taking any action so as to prevent plying of the heavy loaded lorries through the pipeline road. It is also submitted that even though Water Authority have put up cross bars and concrete barricades restricting the entry of goods vehicles, they are destroyed by the interested persons who are carrying with godown activities using the pipeline

road at various places. Therefore, it is submitted there is every likelihood of breakage of the water main and if anything happens it will cause irreparable loss and injury to the people residing in the locality of the local bodies referred to above, and will absolutely disrupt the water supply to several of the areas including the Cochin Corporation. Therefore, seeks the following reliefs.

i) Issue a writ of mandamus or any other writ, order, or direction by directing the 1st and 2nd respondents to implement of order of prohibition of plying of the heavy vehicles through pipeline road starts from water treatment plant at Aluva and ends at Thammanam Booster tank at Ernakulam. WP(C).No.30339 OF 2011 5 ii) Issue a writ of mandamus or any other writ, order, or direction by directing the 3rd respondent to cancel the licence granted to the buildings functioning as the godowns at pipeline road . iii) Issue any other writ, order or direction as this Hon'ble Court deem fit and proper in the circumstances of the case.

2. Kerala Water Authority has filed a detailed counter affidavit

basically approving the contentions put forth by the petitioner and among other contentions it is stated that Aluva water treatment plant is the main source of drinking water for Greater Cochin area, and Kochi Corporation, and further, supply to areas of nearby local bodies, also is carried out through the transmission lines laid beneath the pipeline road from Aluva treatment plant to Samskara Junction and reaching upto KSRTC bus stand. Two transmission lines made of cast iron of 900 mm and 1050mm diameters, and a MS pipe with 1200 mm are laid through the pipeline road for the purpose, and the pipelines are passing through Choornikara Panchayat, and Aluva, Kalamassery and Thrikkakara Municipalities and Kochi Corporation. It is also submitted that the Kerala Water Authority has acquired properties for the purpose of laying the pipeline and maintenance of the same. It was accordingly that the pipelines were drawn underground, and the pipeline road is constructed for the purpose of maintenance of the pipelines. The Kerala Water Authority is maintaining the pipeline road and the vehicular traffic is prohibited through this road, and if vehicles are

WP(C).No.30339 OF 2011 6

passing through the road, weight will exert pressure on the pipeline underneath and cause breakage or damage to them, which would seriously affect the water supply to the aforesaid areas. The drinking water requirement of 15 lakhs people would be perilously affected, if any damage occurs to the pipelines. It was with the aforesaid intention that the Kerala Water Authority prohibited vehicular traffic through the pipeline road and for the purpose caution boards have been erected at 12 places notifying that plying of heavy vehicles prohibited. So also at St.mary's School Junction, Aluva and behind the Cochin University campus, cross bars have been erected for preventing passage of heavy vehicles through the road. A detailed sketch of the pipeline road depicting erection of caution boards and cross bars is produced as Ext.R1(a). While so people have started construction of houses by the side of the pipeline road and have been using the said road for transportation of materials. Other goods vehicles have also started to pass through the pipeline road disregarding the caution and warning boards. Bitumen surface of certain portions of the road are being effected using MLA fund by the Public Works Department. It is also pointed out, bus routes have been sanctioned by the Regional Transport Authority using certain portion of the pipeline road. Even though Kerala Water

Authority had opposed it and requested the Regional Transport Officer, Ernakulam for cancellation of such permit and stoppage of operation of WP(C).No.30339 OF 2011 7 stage carriages, it was not executed by the Motor Vehicles Department. That apart even though requests were made several times to control the traffic and prohibit the passage of heavy vehicles through the pipeline road,

to the respective Police Authorities, no action was initiated. The Water Authority has also undertaken a task of erecting 21 additional cross bars in the pipeline road, and had invited tenders for the work as early as on 16.1.2008. However, there was no response from the contractors. Even though the work was re-tendered, contractors are not coming forward basically due to the hostile attitude of the local public and local politicians. The erection of cross bars and caution notices are vital and essential for the protection and upkeep of the pipelines. The Kerala Water Authority finds it difficult to execute the work without adequate protection from the Police and District Administration and the Transport Authority.

It is also requested that the local bodies have to be directed not to give licences for godowns, and building permits for multi storied buildings if their access is shown through the pipeline road. Therefore, it is submitted that, unless and until directions are issued by this Court, there is a likelihood of breakage of the water lines and if any such things happen, it will cause irreparable loss and injury not only to the Water Authority but to the public at large.

3. Respondents 6 to 8, who are apparently owners of properties by the side of the pipeline road have filed a joint counter affidavit refuting the WP(C).No.30339 OF 2011 8

allegations and claims and demands raised by the petitioner and also contending that no manner of prejudice will be caused, if the vehicles are permitted to be plied through the pipeline road.

4. The Kalamassery Municipality has also filed a counter affidavit

submitting that the use of the pipeline road will in no way affect the petitioner and the contentions are put forth without any technical and other studies and merely because vehicles are plying through the road the likelihood of breakage of water line is only a figment of imagination.

5. The Water Authority has also filed a status report dated 15.1.2020

reiterating the stand adopted in the counter affidavit and also submitting that the property for the purpose of laying pipeline road was acquired by the Kerala Water Authority spending more than Rs.50 Crores and therefore, the Water Authority is the absolute owner of the pipeline road, which is formed for the purpose of maintenance of water main passing by the side, and underneath the pipeline road. That apart it is submitted that, the pipes are jointed with S&S joints and conveyed water at high pressure and therefore, any external pressure exerted on the pipes will have the impact on the carrying capacity since the pipes are very old. Even a very light vibration along the road will get transmitted to the pipe surface and the joints, which leads to bursting of pipes and results in hazardous situation. Breakage in any line may cause damage to the adjacent lines as in the case

of pipe breakage at a place called Kammy and if any such things happens, the residents of various local bodies will be put to innumerable difficulties. It is also submitted that unlike the time of laying the pipelines, the area is thickly populated and constructed with commercial buildings, godowns, religious and other institutions and breakage of this huge pipelines will wash away human lives within seconds. Therefore, the issue is very serious and unless necessary precautions are made, the damage that may occur cannot be repaired. Other respondents have also got impleaded in the writ petitions.

6. We have heard learned counsel for petitioner Sri.Biju M. John,

learned Standing Counsel for the Kerala Water Authority, Sri.Saji Varghese, learned Senior Government Pleader, Sri.Tek Chand, learned Standing Counsel appearing for the respective local body, Sri.M.K.Aboobacker, Sri.T.M.Mohammed Yousef, Sri.S.Sudheesh Kumar, C.G.Manoj and other counsel appearing for the private parties.

7. Learned counsel for petitioner has advanced arguments in

accordance with the pleadings put forth. Learned Standing Counsel for the Kerala Water Authority submitted that even though cross bars and barricades were put up so as to prohibit the entry of heavy vehicles through the pipeline road at various cross sections and interceptions, interested persons, who are carrying on with various business establishments have

WP(C).No.30339 OF 2011 10

destroyed the said preventive measures and even though complaints were submitted before the Police, no effective action was taken. It is also submitted that when bus routes were granted by the Regional Transport Authority through the pipeline road, requests were made before the Department to stop the same, but did not heed, unmindful of the danger pointed out by the Water Authority .

8. Learned Standing Counsel for the Kalamassery Municipality

submitted that the pipelines are existing for several decades and so far no danger has been occurred as apprehended by the petitioner and the Kerala Water Authority. Learned counsel appearing for the residents of the locality has submitted that if barricades and crossbars are put, movement of school buses, and ambulances in case of emergency, and facilitating construction activities, would be put to difficulties and therefore, any prohibition made to the entry of heavy vehicles will cause severe difficulties to the people residing in the locality and so also to the owners of the properties.

9. We have evaluated the rival submissions made across the Bar and

perused the pleadings and documents on record. It is an undisputed fact that, the property for laying the main pipelines was acquired by the Kerala Water Authority providing compensation to the respective land owners. It is the case of the Kerala Water Authority that the road is put up by the Water Authority for the purpose of maintenance of the pipeline and if heavy

WP(C).No.30339 OF 2011 11

vehicles are permitted to ply through the pipeline road, the impact of the same may cause breakage of the main waterlines and if such a thing happens, the misery will be irreparable and huge. Kerala Water Supply and Sewerage Act, 1986, hereinafter called 'the Act, 1986' was brought into force for the establishment of an autonomous authority for the development and regulation of water supply and waste water collection and disposal, in the State of Kerala and the matters connected thereto. The Act, 1986 defines private street as follows; "means any street, road, square, court, alley, passage or riding-path which is not a "public street", but does not include a pathway made by the owner of premises on his own land to secure access to or the convenient use of such premises and the public street is defined to mean any street, road, square, court, alley, passage or riding-path over which the public have a right of way, whether a thoroughfare or not, and includes:-

(a) the roadway over any public bridge or causeway

(b) the foot-way attached to any such street, public bridge or cause way and

(c) the drains attached to any such street, public bridge or cause-way and

the land, whether covered or not by any pavement, veranda, or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property, whether that property is private property or property belonging to the Government. In Section 2(xxxvi), water works is defined, which read thus: WP(C).No.30339 OF 2011 12

waterworks includes water channel (including stream lake, spring, river or canal, well, pump, galleries, reservoir, cistern, tank), duct, whether covered or open, treatment units, sluice supply main, culvert, engine, water-truck, hydrants, stand pipe, conduit and machinery, land, building or other things for supplying or used for supplying water or for protecting sources of water supply or for treatment of water '(and units for manufacturing, marketing and storing of packaged drinking water, mineral water, aerated water or any other processed water or of goods or articles necessary for the water supply.)

10. Section 3 deals with establishment of Kerala Water Authority .

Sub-section (2) thereto specifies that Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall by the said name sue and be sued.

11. Sections 14 and 15 deals with functions and powers of the

Authority. The functions of the Authority includes preparation, execution, promotion, operation, maintenance and financing of the schemes for the supply of water and for the disposal of waste water apart from rendering its services to the Government and on request of private institutions or individual and all necessary services in regard to water supply and collection. It is also duty bound to carry out all functions which were being

performed by the Public Health Engineering Department of the Government before the commencement of the Act. It is also within the powers of the Authority subject to the provisions of the Act to do anything WP(C).No.30339 OF 2011 13 which may be necessary or expedient for carrying out its functions under the Act. Section 15(1)ix) is relevant to the context, which read thus: To acquire, possess and hold lands and other property and to carry any water or sewerage works through, across, over or under any highway, road, street or place and, after reasonable notice in writing to the owner or occupier, into, through, over or under any building or land.

12. Chapter III of Act, 1986 deals with vesting of properties, assets,

liabilities and obligations and transfer of employees. Section 16 (a)(i) specifies that all properties and assets (including water works, buildings, laboratories, stores, vehicles, furniture and other furnishing), all the existing water supply and sewerage services, sewerage works and sewage farms including, as the case may be, all plants, machineries, water works, pumping stations, filter beds, water mains and public sewers in, along, over or under any public street and all buildings, lands and other works, materials, stores and things appertaining thereto vests with the Water Authority from the date of establishment of the Authority, i.e., 4.8.1986. It is also important to note that as per section 16(1) (a)(ii), so much of sub- soil appertaining to the said distribution lines and sewers as may be necessary for the purpose of enlarging, deepening or otherwise repairing or maintaining any such distribution lines and sewers or any pipes and other appliances and fittings connected with such water supply and sewerage

WP(C).No.30339 OF 2011 14 services and sewerage works vested in any local body and in respect of which maintenance of sewerage services and sewerage works, management and distribution of water supply or collection of charges which immediately before the appointed day were attended to by the Public Health Engineering Department, shall vest in and stand transferred to the Water Authority;

13. Likewise it is clear from section 16(1)(b) (i) and (ii) that all the

water supply and sewerage services, sewerage works and sewage farms including all the plants, machineries, pumping stations, distribution lines and public sewers in, along, over or under any public street and all buildings, lands and other works, material, stores and things appertaining thereto and so much of sub-soil appertaining to the said distribution lines and sewers as may be necessary for the purpose of enlarging, deepening or otherwise repairing or maintaining any such distribution lines and sewers or any pipes and other appliances and fittings and connected with such water supply and sewerage services and sewerage works vested in any local body and in respect of which maintenance of sewerage services and sewerage works, management and distribution of water supply or collection of charges which immediately before the appointed day were attended to by the Public Health Engineering Department, shall also vests and transferred to the Authority.

WP(C).No.30339 OF 2011 15

14. Similarly section 18(1) makes it clear that, as from the date

following the expiry of a period of three years from the appointed day or such further period as may be specified by the Government in this behalf by notification in the Gazette, all the water supply and sewerage lines etc. etc. under local bodies vests with Kerala Water Authority. There is no dispute with respect to the vesting of the existing lines and other properties with the Kerala Water Authority consequent to introduction of the Act, 1986. It is true by virtue of powers conferred under section 18(A), Government is vested with powers to re-transfer certain water supply and sewerage services, and as per section 18(B) the Authority is vested with powers to transfer water supply and sewerage services to local bodies. Section 38(B) encompasses a duty on the Water Authority to have control over all water supply connections and it shall be altered or repaired only in such manner as may be provided by the regulations. Sections 46 and 46A are relevant to the context, which read thus:

46. Prohibition of certain acts.-

(1) No person shall-

(a) wilfully obstruct any person acting under the orders of the

Authority in setting out the lines of any work or pull up or remove any pillar, post or stay fixed in the ground for the purpose of setting out the lines of such works, or deface or destroy any works made for the same purpose; or

(b) wilfully or negligently break, injure, turn on, open, close, shut off or otherwise interfere with any lock, cock, valve, pipe, meter or WP(C).No.30339 OF 2011 16 other work or apparatus belonging to the Authority; or

(c) unlawfully obstruct the flow of or flush, draw off, or divert or

take water from, any water works belonging to the Authority or any water course by which any such water is supplied '[with or without any mechanical or other device; or

(d) obstruct any officer or other employee of the Authority in the

discharge of his duties under this Chapter or refuse or wilfully neglect to furnish him with the means necessary for the making of any entry, inspection, examination or inquiry thereunder in relation to any water works; or

(e) bathe in, at or upon any water works, or wash or throw or

cause to enter therein any animal, or throw any rubbish, dirt or filth into any water works or wash or clean therein any cloth, wool or leather or the skin of any animal, or cause water of any sink, or drain or any steam engine or boiler or any polluted water to turn or be brought into any water works or do any other act whereby the water in any water works is fouled or likely to be fouled.

(2) Nothing in clause (b) of sub-section (1) shall apply to a consumer

closing the stop-cock fixed on the service, pipe supplying water to his premises so long as he has obtained the consent of any other consumer whose supply will be affected thereby. 46A. Prohibition of construction of buildings etc., over land, pipes

etc.-

(1) No person shall without permission of the Authority construct any private street, building, wall, fence or other structure over any land or pipes or mains belonging to the Authority.

(2) any private street is constructed or any building, wall, fence or other structure is erected on any land or pipes or mains belonging to the Authority, the Authority may remove/or cause to remove the same as WP(C).No.30339 OF 2011 17 may be provided in the regulations.

(3) The expenses incurred by the Authority in so doing shall be paid by

the owner of the private street or of the building, fence, wall or other structure or as the case may be, by the person offending and shall be recoverable as arrears of land revenue.

15. That apart section 50 prohibits construction of building etc. over

sewer, which stipulates that, no person shall without the permission of the Authority construct any private street, building, wall, fence or other structure on any sewer of the Authority and sub-section (2) thereunder stipulates that if any private street be constructed or any building, wall, fence or structure erected on any sewer as aforesaid without the written permission of the Authority, the Authority may remove or otherwise deal with the same as it thinks fit and it is also vested with powers to recover the expenses incurred for the purpose of doing so. Section 50A prohibits any person from wilfully obstructing any person acting under the orders or directions of the Authority in setting out the lines of any sewerage or put up or remove any pillar, post or, stake fixed in the ground for the purpose of setting out such lines or deface or destroy any works made for the same purpose. Section 52A deals with penalty for the violation of the aforesaid

provisions. Section 57 casts a duty on the local bodies to assist which states that all local bodies shall render such help and assistance and furnish such information to the Authority and shall make available for inspection WP(C).No.30339 OF 2011

and examination such records, maps, plans and other documents as it may require to discharge its functions under the Act. The Government as per sub-section (2) thereunder, is duty bound to direct the local body as in its opinion may be necessary or expedient, or enabling the Authority to perform its functions under the Act and thereupon it shall be the duty of the local body to comply with such directions. Section 60 deals with general penalty which stipulates as follows:

60. General penalty.- (1) Whoever, in any case in which a penalty is not expressly provided by this Act or any rule or regulations made thereunder, contravenes the provisions of this Act or of any rule

or regulation made thereunder or fails to comply with any notice, order

or requisition issued under this Act or any rule or regulation made thereunder shall be punishable with fine which may extend to (three thousand rupees] and in the case of a continuing failure or contravention, with an additional fine which may extend to one hundred rupees] for every day on which such contravention or failure continues after the first conviction.

16. On a reading of the above provisions of the Act, 1986, it is

explicit and clear that the property acquired by the Water Authority for the purpose of laying the pipeline and the formation of the road for the maintenance of the pipelines is the absolute property of the Kerala Water Authority and if at all any lines and mains were passing through or by the side of the above said property, which was vested with the local bodies,

WP(C).No.30339 OF 2011 19

also vested with the Kerala Water Authority consequent to the introduction of Act, 1986. The provisions discussed above would make it clear that, the Water Authority is vested with powers to put up cross bars and barricades to regulate traffic through the property owned by it and through which pipelines are

maintained. It is with the clear intention of prohibiting and preventing any illegal activities, sufficient powers are conferred with the Water Authority, to file necessary complaints before Police Authorities and penal provisions are incorporated under the Act in order to prevent such illegal activities and to protect the pipelines and the property of the Water Authority, in the interest of larger public. It is also clear and evident that the pipeline road in question, having a distance of more than 20KMs with various intersections and interceptions of State, National Highway and other roads are maintained by the Water Authority for the purpose of laying and maintaining main water lines without causing any disruption. It is also an admitted fact, the Kerala Water Authority had put up cross bars and barricades so as to prohibit and prevent the entry of heavy vehicles but they were removed by the persons with vested interest so as to take goods carriages and other vehicles to their premises, which according to us, is nothing but a private interest interfering with the absolute rights of Kerala Water Authority in accordance with the statutory rights conferred under the Act, 1986. It is the specific case of the Kerala Water Authority that in spite

WP(C).No.30339 OF 2011 20 of filing complaints before respective Police station, Motor Vehicles Authority and other Authorities, no action was taken consequent to the high influence exerted by the people of the locality and other politicians.

17. Normally and ordinarily by virtue of the powers under the Kerala

Municipality Act, 1994 and the Kerala Panchayat Raj Act, 1994 public roads other than those classified by the Government as National Highway, State Highway or major district road, bridges, culverts etc. etc. will vest with the

respective local body. So much so by virtue of the provisions contained under the Kerala Municipality Act, 1994 and the Kerala Panchayat Raj Act, 1994, unless and until the State Government publishes notification in the Gazette, the water supply and sewerage services functioning under the Kerala Water Authority will not vest in the Municipality as well as Panchayat.

18. In our considered opinion, since vesting and ownership of the

properties in the Kerala Water Authority consequent to introduction of the Act, 1986 and acquisition of the properties respectively by the Water Authority, no other private persons or other local bodies have any right or authority to interfere with the statutory functions and powers exercised by the Kerala Water Authority. In this regard Chapter 16 of the Kerala Municipality Act, 1994 is relevant dealing with water supply, lighting and sanitation. Section 315 (a) and (b) are relevant to the context.

WP(C).No.30339 OF 2011 21

315A. Administrative power of the Municipality with regard to the existing water supply and sewerage schemes- (1) Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 (14 of 1986) or any other law, the water supply and sewerage schemes useful for the residents in the land area of more than one Local Self Government institutions which cannot be vested or transferred to the Municipality under Section 315, the power with regard to the maintenance and operation of such schemes shall be vested in the committee constituted for this purpose by the Government.

(2) In the committee referred to in sub-section (1),

(a) Chairpersons of the Municipalities concerned;

(b) Presidents of the Panchayats concerned;

(c) Senior Engineer of the Water Authority of the concerned

scheme, who shall be its Secretary and Convenor; shall be the members and the Chairperson or the President of the Local Self Government Institution to which the concerned scheme is more useful, shall be the chairman of the committee.

(3) The water authority shall provide the fund and the service of staff

required to perform the powers and functions of the committee. 315B. Power of Municipalities to prepare and implement schemes with regard to water supply and sewerage.- (1) Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 (14 of 1986) or in any other law each Municipality have the power and right to prepare and implement the water supply scheme or the sewerage scheme with in its Municipal area.

(2) The Municipality which prepare and implement the water supply scheme and drainage scheme under sub-section (1) may realise water charge and service charge for sewerage from the beneficiaries in the manner as prescribed.

19. Likewise as per section 234A, 234B and 234C of the Kerala WP(C).No.30339 OF 2011 22 Panchayat Raj Act,1994, the water supply and sewerage services will not vest with the Grama Panchayat unless and until it is notified by the State Government.

20. On an appreciation of the above provisions, it is clear that, the

Municipality and the Corporation are not having any power or authority over the properties enjoyed by the Kerala Water Authority in view of the powers conferred under the Act, 1986 unless and until the State Government notifies vesting of such properties on the local bodies. Section 315(b) discussed thereunder makes it clear that, the local body has only power, right and authority to maintain water supply scheme or the sewerage scheme launched by the Municipality or Corporation within the municipal area.

21. In that view of the matter, objection raised by the Kalamaserry

Municipality that the people residing by the side of the pipeline road are entitled to use the same as of right as a public way cannot have any force of law. That apart local bodies are liable under section 57 of the Act, 1986 to render help and assistance to the Kerala Water Authority for maintaining its properties. Circumstances being so, we are of the definite opi nion that, whatever restrictions and impositions brought out by the Water Authority for maintaining its properties

including the main water lines, are absolute in nature and no manner of power or authority is vested with any of the local bodies to interfere with the functions carried out, in accordance with

WP(C).No.30339 OF 2011 23 the power conferred under Act, 1986.

22. That being so, the provisions of Act, 1986 apart from conferring

power to discharge the functions under the Act enjoins a corresponding duty on the Authority to the public for ensuring safety, and uninterrupted services as is contemplated under the Act, 1986. Therefore, when such Authority enjoined with corresponding duty fail to discharge the functions taking into account the duty as is expected of under the statute, it is necessary that constitutional courts step in and issue necessary directions to secure justice to the community at large. That said, a fine and harmonious blend of power, duty and obligation conferred on a statutory authority, transforms into a right for the beneficial enjoyment of the citizens. Viewed in that manner any failure on the part of the Authority/Authorities to exercise the power, duty and obligation becomes arbitrary, susceptible to be interfered with by this Court exercising the power of judicial discretion under Article 226 of the Constitution of India. In this context, observations made in the following judgements would be relevant:

In *Frederic Guilder Julius v. The Right Rev. The Lord Bishop of Oxford; The Rev. Thomas Thellusson Carter* [(1880) 5 AC 214], it is observed as follows: "There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something to the conditions under which it is to be done, something to the title of the

WP(C).No.30339 OF 2011 24

person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person to whom the power is reposed, to exercise that power when called upon to do so. Whether the power is one coupled with a duty such as I have

described is a question which, according to our system of law, speaking generally, it falls to the Court of Queen's Bench to decide, on an application for a mandamus.

Judgment of the Apex Court in L. Hriday Narain v. Income Tax

Officer - [(1970) 2 SCC 355], paragraph 13 is relevant to the context, read thus:

If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of the authority are shown to exist. Even if the words used in the statute are prima facie enabling the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right - public or private - of a citizen. So also the judgment of the Apex Court in Lafarge Umiam Mining

(P) Ltd v. Union of India & Ors - [(2011) 7 SCC 338], paragraph 122(i.1) is relevant, read thus:

The principles/ guidelines mentioned in the National Forest Policy, 1988 should be read as part of provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980. This direction is required to be given because there is no machinery even today established for implementation of the said National Forest Policy, 1988 read with the Forest (conservation) Act, 1980. Section 3 of the Environment

WP(C).No.30339 OF 2011 25

(Protection) Act, 1986 confers a power coupled with duty and, thus, it is incumbent on the Central Government, as hereinafter indicated, to appoint an appropriate authority, preferably in the form of regulator, at

the State and the Central level for ensuring implementation of the National Forest Policy, 1988. The judgment of the Apex Court in T.N.Godavarman Thirumulpad v. Union of India, paragraph 8 is relevant to the context, read thus:

8. It will be clear from the italicised portions of the order of this Court in Lafarge Umiam Mining (P) Ltd. extracted above that this Court on an interpretation of Section 3(3) of the Environment (Protection) Act, 1986 has taken a view that it confers a power coupled with duty to appoint an appropriate authority in the form of a Regulator at the State and at the Central level for appraising projects, enforcing environmental conditions for approvals and to impose penalties on polluters and has, accordingly, directed the Central Government to appoint a National Regulator under the said provision of the Act. Mr Parasaran is, therefore, not right in arguing that in Lafarge Umiam Mining (P) Ltd., this Court has merely suggested that a National Regulator should be appointed and has not issued any mandamus to appoint a National Regulator.

In the judgment of the Apex Court in Director of Settlement v. M.R.Apparao, paragraph 17 is relevant which, read thus: x x x x x x x x x x x x x x x x x x x x x x x x x x x x ...One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the

conclusion that the aggrieved person has a legal right, which

entitles him to any of the rights and that such right has been WP(C).No.30339 OF
2011 26

infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. Mandamus means a command. It differs from the writs of prohibition or

certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (*Kalyan Singh v. State of U.P.*). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.

23. Thinking so, we are of the view that petitioner is entitled to

succeed in the writ petition and we feel it appropriate to issue necessary directions to the Government, local bodies and other Authorities in order to restrict the usage of the pipeline road in the following manner:

(1) Water Authority shall put up sufficient barricades so as to prevent entry of heavy vehicles to the pipeline road at all cross roads, intersections and interceptions from any road maintained by the local WP(C).No.30339 OF 2011 27

bodies, State and National Highway Authorities, within three months leaving sufficient width so as to facilitate passing of other vehicles, in consultation with Motor Vehicles Department.

(2) The Authority shall also put up cross bars permanently so as to prevent the entry of heavy vehicles at sufficient height and width in consultation with the Motor Vehicles Department within three months.

(3) Police shall ensure that the cross bars and barricades put up by

the Kerala Water Authority is not destroyed, damaged or defaced by any persons either by putting up Police post or by reasonable periodical patrolling of the respective sites by Police.

(4) The Police together with the Kerala Water Authority shall take necessary steps to install CCTV cameras at or near the cross bars and the barricades put up by the Kerala Water Authority .

(5) In case of destruction/damaging of the barricades/cross bars,

immediate steps shall be taken by the Police on the complaint made by the Kerala Water Authority, and to register case and prosecute the assailants without fail.

(6) Water Authority will also be at liberty to put up its own regulatory measures to ensure that the installation put up by it are not defaced or destroyed.

(7) The Police and Motor Vehicles Department shall also ensure that heavy vehicles are not plying through the pipeline road. WP(C).No.30339 OF 2011 28

(8) Motor Vehicles Authority shall ensure that route permits are not granted to heavy vehicles through the pipeline road.

24. We also record that learned counsel for the petitioner has

endorsed in the original of the writ petition paper book filed before this Court, that he is not pressing the second relief for, direction to the local body i.e., the Corporation of Kochi, to cancel the licence granted to the buildings functioning as godowns at pipeline road.

Writ petition is disposed of accordingly. Sd/- S.MANIKUMAR CHIEF JUSTICE Sd/- SHAJI P.CHALY smv JUDGE WP(C).No.30339 OF 2011 29 APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1 A TRUE PHOTOGRAPH OF THE PUBLICATION OF PROHIBITION OF PLYING OF HEAVY VEHICLES PUBLISHED BY 1ST RESPONDENT. EXHIBIT P2 A TRUE PHOTOGRAPHS SHOWING ILLEGAL PLYING OF LORRIES AND FUNCTIONING OF GODOWN AT PIPE LINE ROAD. RESPONDENT'S EXHIBITS: EXHIBIT R1 NIL. EXHIBIT R1 (A) DETAILED SKETCH OF PIPELINE ROAD DEPICTING POINTS OF

ERECTION OF CAUTION BOARDS AND CROSS BARS. EXHIBIT R1(B) COPY OF LETTER ADDRESSED TO R.T.O., ERNAKULAM DATED 13.01.2009 WITH TRUE ENGLISH TRANSLATION. EXHIBIT R1(C) COPY OF LETTER ADDRESSED TO R.T.O., ERNAKULAM DATED 12.07.2007 WITH TRUE ENGLISH TRANSLATION. EXHIBIT R1(D) COPY OF TENDER NOTICES DATED 21.01.2008 AND 29.03.2008 WITH TRUE ENGLISH TRANSLATION. EXHIBIT R1(E) DETAILED PLAN OF THE LAY OUT OF PIPES IN THE PIPE LINE ROAD.

EXHIBIT R2

NIL.EXHIBIT R3

NIL.EXHIBIT

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