

Prosper vs State of Kerala

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Court : Kerala

Decided On : Jun-20-2019

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appeal No. : WP(C)/4080/2019

Appellant : Prosper

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE THURSDAY, THE 20TH DAY OF JUNE 2019 / 30TH JYAISHTA, 1941 WP(C).No.4080 of 2019 PETITIONER/S:

1 PROSPER, AGED 65 YEARS, S/O.BERNABAS, POOVANVILAKAM, VIZHINJAM P.O., NEYYATTINKARA TALUK, 2 VAREETHA LOPEZ, AGED 58 YEARS, W/O.PLASIT LOPEZ, MINI HOUSE, OOTUKAL PARAMBU, KOTTAPURAM P.O., VIZHINJAM VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM - 695 121. 3 VINCENT DECOSTAS, AGED 70 YEARS, S/O.ALEXANDER DECOSTAS, DECOSTAS BHAVAN, KOTTAPURAM P.O., VIZHINJAM

VILLAGE, NEYYATTINKARA TALUK, 4 GONSLEEVI DAVIDSON ALIAS MUTHAMMA, AGED 60 YEARS, JEENA NIVAS, NEAR ST.MARYS L.P.SCHOOL, KOTTAPURAM P.O., VIZHINJAM VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM - 695 121. 5 BRIJITH, AGED 35 YEARS, W/O.YESUDASAN, KADAKULAM TOWNSHIP COLONY, KOTTAPURAM P.O., VIZHINJAM VILLAGE, 6 SAROJAM, AGED 60 YEARS, W/O.JOHNSON, KUZHINIVILA PURAYIDAM, KOTTAPPURAM P.O., VIZHINJAM VILLAGE, 7 JOHN, AGED 48 YEARS, S/O.ESAK, ISAC BHAVAN, THAIKOOTTAM PURAIDAM, KOTTAPPURAM P.O., VIZHINJAM VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM - 695 121. 8 XAVIOUR, AGED 56 YEARS, S/O.ISAC, THAIKOOTTAM PURAIDAM, KOTTAPPURAM P.O., VIZHINJAM VILLAGE,

WP(C).No.4080/2019 2 9 MUTHAPPAN, AGED 60 YEARS, S/O.BENZIGER, ANAKUZHI PURAYIDAM, VIZHINJAM P.O., NEYYATTINKARA TALUK, 10 VICTOR, AGED 51 YEARS, S/O.NAZRATH, MINISTICA HOUSE, THENNOORKONAM KOTTAPURAM P.O., VIZHINJAM VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM - 695 121. BY ADVS. SRI.V.G.ARUN (K/795/2004) SMT.INDULEKHA JOSEPH SRI.NEERAJ NARAYAN RESPONDENT/S:

1 STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF FISHERIES, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 DISTRICT COLLECTOR, THIRUVANANTHAPURAM - 695 001. 3 KERALA STATE HARBOR ENGINEERING DEPARTMENT REPRESENTED BY ASSISTANT EXECUTIVE ENGINEER, VIZHINJAM VILLAGE, THIRUVANANTHAPURAM - 695 521. 4 EXECUTIVE ENGINEER, HARBOR ENGINEERING THIRUVANANTHAPURAM DIVISION, VIZHINJAM VILLAGE, THIRUVANANTHAPURAM - 695 521. BY GOVERNMENT PLEADER, T RAJASEKHARAN NAIR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.06.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No.4080/2019 3

JUDGMENT

The petitioners have approached this Court challenging Ext.P7 notice issued by the Executive Engineer as directed by the District Collector. The petitioners were directed to vacate illegal occupation of sea puramboke.

2. If the petitioners are not vacating sea

puramboke, necessarily, they can be only evicted in accordance with the statutory provisions of the Land Conservancy Act and Rules or any other statutory provisions.

3. In the statement filed by the second

respondent it is stated that many persons have encroached into the sea puramboke and made certain constructions. It is also stated that there are unauthorized peeling sheds.

4. Admittedly, a civil suit has been filed by

the petitioners.

The said civil suit is pending.

order has been passed. Anyhow, I do not find any

scope for interfering with the notice for the simple reason that the petitioners can only be evicted in accordance with the statutory proceedings as referred as above. If the statutory proceedings are initiated, the petitioners are free to raise such objection before the officer who initiated the eviction proceedings. It is made clear that further action can be only taken based on the statutory proceedings and not based on Ext.P7. With the above observations, the writ petition is disposed of. Sd/-
A.MUHAMED MUSTAQUE JUDGE

In WP(C).No.4080/2019 5 APPENDIX PETITIONER'S/S EXHIBITS:

EXHIBIT P1 THE TRUE COPY OF G.O.(RT) NO.3/98/F&PD DATED EX

DATED 02/02/2016 FORWARDED BY THE SUPERINTENDING ENGINEER HARBOR ENGINEERING, SOUTH ZONES. EXHIBIT P4 THE TRUE COPY OF THE PLAINT IN THE O.S.NO.71 OF 2019 ON THE FILES OF THE PRINCIPAL MUNSIFF COURT, NEYYATTINKARA. EXHIBIT P5 THE TRUE COPY OF I.A.NO.495/2019 IN O.S.NO.71/2019 ON THE FILE OF THE PRINCIPAL MUNSIFF COURT, NEYYATTINKARA. EXHIBIT P6 THE TRUE COPY OF THE OBJECTION FILED BY THE

SECOND COUNTER PETITIONER AGAINST I.A.NO.495/2019 IN O.S.NO.71/2019 ON THE FILES OF THE PRINCIPAL MUNSIFF COURT, NEYYATTINKARA. EXHIBIT P7 THE TRUE COPY OF NOTICE DATED 08/02/2019 ISSUED BY THE EXECUTIVE ENGINEER, HARBOR DEPARTMENT PURPORTED TO BE UNDER THE ORAL INSTRUCTIONS OF THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM.

EXHIBIT P8 A TRUE COPY OF THE ORDER DATED 11.02.2019 IN I.A. NO.495/2019 IN O.S. NO.71/2019 ON THE FILES OF PRINCIPAL MUNSIFF COURT NEYYATTINKARA. EXHIBIT P9 A TRUE COPY OF THE ORDER DATED 11.02.2019 IN I.A.NO.495/2019 IN O.S.NO.71/2019 ON THE FILES OF PRINCIPAL MUNSIFF COURT, NEYYATTINKARA. RESPONDENTS EXHIBITS:NIL. //TRUE COPY// P.A.TO JUDGE

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