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Nandakumar vs the Assistant Executive Engineer, Pwd

Nandakumar vs the Assistant Executive Engineer, Pwd

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Court : Kerala

Decided On : Apr-01-2019

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appeal No. : WP(C)/1737/2018

Appellant : Nandakumar

Respondent : The Assistant Executive Engineer, Pwd

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE MONDAY ,THE 01ST DAY OF APRIL 2019 / 11TH CHAITHRA, 1941 PETITIONERS: 1 NANDAKUMAR, AGED 49 YEARS, S/O.RAMANKUTTY NAIR, MANNAKUNNEL HOUSE, PADUVA.P.O., MATTAKKARA, KOTTAYAM- 686 564. 2 MINI NANDAKUMAR, AGED 41 YEARS, W/O.NANDAKUMAR, MANNAKUNNEL HOUSE, PADUVA.P.O., MATTAKKARA, KOTTAYAM- 686 564. BY ADVS.SRI.BINOY VASUDEVAN SMT.K.J.ANITHA SMT.P.G.BABITHA RESPONDENTS: 1 THE ASSISTANT EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, KOTTAYAM- 686 001. 2 THE ASSISTANT ENGINEER, PUBLIC WORKS DEPARTMENT, PAMPADI,

KOTTAYAM- 686 502.

3 THE AKALAKUNNAM GRAMA PANCHAYAT, REPRESENTED BY ITS SECRETARY, PADUVA.P.O., MATTAKKARA, KOTTAYAM- 686 564. 4 B ANIL KUMAR, MEMBER, WARD NO.2, AKALAKUNNAM GRAMA PANCHAYAT, MANNAKUNNEL HOUSE, PADUVA.P.O., KOTTAYAM- 686 564. 5 GIRIJA RAJAN, MEMBER WARD NO.3, AKALAKUNNAM GRAMA PANCHAYAT, VATTOLIMEMPURATH HOUSE, PADUVA.P.O., KOTTAYAM- 686 564. -2- 6 THE TAHASILDAR (L.R.), TALUK OFFICE, CIVIL STATION, KOTTYAM- 686 001. BY ADVS. SRI.P.I.GEORGEKUTTY SRI.V.MANU SR. GP THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.04.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

JUDGMENT

The petitioners approached this Court seeking the following reliefs:

i. Issue a Writ of Mandamus or other appropriate Writs, Orders or Directions commanding the respondents 1,2 and 3 not to widen the PWD road from Chuvanna Plavu to Kummanur by trespassing into the petitioners property without resorting to the procedure known to law in the interest of justice. ii. Issue a Writ to declare that the action of the respondents 1 to 3 in abetting the respondents 4 and 5 for trespassing into the petitioners property for the purpose of widening of the road is perse illegal, irregular and arbitrary. (ii)(a)Issue a writ of mandamus or other appropriate writs, orders or directions commanding the respondents to evict the petitioners from the alleged road puramboke only in compliance of the provisions of the Kerala Land Conservancy Act, 1957. (ii)(b) Issue a writ to declare that any attempt to evict the petitioners without following the mandatory provisions contained in the Kerala Land Conservancy Act, 1957 as illegal and arbitrary. iii. Render such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. In the counter affidavit filed by the first

respondent, it is stated that widening of carriageway of Mattakkara-Kummannur road and maintenance of other roads are being carried out for the purpose of Sabarimala. It is submitted that widening and maintenance of all part of the stretch have been completed. It is also stated in the counter affidavit, that PWD sought demarcation of road puramboke land after notice to the petitioners. It appears that a rock alleged to be part of road puramboke was claimed to be in the possession of the petitioners. The case of the first respondent is that it is not part of the petitioners' property and it is a road puramboke. Perhaps, this issue should have been resolved without much labour on the dispute during the pendency of this writ petition itself. Any how, I am of the view that the petitioners' claim over the disputed area shall be considered by the Tahsildar and the Taluk Surveyor. The Taluk Surveyor and the Tahsildar shall be present on 25.4.2019 at 11 am and demarcate and survey the property of the petitioners. If it is found that the petitioners are in illegal occupation of such portion of the puramboke land, the Tahsildar is at liberty to invoke Rule 13A of the Kerala Land Conservancy Rules, 1958 by passing any orders thereon. If the property is found to be part of the -5- petitioners' property, certainly, the petitioners can dispossessed only through the procedures established under law. The writ petition is disposed of as above. A.MUHAMED MUSTAQUE akv JUDGE -6- APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE CERTIFIED COPY OF DOCUMENT NO 33/2005 OF S.R.O KOZHUVANAL EXHIBIT P2 TRUE COPY OF THE CERTIFIED COPY OF DOCUMENT NO 940/2014 OF S.R.O KOZHUVANAL EXHIBIT P3 TRUE COPY OF THE POSSESSION CERTIFICATE IN RESPECT OF THE PETITIONER'S PROPERTY EXHIBIT P4 TRUE COPY OF THE LAND TAX RECEIPT EXHIBIT P4(A) TRUE COPY OF THE LAND TAX RECEIPT EXHIBIT P5 TRUE COPY OF THE LETTER SENT TO THE DISTRICT COLLECTOR KOTTAYAM BY THE PRESIDENT OF THE 3RD RESPONDENT GRAMA PANCHAYATH ON 10.11.2017 EXHIBIT P6 TRUE COPY OF THE LETTER DATED 23.11.2017 SENT BY THE TAHASILDAR KOTTAYAM TO THE VILLAGE OFFICER, AKALOOKUNNAM EXHIBIT P7 TRUE COPY OF THE

NOTICE DATED 6.1.2018 ISSUED BY THE 6TH RESPONDENT EXHIBIT P8 TRUE COPY OF THE INTERIM ORDER DATED 23.2.2017 IN WPC NO 6267/2017 EXHIBIT P9 TRUE COPY OF THE OBJECTION SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT. RESPONDENT'S/S EXHIBITS:NIL. //TRUE COPY// CA TO JUDGE

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