

(2021) 01 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21939 Of 2020

Ancy Rajan

APPELLANT

Vs

Kochi Municipal Corporation And Ors

RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Kerala Municipality Act, 1994 — Section 317

Citation : (2021) 01 KL CK 0022

Hon'ble Judges : P.B. Suresh Kumar, J

Bench : Single Bench

Advocate : Deepu Thankan, Ummul Fida, Lakshmi Sreedhar, K. Anand

Final Decision : Disposed Of

Judgement

1. Petitioner holds an item of property measuring 9.10 cents within the limits of the first respondent, the Kochi Corporation. 6 cents out of the said 9.10 cents comprises under survey No.745/2 of Poonithura Village. There exists a drainage channel through the southern and western boundaries of the said 6 cents. A public drainage channel ends at the south-eastern corner of the property of the petitioner and the outlet of the said public drainage channel is connected to the inlet of the drainage channel constructed through the property of the petitioner. Similarly, the outlet of the drainage channel constructed through the property of the petitioner is connected to the inlet of another public drainage channel starting from the north-western corner of the property of the petitioner. It is stated by the petitioner that she acquired the said property with the drain and she does not know as to who constructed the drainage channel through the property. It is alleged by the petitioner that the position of the drainage channel is in such a way that it divides the property of the petitioner into two, making it impossible for the petitioner to make use of the property in a convenient manner. The case set out by the petitioner in the writ petition is that she has therefore constructed a new drainage channel connecting the inlet and outlet of the existing drainage channel through the eastern and northern boundaries of the

said 6 cents, so as to enable her to enjoy the property in a convenient manner and thereupon preferred Ext.P2 representation before the Corporation seeking permission to divert the drain water through the newly constructed drainage channel. Ext.P4 is the communication issued to the petitioner by the Secretary of the Corporation in this regard. In Ext.P4, it is stated by the Secretary that appropriate decision on the request made by the petitioner will be taken by the Council of the Corporation. The petitioner is aggrieved by Ext.P4 communication. According to the petitioner, permission of the Council of the Corporation is not required in a matter like this and that appropriate decision can be taken by the Secretary of the Corporation himself. The petitioner, therefore, seeks appropriate directions in this regard in the writ petition.

2. A counter affidavit has been filed by the Corporation. In the counter affidavit, it is stated, among others, that the permission sought by the petitioner can be granted only if the natural flow of drain water is not affected on account of the shifting of the drain water and that a decision in this regard has to be taken by the Council of the Corporation. It is however admitted by the Corporation in the counter affidavit that the existing drainage channel runs through the property of the petitioner.

3. Heard the learned counsel for the petitioner as also the learned Standing Counsel for the Corporation.

4. If the existing drainage channel is one passing through the property of the petitioner, the right of the petitioner to divert the drain water through another channel constructed by her through her property for the convenient enjoyment of the property cannot be questioned by anybody. Of course, insofar as the existing drainage channel is connected to a public drainage channel, as rightly stated by the Corporation in their counter affidavit, it is the duty of the Corporation to ensure that the natural flow of the drain water is not affected in any manner while diverting the drain water to another drainage channel. The request made by the petitioner before the Corporation in the circumstances can be considered only as one preferred by the petitioner to enable the Corporation to ensure that the natural flow of drain water would not be affected, if the drain water is diverted as proposed by the petitioner. The Kerala Municipality Act, 1994 (the Act) and the various rules made thereunder do not give any indication as to who should consider a request in the nature of one made by the petitioner, as a situation of the instant nature is not dealt with therein. However, the provisions contained in Chapter XVI of the Act dealing with water supply, lighting and sanitation, especially Section 317 gives an indication that the scheme of the Act is that matters of this nature can be dealt with by the Secretary of the Municipality himself.

In the said view of the matter, the writ petition is disposed directing the Secretary of the first respondent to cause an inspection to be made in the property of the petitioner and ascertain whether the natural flow of drain water would be affected in any manner, if drain water through the existing drainage

channel is diverted to the newly constructed drainage channel. It is also directed that if it is found that the natural flow of the drain water will not be affected in any manner, if drain water through the existing drainage channel is diverted to the newly constructed drainage channel, the permission sought by the petitioner as per Ext.P2 representation shall be granted. The aforesaid directions shall be complied with, within one month from the date of receipt of a copy of this judgment.