

(2026) 02 KL CK 1664

In the High Court Of Kerala

Case No : Writ Petition (C) No.. 34797 Of 2024

C.J. Mathews

APPELLANT

Vs

District Collector, Ernakulam Collectorate

RESPONDENT

Date of Decision : 05-02-2026

Acts Referred:

Kerala Municipality Act, 1994 — Section 412, 412(1), 412(2), 427, 428, 538

Citation : (2026) 02 KL CK 1664

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : M.Dinesh, Suresh Kumar C.G., K.B.Arunkumar, P.Rani Diothima, P.V.Radhamani, Rose Ann Babu Gp, Preetha K K

Final Decision : Allowed

Judgement

P.V.Kunhikrishnan, J

1. This Writ Petition (C) is filed seeking the following reliefs:

" (i) Issue a writ of mandamus or any other appropriate writ directing the 3rd respondent to implement Exhibit-P6 order issued by the 2nd respondent.

(ii) Issue an order or direction to the 3rd respondent to take effective steps to act in accordance with Section 412, 427 and 428 of the Kerala Municipalities Act."

[SIC]

2. Mr C.J. Mathews is a 92-year-old man. This nonagenarian has been fighting for a genuine cause for the last 9 years. He apprehends an imminent danger to his property and his residential building because of certain trees standing on the neighbouring property. Mr C.J. Mathews, a nonagenarian, is fighting at multiple levels of bureaucracy to have those trees cut and removed. Although he failed, he continues to fight, and at last he has knocked on the doors of this court. When I see the fighting mood of Mr C.J. Mathew, I recall the famous poem by the freedom fighter Sree T.S. Thirumumbu titled "????? ??????" (My Youth), written

decades back. It will be better to extract the four lines of the above poem:

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3. I am not attempting to translate these strong words of the legend Sree T.S. Thirumumb to English because I may not be able to convey the same in that spirit. But for the purpose of this judgment, I will say the brief message in it. The poet says that, greying my head is not my old age, and also not greying my head is not my youthfulness. The poet again states that counting the days from birth to the final day of life is not a measure of my youthfulness. The poet firmly says that the courage to never bow his head to the tyranny of bureaucracy during that time was his youthfulness. These words speak volumes. This message is intended for older adults and younger people: "age is no barrier to anything; it is a limitation you put on your mind and a lack of enthusiasm that holds you back".

4. I will narrate the interesting story of Mr C.J. Mathew, the fighter, in brief first. Mr C.J. Mathews is a retired official of the Ministry of Defence, Government of India, and he served the country for about three decades. He is the absolute owner and in possession of 4.2 cents of land comprised in Sy. No.660/1-4 of Rameswaram Village in Kochi Taluk. Petitioner resides in a building located on the said property. Ext.P1 is the tax receipt issued in the name of the petitioner from the Village Office, Rameswaram. Towards the southern side of the petitioner's property, there is a vacant plot of 7 cents, which was previously owned by the father of the 5th respondent, Late Harihara Menon. After his death, the said property is in the possession and enjoyment of the 5th respondent. Ext.P2 is produced to show the sketch of the properties belonging to the petitioner and the 5th respondent. After the death of the 5th respondent's father, it is the case of the petitioner that the 5th respondent and other co-owners of the property are not interested in taking care of the property, and thus the property is fully covered with trees, bushes and unwanted plants. The property is now a comfortable home for dangerous snakes and other reptiles, says C J Mathew. Two tall trees, comparatively bigger in size, are situated in the 5th respondent's property near the boundary that demarcates the petitioner's property and the 5th respondent's property. Petitioner produced Exts.P3 and P4 photographs to show the present state of affairs of the property. In Ext.P4, the lie and nature of the petitioner's residential house and the property belonging to the 5th respondent are visible. It is the case of the petitioner that the roots and branches of the trees in the property of the 5th respondent cause a severe threat to the petitioner's peaceful living. The stature of the big branches causes great

inconvenience, and it is always a threat to the life and property of the petitioner, especially during the rainy and stormy seasons, Mr C J Mathew submits. The roots of the trees penetrate the foundation and basement of the petitioner's residential building, and the water tank is the further submission. This results in cracking and weakening of the building's walls and obstruction of water and wastewater pipelines. The dry leaves from the trees fall directly into the property and the sunshade of the building of the petitioner, which is another concern raised by the petitioner. The trees situated in the property are home to bats, and it is dangerous to the health and well being to the nearby residents, including the petitioner, Mr C.J. Mathew, says in this writ petition.

5. The petitioner has taken up all these difficulties to the notice of the 2nd respondent by way of representation on 06.06.2017, as evident by Ext.P5. The 2nd respondent conducted an enquiry through the Village Officer and instructed the 3rd respondent to take further action as provided in Section 412 of the Kerala Municipality Act 1994 (for short Act 1994), as evidenced by Ext. P6 dated 19.07.2017. Consequent to the Ext.P6 letter issued by the 2nd respondent, the Health Inspector, Kochi Corporation, Circle-08, Thoppumpady, had conducted an enquiry through the Village Officer, Rameswaram village, as to the identity of the ownership of the seven cents property adjacent to the petitioner's property. Ext.P7 dated 25.05.2021 is the letter. Meanwhile, the petitioner approached the District Legal Service Authority for seeking legal aid, and as required by the District Legal Service Authority, the Village Officer, Rameswaram Village after conducting a detailed enquiry, has confirmed the above mentioned nuisance caused to the petitioner on account of the trees in the adjacent property and identified the 5th respondent to be in possession and enjoyment of seven cents of property lying adjacent to petitioner's property. Ext.P8 is the letter submitted by the village officer, Rameswaram Village, to the district legal service, Ernakulam. Thereafter, neither the village officer nor the Health Inspector of the Corporation has taken any effective follow-up on the matter is the grievance. The petitioner is aggrieved by the inaction of the statutory authorities in implementing the direction issued by the Revenue Divisional Officer, Fort Kochi, to cut and remove the trees standing dangerously adjacent to the petitioner's property. Therefore, the petitioner again approached the District Collector, Ernakulam, requesting that effective steps be taken to implement the order of the Revenue Divisional Officer, Fort Kochi, as per Ext.P6 letter.

6. It is the case of the petitioner that District Collector, Ernakulam, acted quickly and, as per Ext.P9 letter dated 16.12.2021, directed the 3rd respondent to take urgent and effective steps to redress the grievances of the petitioner without any delay. In response to the above direction issued by the District Collector, a few labourers of the 3rd respondent Corporation came to the property and cleared the bushes and plants in the property of the 5th respondent, but nothing whatsoever was done to cut and remove the dangerously standing trees near the boundary, as narrated above, eventhough specific direction was already issued by the Revenue Divisional Officer, as per Ext.P6 dated 19.07.2017. This is the

sum and substance of the grievance of Mr C.J. Mathew. Hence, this writ petition.

7. Heard counsel for the petitioner, Government Pleader, the Standing Counsel appearing for the Corporation and also the counsel appearing for the 5th respondent.

8. The counsel for the petitioner reiterated the contentions raised in the writ petition. No counter has been filed by the official respondent. A counter-affidavit is filed by the 5th respondent. She stated that the property on the southern side of the petitioner's property is owned by her father, Harihara Menon. She states that, in connection with a civil case filed by one Sri. Rajendran and another, the above-mentioned property was attached, and the parents of this respondent, along with the two siblings of this respondent, left the said residential house more than 20 years ago. The parents of this respondent passed away after shifting from her residential house is the submission. It is also submitted that she has two sisters, who are not arrayed as parties to this case. It is also the case of the 5th respondent that, without the knowledge of this respondent and her sisters, the petitioner has cut and removed trees which were standing in the property mentioned, as the western boundary of the petitioner's property. It is also stated in the affidavit that since the R.F.A No. 631 of 2005 is still pending consideration before this Court, she and her siblings are not in a position to enter into the property and do anything therein. It is also the case of the 5th respondent that, since the original owner of the property obtained an attachment of the property from the civil court in a civil dispute, she cannot enter into or manage the property unless the court specifically permits her to do so. Hence, it is submitted that the 5th respondent is not in a position to take any act detrimental to the parties to the civil case pending.

9. This Court considered the contentions of the petitioner and the 5th respondent. As I mentioned earlier, a nonagenarian has been pursuing his genuine grievance for the past nine years. This Court perused Ext.P6. This is a proceedings issued by the Revenue Divisional Officer, Fort Kochi, to the Secretary. It would be preferable to extract the contents from Ext.P6 dated 19.07.2017.

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412 ?????????? ?????????? ?????????????? ?????????????? ?? ?????????????????????????????????????."

10. It is stated in Ext.P6 that the complaint received from the petitioner and the enquiry report were forwarded to the 3rd respondent. The Revenue Divisional Officer directed the Corporation authority to take action under Section 412 of the Act 1994. It will be better to extract Section 412 of the Act, 1994.

"412. Precautions in case of dangerous trees.—

(1) Where any tree or any branch of a tree or the fruits of any tree deemed by the Secretary to be likely to fall and thereby endanger any person or any structure, the Secretary may, by notice, require the owner of the said tree to secure, lop or cut down the said tree or any branch thereof so as to prevent any danger therefrom.

(2) Where immediate action is necessary, the Secretary shall before giving such notice or before the period of such notice expires cause to secure, lop or cut down the said tree or branch thereof or remove the fruits thereof or fence off a part of any street or take such other temporary measures as he deems fit to prevent danger, and the cost thereof shall be recoverable from the owner of the tree in the manner provided in section 538."

11. A perusal of Section 412 of the Act 1994, it is clear that where immediate action is necessary, the Secretary can cut and remove the trees or branches thereof, if they are dangerously situated. If the ingredients of Section 412(2) of the Act 1994 are attracted, even a notice is not necessary for taking action. As per Section 412 (1), where any tree or any branch of a tree or the fruits of any tree deemed by the Secretary to be likely to fall and thereby endanger any person or any structure, the Secretary may, by notice, require the owner of the said tree to secure, lop or cut down the said tree or any branch thereof so as to prevent any danger therefrom. But sub section (2) of 412 states that where immediate action is necessary, the Secretary shall before giving such notice or before the period of such notice expires cause to secure, lop or cut down the said tree or branch thereof or remove the fruits thereof or fence off a part of any street or take such other temporary measures as he deems fit to prevent danger, and the cost thereof shall be recoverable from the owner of the tree in the manner provided in section 538. So in cases where immediate action is necessary, it is the duty of the Secretary to the Corporation to cut and remove the trees even without notice to the owner of the property.

12. This Court perused Ext.P5 representation of the petitioner to the Revenue Divisional Officer, which resulted in Ext.P6. The petitioner has specifically identified the types of trees that are causing harm and endangering his life and property. The Revenue Divisional Officer, as per Ext.P6, directed the 3rd respondent to take action in accordance with Section 412 of the Act 1994 and Ext.P6 is dated 19.07.2017. No action was taken by the Corporation authorities. The Health Inspector of the Corporation addressed a letter to the Village Officer of Rameswaram Village to ascertain the identity of the property owner. When a tree is in a dangerous situation, the Corporation Authority need not go behind the real owner to ascertain the ownership of the property, and, in such a situation, immediate action ought to have been taken. Moreover, this Court perused Ext.P8 proceedings of the Village Officer, Rameswaram, to the Legal Service Authority, Ernakulam, in which it is clearly stated that the trees are creating difficulties for the petitioner. Even then, no action was taken. Thereafter,

the petitioner approached the District Collector, Ernakulam, and the District Collector issued directions. Consequently, a few labourers of the 3rd respondent came to the property of the 5th respondent and cleared the bushes and plants there. But nothing was done to cut and remove the dangerously standing trees near the boundary, which is the grievance of the petitioner. The petitioner again approached the District Collector, Ernakulam, with such a grievance, and consequently, Ext.P9 was issued by the District Collector to the Secretary, Cochin Corporation, on 16.12.2021. It would be preferable to extract the contents from Ext.P9 as well.

13. In Ext.P9, it is stated that the petitioner had approached the District Collector, stating that the difficulties of the petitioner were cured only in part. Therefore, the Corporation authorities were directed to take the necessary steps to redress the petitioner's grievance. But, there is no action is the submission.

this manner. As I mentioned earlier, an octogenarian's fight continues, and it continues as a nonagenarian. Let the petitioner reside in his house as a centenarian also, without apprehending any danger to his life or that of his family. Therefore, there can be a direction to the official respondents to remove all dangerous trees mentioned in Ext.P5 within a short time. The 5th respondent submitted that she is unable to enter the property due to a pending civil case. From the facts and pleadings, it is clear that the trees are in a dangerous situation. Therefore, the Corporation can very well invoke the powers under Section 412(2) of the Act, 1994.

Therefore, this writ petition is allowed in the following manner:

1. The 3rd respondent will see that the dangerous trees mentioned in Ext.P5 are cut and removed forthwith, at any rate, within one month from the date of receipt of a copy of this judgment.
2. Respondent Nos.1 and 2 will supervise and do the needful to ensure that the 3rd respondent is complying with the direction within one month, as directed above.