
(2021) 05 KL CK 0080

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10221 Of 2021

Gracious Kuriakose And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 07-05-2021

Acts Referred:

Citation : (2021) 05 KL CK 0080

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : K.K. Chandran Pillai, Lal George, K. Janardhana, S. Kannan

Judgement

1. The petitioners have approached this Court seeking directions to the Corporation to widen the drain running on the southern side of the Shenoy

Cross Road towards Kathrikadavu, particularly at the area where the residences of respondents 6 to 11 are situating.

2. Sri.K.K.Chandran Pillai, learned senior counsel, instructed by Sri.Lal George, appearing on behalf of the petitioners, took me through Ext.P4 sketch

and showed me that, except at the stretch of the drain which runs through the properties of respondents 6 to 11, it has sufficient width; and

consequently that there is a bottleneck caused, thus restricting the flow of storm and drain water by 60 to 70%.

3. The learned senior counsel then submitted that when there was a similar issue with respect to the another part of the "Seena thodu", the

petitioners, along with others, had approached this Court to obtain Ext.P2 order and P3 judgment respectively, as per which, the said "thodu" was

directed to be widened even through the properties of private persons, making it clear that the said properties will remain with them in ownership and

possession and that a new drain will be completely slabbed, so that there will be no interdiction for them from using it in future.

4. Sri.Manu Roy, learned counsel appearing for respondents 8 to 11; Sri.Sajeev P Prabhakaran, learned counsel appearing for the 6th respondent and

Sri.Jojoy George Jacob, appearing for the 7th respondent, submitted that they have absolutely no contest against the requirement for widening the drain

in question but prayed that it be done from both sides, namely the western and the eastern side of the existing one and not merely from the properties

of their clients alone.

5. Sri.K.Janardhana Shenoy, learned standing counsel for the Corporation of Kochi, submitted that if this Court permits, then his client will immediately

begin work of widening the stretch in question so that there will be no inundation there when the monsoons begin, in about a month's time. He

submitted that the attenuation of the width of the drain/thodu has happened on account of encroachments by various persons, including the party

respondents.

6. When I consider the afore dialectical contentions, it is clear that it will not be possible for this Court to enter into the questions of encroachments at

this time, because of the impending monsoons, which is likely to hit the shores of Kerala by the end of May or the first week of June, 2021. What is

required by the petitioners is that the drain/thodu be widened sufficiently, so that there will be no flooding. I do not think that anyone can stand against

this.

7. I am, therefore, of the firm view that the arrangement this Court made with respect to the â??Seena thoduâ? in its another stretch, as is discernible

from Ext.P2 order and Ext.P3 judgment, has to be applied to this case also.

8. In the afore circumstances and since respondents 6 to 11 do not oppose it, I direct the Corporation to widen the drain/thodu through the properties

owned by respondents 6 to 11, as far as practically possible to the same width as is available with respect to the rest of the stretch within a period of

one month from today.

9. We, however, clarify that the land which is now used for the purpose of widening of the drain/thodu will remain in ownership/possession with

respondents 5 and 7, until it is recovered as per law by the Corporation, if they are so desirous. In other words, merely because the drain is widened, it

will not be up to the Corporation to claim the land to be their own, but will have only the right to conduct periodical maintenance and cleaning, for

which purpose respondents 6 to 11 will give them full access. After the drain is so widened to the requisite depth as is found necessary by the

Corporation, it will be covered by them with slabs so that respondents 6 to 11 can then use it without any interdiction.

This writ petition is thus ordered.