

(2010) 11 KL CK 0154

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 33413 of 2010 (B)

Jagal Mohan

APPELLANT

Vs

The Thrikkakara Grama Panchayath, The Secretary and C.
Krishnan

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Kerala Panchayat Raj (Removal of Encroachment and Imposition and Recovery of Penalty for Unauthorised Occupation) Rules, 1996 — Rule 5(1), 5(3)

Citation : (2010) 11 KL CK 0154

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Sajeev Kumar K. Gopal, for the Appellant; No Appearance, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—The petitioner is aggrieved by Exhibit P12 notice issued by the Panchayat to demolish within 15 days, a compound wall.

2. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the Panchayat. In the light of the direction proposed to be issued, it is not necessary to issue notice to the 3rd respondent.

3. The petitioner claims to be the absolute owner in possession of 3.5 cents property in resurvey No. 731/11 in Kakkanad Village. Mainly, it is contended that the direction is issued in violation of the principles of natural justice and without considering the objections submitted by the petitioner, a copy of which has been produced as Exhibit P10. Such objections were submitted on receipt of Exhibit P9 notice. It is pointed out that there is no consideration of the contentions raised by the petitioner by the authority concerned.

4. The learned Counsel for the Panchayat explains that Exhibit P12 is not a final order and it is only a provisional order issued under Rule 5(1) of the Kerala Panchayat Raj (Removal of Encroachment and Imposition and Recovery of

Penalty for Unauthorised Occupation) Rules, 1996. Rule 5(3) empowers the authority concerned to pass a final order.

5. The learned Counsel for the petitioner sought for an opportunity for the petitioner to submit his case before the authorities concerned. Therefore, there will be a direction to the 2nd respondent, namely, the Secretary of the Panchayat to hear the petitioner and the 3rd respondent and take appropriate decision as empowered by the relevant rule, namely Rule 5(3) within a period of three weeks. In the meanwhile, any coercive action in continuation of Exhibit P12 will be kept in abeyance. If any adverse order is passed against the petitioner, the same will not be enforced for a period of 10 days from the date of communication of the order.

The Writ Petition is disposed of as above.