

(2010) 02 KL CK 0036

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 20618 of 2007 (S)

Mankuzhy Nagar Resident's Association

APPELLANT

Vs

District Collector, Tahsildar and Secretary

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Citation : (2010) 02 KL CK 0036

Hon'ble Judges : P.R. Raman, Acting C.J.;Thottathil B. Radhakrishnan, J

Bench : Division Bench

Advocate : Antony M. Ambat, for the Appellant; M.K. Aboobacker, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—This writ petition is filed by Mankuzhy Nagar Residents' Association essentially complaining that there is large scale encroachment of revenue land by different occupants of patta lands or even without any occupation of patta lands. The survey documents issued in relation to the area is sought to be redone.

2. With this public interest litigation in hand, this Court issued an order requiring publication of notice of this writ petition in a newspaper. That was promptly done. Thereafter, following different directions, the Tahsildar, Kanayannur had placed a report and certain exhibits. Thereafter an application for enlargement of time was also filed to carry out the directions issued by this Court. Ultimately, the first respondent District Collector has filed an affidavit dated 3.11.2009 stating that the District Collector had appointed a special team with two surveyors, in 2004, for measuring the thodu puramboke and it took three months to complete the work. The District Collector stated that, however, the Municipal authorities neither maintained the boundary stones and the survey markings nor acted upon the process of eviction on the basis of the survey report. It was, therefore, asserted by the District Collector that, as such, the entire area having a length of more than 2.5 kilometres resulted to be surveyed again for fixing the thodu puramboke. She further proceeds to say that there occurred some delay in

completing the further survey owing to deficiency of revenue staff and the intervening Legislative Assembly elections. Thereafter it is stated that the Tahsildar, Kanayannur was directed to start the survey afresh and make reports.

3. Pursuant to the aforesaid, the learned Senior Government Pleader appearing in this case submits today that the District Collector has reported that the survey activities in terms of the direction have been completed on 10.12.2009.

4. The thodu puramboke which are nothing but land adjoining water-ways are vested in the local authorities in terms of the provisions contained in the Municipality Act. Obviously, therefore, the Municipality cannot shirk its responsibility to plant and maintain boundary stones and ensure that there is no encroachment over the thodu puramboke. If any encroachment has been found, it is the bounden duty of the Municipality to remove such encroachment in accordance with law after following the due procedure.

5. Learned Counsel appearing for the Municipality states that following the survey, the Municipality has fixed boundary stones and is taking due care and caution to ensure that there is no tampering of the boundaries. It is the personal responsibility of the officers of the Municipality to make strict vigil and supervision to ensure that the land vested in the Municipality is promptly protected. This is part of the public interest and public duty that the Municipal officers have to ensure.

6. In terms of the aforesaid, this writ petition is ordered directing as follows:

i) The survey having been conducted, the said survey records will be made available in the office of the Municipal Secretary and the revenue authority for perusal and if necessary for obtaining copy as may be applied for by any citizen.

ii) The competent authority in the Municipality or in the Revenue Department will ensure appropriate action in accordance with law against any encroachment that has been found and the encroachment shall be dealt with in accordance with law, without in any manner impairing the right of an occupier to relief in terms of law.

iii) At any rate, both the authorities, as stated above, shall initiate such action within an outer limit of three months from today and the authorities, at the first instance, shall complete such proceedings after hearing the necessary parties within an outer limit of four months therefrom.

iv) It is further clarified that any land holder aggrieved by any action taken by the Municipal authorities or the Revenue authorities will be entitled to seek remedies before the competent statutory appellate authorities as against such decisions and all such rights and remedies are left open.

In so far as I.A. No. 13930 of 2007 is concerned, the petitioner in this public interest litigation states that the Municipality is proceeding to sell off two roads which are vested in the Municipality. The plea is that if those roads are sold off, that will affect the right of the public for free movement through those roads and

that the Municipality is acting in excess of their powers under the Municipality Act. We are clear in our mind that the State legislation provides certain prescriptions on transfer of properties which are vested in the Municipality and in so far as such properties are concerned, there is a procedure prescribed under the Municipality Act and Rules for transfer. Learned Counsel for the Municipality states that due procedure has been followed in terms of the Act and Rules for dealing with those properties. This is countered by the learned Counsel appearing for the petitioner by stating that if those roads are sold out, that will affect the right of the citizens for free movement and that there will not be any road access for the public. Learned Counsel for the petitioner further states that the Municipality may give effect to its decision as stated in the counter affidavit to the said interlocutory application, regarding the provision for alternate way. If the petitioner is further aggrieved on that count or if they are aggrieved by any decision of the Municipality, they may move either the Government or the learned Ombudsman for Local Self Government Institutions, as the case may be, since Government is the appropriate authority to grant sanction to the Municipality to deal with properties which are vested in the Municipality. That issue is accordingly left open.

Writ petition is ordered accordingly.