

(2022) 11 KL CK 0091

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31221 Of 2009

M/s Vembanadu Waterways

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 08-11-2022

Acts Referred:

Citation : (2022) 11 KL CK 0091

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

Bench : Single Bench

Advocate : R.Ramadas, K.Denny Devassy, M.K.Thankappan, M.K.Thankappan, K.Denny Devassy, Varghese K.Paul, Manoj Ramaswamy, V.Harish, Hameedu Kunju.A, T.Krishnanunni, K.G.Sarojini

Final Decision : Disposed Of

Judgement

P.V.Kunhikrishnan, J

1. The above writ petition is filed with following prayers :

“(a) To direct the respondents to provide a motorable access road to the petitioner as shown in the sketch to have an access to their property.

(b) To issue an advocate commissioner to identify the property shown in Exhibit P9 and find out there is any other access to the petitioner's property other than through the 2nd respondents property as shown in the sketch.

(c) Direct the 2nd respondent not to hand over possession of the property adjacent to petitioner's property extending 17.90 acres allotted to them by the 1st respondent as per GO(MS) No. 72/03 and GO(MS) No. 11/2005/Hsg without providing a motorable access road to the petitioner to the 3rd parties.” [SIC]

2. The petitioner is the absolute owner of the land extending 1.29 acres comprised in Survey No. 1103 of Ernakulam Village in Kanayannur Taluk. The petitioner is a firm constituted in 1968, mainly carrying on the business of selling/ providing services to shipping and allied industries. According to the petitioner,

till 1990, the petitioner was giving employment for more than 300 employees and during 1993 to 1995, there were labour strikes and it is stated that the petitioner was compelled to close down their activities. Till such time, it is the case of the petitioner that there was an access to their property through the land and by water. During 1994, Gosree Island Development Authority (GIDA) started reclaiming the entire land adjacent to the petitioner's property by dredging the waterways and consequently, it is the case of the petitioner that the access to the petitioner's property through the land was blocked. So the petitioner approached the 1st respondent, GIDA and GCDA to have their access to their property. It is also the case of the petitioner that at that juncture they promised that after reclamation they will provide a motorable access road to the petitioner's property. After the reclamation, the land adjacent to the petitioner's property was allotted to the 2nd respondent. It is the case of the petitioner that now, the 2nd respondent has called for a tender to develop the entire land belonging to them adjacent to the petitioner's property for a township from private parties without giving a road access to the petitioner to enter their property. In such circumstances, this writ petition is filed.

3. Heard Adv.T.Krishnanunni, learned senior counsel appearing for the petitioner instructed by Adv.R.Ramadas. I also heard the learned Standing Counsel appearing for the 2nd respondent. The learned Government Pleader represented 1st and 6th respondents.

4. The Senior Counsel takes me through Exts. P1 and P9 and submitted that there is no access to the property of the petitioner. It is the case of the petitioner that originally a way was given to the petitioner to access their property. Now that is also blocked by the 2nd respondent. The learned Standing Counsel for the 2nd respondent submitted that the 2nd respondent is proposing a township in the property and the property was given by the Government. The Board is not in a position to take any decision to give access to the petitioner.

5. This Court considered the contentions of the petitioner and the respondents. A perusal of Ext.P9 plan will show that there is no access to the petitioner's property. This is a matter to be looked into by the Government and the 2nd respondent. It is true that the counsel appearing for the 2nd respondent strongly oppose the same. But, a solution is necessary in this matter because admittedly, there is no access to the petitioner's property. The petitioner already submitted Ext.P11 before the 2nd respondent. The 2nd respondent can take a decision in it and forward the decision to the 1st respondent and there can be a direction to the 1st respondent to decide the matter, after giving an opportunity of hearing to all the parties, including the petitioner.

Therefore, this writ petition is disposed of with the following directions :

1) The 2nd respondent is directed to consider Ext.P11 representation after inspecting the property with notice to the petitioner and send their view to the 1st respondent within two months from the date of receipt of a copy of this

judgment.

2) Once the proposal along with the representation is received by the 1st respondent, the 1st respondent will hear the petitioner, the 2nd respondent and other affected parties and take a decision in the matter as expeditiously as possible, at any rate, within 4 months from the date of receipt of the proposal from the 2nd respondent.