

(2011) 02 KL CK 0016

In the High Court Of Kerala

Case No : Writ Petition (C) No. 38314 of 2010 (L)

P.J. Thomas

APPELLANT

Vs

The Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Citation : (2011) 02 KL CK 0016

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Carolin Sindhu Vaz, for the Appellant; N. Ashok Kumar, for the Respondent

Judgement

Antony Dominic, J.—Petitioner owns property in R.S. No. 104 of Ala Village of Chengannur Taluk. The property is situated on the side of Thottapady - Sarpathipadi road. The road lies on the East - West and is slopping towards the West. According to the Petitioner, Respondents 4 and 5 levelled the road, as a result of which, the natural flow of water is affected and the water now gets pooled in his property. He made complaints to various authorities. There was no response. Thereupon, he approached this Court and filed W.P(C) No. 24706/2009. That writ petition was disposed of by Ext.P2 judgment, directing the RDO to deal with the complaint.

2. Accordingly, the property was inspected and the RDO issued Ext.P3 order to the Assistant Executive Engineer, the third Respondent herein. In this order, it is stated that the only way to remedy the grievance of the Petitioner is by providing a drainage for the flow of rain water and that the same shall be constructed giving top priority.

3. Petitioner complains that nothing further has been done on Ext.P3. According to him, in spite of Ext.P3, Respondents 4 and 5 attempted to demolish his compound wall and to make a drainage into his property. It is stated that on account of the above, he filed O.S. No. 166/2010 before the Munsiff Court,

Chengannur and the Munsiff Court passed an interim order of status quo, as a result of which, Respondents 4 and 5 desisted from further proceedings.

4. Learned Government Pleader has obtained instructions in the matter. According to him, the road is not a PWD road as claimed by the Petitioner. It is contended that the road is one which is vested in the local authority, viz., Ala Grama Panchayat. Therefore, it is stated that Ext.P3 cannot be implemented by the third Respondent.

5. Submission made by the learned Counsel for Respondents 4 and 5 is that the Petitioner's property lies on the northern side of the road which is at a higher level. It is stated that the property of Respondents 4 and 5 is situated on the southern side of the road and is situated at a lower level. It is stated that earlier, in view of the lie of the property, rain water from the northern side of the road used to flow into the property on the southern side of the road. In such circumstances, after obtaining permission from the PWD authorities, the road was levelled and drainage of the southern side was constructed. It is stated that in pursuance to Ext.P3, an attempt was made by the official Respondents to construct a drainage on the northern side of the road, which was resisted by the Petitioner, who filed O.S. No. 166/2010, the plaint of which is Ext.R4(a). It is stated that after thus making the situation impossible, Petitioner cannot now approach this Court for getting Ext.P3 implemented.

6. From the photographs made available by the Petitioner and the submissions made by both sides, it is obvious that following the levelling of the road and construction of the drainage of the southern side, water flows into the Petitioner's property. This problem of the Petitioner has been recognised by the first Respondent in Ext.P3 order as well. Therefore, this certainly is a matter which the Respondents will have to rectify. If as stated by the learned Government Pleader, the road is now vested in the Panchayat, instead of the third Respondent, Ext.P3 ought to have been issued to the Panchayat. As far as the suit is concerned, Ext.R4(a) plaint itself shows that the Petitioner had to approach the civil court not because the drainage was constructed but, according to him, under the guise of such construction, an attempt was made to demolish his compound wall and to construct drainage through his property. None has a case that any part of the property has been acquired or has been freely surrendered by him. If that be so, drainage could not have been constructed or attempted to be constructed through the property of the Petitioner. In that view, if the Petitioner has moved the civil court, he cannot be accused of having prevented the implementation of Ext.P3 which does not direct that the drainage should be constructed through his property.

7. Thus, what is required is that the first Respondent, who has passed Ext.P3, should take note of the above with notice to the Petitioner, Respondents 4 and 5 and the Panchayat concerned, if the road is vested in the Panchayat. Therefore, I direct that on the production of a copy of this judgment, the first Respondent shall consider the matter in the manner as directed above and issue appropriate

directions to the authority concerned for remedying the grievance of the Petitioner. This, the first Respondent shall do as expeditiously as possible and at any rate, within one month from the date of production of a copy of this judgment.

Writ petition is disposed of as above.