
(2021) 02 KL CK 0076

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19457 Of 2014

R. Anish Kumar And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 23-02-2021

Acts Referred:

Citation : (2021) 02 KL CK 0076

Hon'ble Judges : S. Manikumar, CJ;Shaji P.Chaly, J

Bench : Division Bench

Advocate : C. Unnikrishnan, Tek Chand

Final Decision : Disposed Of

Judgement

Shaji P. Chaly, J

1. Captioned writ petition is a Public Interest Litigation filed by the residents of Enadimangalam Village seeking the following reliefs:

(i) Issue a writ of mandamus or any other writ, order or direction commanding the respondents to take appropriate actions to prevent encroachment of

government land by the land mafia in Puthuval-Pattara area in Enadimangalam Village.

(ii) Issue a writ of mandamus or any other writ, order or direction commanding the respondents to take action to evict all the unauthorized encroachers

of government land within a time limit as prescribed by this Honourable Court.

(iii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant and

(iv) Grant the cost of the petition.

2. The basic contention advanced is that the respondents have failed to take preventive action against the large scale encroachment of public land

within the limits of Enadimangalam Village especially in Puthuval-Pattara area by the land Mafia. According to the petitioners, by virtue of Exhibit P1

proceedings of the District Collector, Pathanamthitta and the Revenue Divisional Officer, Adoor, it is clear that the authorities are aware that there is

large scale encroachment of Government land in the area in question. However, due to the power exerted by the land Mafia, the authorities are not

initiating any action to evict the encroachers and consequent to which, illegal constructions are going on in the Government properties without the

knowledge of competent authorities. It is further contended that the land Mafia is filling up the natural water flows in the Government land, which will

cause disastrous consequences to the ecology and in near future there is every chance for acute shortage of drinking water. An interim order was

passed by this Court as early as on 28.5.2019 recording that Exhibit P1 proceedings of the District Collector in the meeting held on 16.3.2012 would

indicate that the allegations raised in the writ petition in regard to the encroachment was correct. It is also seen that a counter affidavit was filed by

the Additional Tahsildar, Adoor as early as on 22.2.2016, whereby the encroachment into the Government property is virtually admitted but stated that

steps were being taken in order to identify the encroachers and will take appropriate action for evicting them from the premises.

3. Anyhow by virtue of the directions issued on 28.5.2019, a fresh report was filed on 26.6.2019 showing the details of the steps taken for identifying

the encroachers and the steps taken for evicting them from the premises. Paragraphs 3 & 4 of the said report is relevant to the context, which read

thus:

3. This Hon'ble Court by order dated 28.5.2019 has directed to place on record an affidavit detailing the follow up pursuant to Exhibit P1 dated

27.10.2012 wherein it has resolved in a meeting presided by the 3rd respondent to survey the property and cross check the same with the survey

records on a finding that the said land has been encroached within the limits of Enadimangalam Village in Adoor Taluk. The survey team submitted a

report after surveying with the aid of old Re-Survey records and has reported that there exists no discrepancy in the Re-Survey records and had listed

three persons who had encroached the 'thodu puramboke' at Puthuvel Pattara area within the limits of Enadimangalam Village, Adoor Taluk. On

getting the report from the Surveyor the 3rd respondent, District Collector had directed the Additional Tahsildar, Adoor Taluk for necessary

instructions to the Secretary, Enadimangalam Grama Panchayath evict those encroachers in Puthuvel Pattara area as 'Thodu Puramboke is vested

with the Local Self Government as per Kerala Panchayath Raj Act, 1994'.

4. Upon receiving the instructions from the 3rd respondent, District Collector, the Tahsildar (Land Records) had issued directions to the Secretary,

Enadimangalam Grama Panchayath to evict the encroachers from thodu puramboke in Puthuvel Pattara area and to report further actions. The

Secretary, Enadimangalam Grama Panchayath had not submitted any report till date in this regard. Later, on 29.02.2016 the Secretary, Grama

Panchayath had submitted an application to demarcate the boundary of Puthuvel Pattara area. The Tahsildar (Land Records) had directed the Taluk

Surveyor to refix the 'thodu puramboke' boundary and same was refixed by the Taluk Surveyor on 21.06.2019 in the presence of Secretary,

Enadimangalam Grama Panchayath and 8th respondent, Village Officer, Enadimangalam. Based on the Taluk Surveyor's report after refixing the

boundary on 21.06.2019, further directions was issued by the Tahsildar (Land Records) to the Secretary, Enadimangalam Grama Panchayath on

22.06.2019 for evicting the encroachers who were pointed out in the earlier survey carried out in pursuance to Exhibit PI decision. The above facts are

brought on records of this Hon'ble Court for a just and proper disposal of the above case. The removal of encroachers in Puthuvel Pattara area are to

be carried out by the Secretary, Enadimangalam Grama Panchayth as 'thodu puramboke is vested with the Grama Panchayath as per the Kerala

Panchayath Raj Act, 1994'. The above affidavit may be accepted as part of the records.

4. On a reading of the latest report, it is clear that a survey was conducted and the encroachers were identified and on getting report from the

Surveyor, the District Collector directed the Additional Tahsildar, Adoor Taluk for issuing necessary instructions to the Secretary, Enadimangalam

Grama Panchayat to evict the encroachers in Puthuval-Pattara area as 'thodu puramboku is vested with the Local Self Government as per Kerala

Panchayat Raj Act, 1994'. It is true that by virtue of the provisions of the Kerala Panchayat Raj Act, 1994, it is the duty of the Panchayat to remove

encroachment into any public property, which is a mandatory function of the Panchayat by virtue of Entry 2 under mandatory functions at 3rd

Schedule of Act, 1994, read along with the other provisions of the Act. Therefore, there can be no doubt that Panchayat has to discharge its duty in

terms of the provisions of Act, 1994. But the Panchayat or the Secretary of the Panchayat are not made parties to this writ petition. Though the

mandatory function to remove encroachment to any public property is conferred on the Grama Panchayat concerned, we are also of the opinion that,

that will not take away the power of the District Collector and the revenue authorities to remove the encroachment into any public property in spite of

the public property vested in the Panchayat in accordance with the provisions of the Act, 1994.

5. In that view of the matter and taking into account the developments that have taken place during the pendency of the writ petition and the report

deliberated above, this writ petition is disposed of directing the District Collector, Pathanamthitta, to take appropriate action in accordance with law, to

remove the encroachments into the public lands, either using the machinery of the District Administration or directing the Secretary of the

Enadimangalam Grama Panchayat to take appropriate action to remove the encroachments from the public properties vested with the Panchayat.

Anyhow we make it clear that steps shall be taken as above and finalise the same within two months from the date of receipt of a copy of this

judgment.