

**(2022) 01 KL CK 0208**  
**In the High Court Of Kerala**  
**Case No : Writ Petition (C) No. 6449 Of 2015**

Sameena O A

APPELLANT

Vs

Cheranalloor Grama Panchayath Rep. By Secretary, South  
Chittoor Po, Ernakulam 682027

RESPONDENT

**Date of Decision :** 27-01-2022

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Kerala Panchayat Raj Act, 1994 — Section 218, 218(1)  
Kerala Survey and Boundaries Act, 1961 — Section 4A

**Citation :** (2022) 01 KL CK 0208

**Hon'ble Judges :** Shaji P.Chaly, J

**Bench :** Single Bench

**Advocate :** S.Mohammed Al Rafi, T.K.Ajithkumar, Ajith Viswanathan,  
T.K.Ajithkumar, Ajith Viswanathan

**Final Decision :** Disposed Of

## Judgement

Shaji P.Chaly, J

1. This writ petition is filed by the petitioner challenging Ext. P2 order dated 11.02.2015 issued by the Secretary of the Cheranalloor Grama

Panchayat.

2. The case put forth by the petitioner is that, he is the absolute owner in possession and ownership of an extent of 13.86 Ares of property situated in

re-Survey No. 587/14 of Cheranalloor Village, and described as a purayidam (dry land) in the revenue records. It is further submitted that the property

was inherited by the petitioner from her deceased father and now her mother Arifa received Ext. P2 notice from the Cheranalloor Grama Panchayat

stating that a water course (thodu) situated in the property was filled up and directing the petitioner/her mother to restore the original position of the

water course within 14 days from the date of receipt of the order.

3. The paramount contention advanced by the petitioner is that there is no water course in her property and that the petitioner's mother has no right in

the property. It is also submitted that neither the petitioner nor her mother were heard before issuing Ext. P2 notice. It is also contended that Ext. P2

notice suffers from the vice of arbitrariness and illegality liable to be interfered with by this Court. It is further pointed out that respondents 2 and 3

namely James George and Mary Diny James, have filed O.S. No. 402 of 2015 before the Munsiff's Court, Ernakulam against the mother of the

petitioner namely Arifa and the same is pending consideration.

4. Today, when the matter was taken up, the learned counsel for the petitioner submitted that the suit was later dismissed as withdrawn. But, again an

application was filed to restore the suit for the third time, which is also pending consideration and again an application is filed to withdraw the same.

But, fact remains, the Panchayat is not a party in the said suit proceedings.

5. Respondent Nos. 2 and 3 have filed a counter affidavit disputing the allegations and the contentions raised by the petitioner in the writ petition. It is

also submitted that the petitioner has filled up the water channel causing inconvenience to the said respondents and others. Anyhow, it is submitted

that proceedings in a suit by and between the private parties are pending consideration before the Munsiff's Court, Ernakulam.

6. The first respondent has filed a counter affidavit justifying its action and also raising contentions relying upon Section 218 of the Kerala Panchayat

Raj Act, 1994 dealing with water courses etc.

7. I have heard the learned counsel for the petitioner Sri. S. Mohammed Al Rafi, Sri. Jeffin, representing Senior Advocate Sri. P. Viswanathan for

respondents 2 and 3, and Sri. T.K. Ajith Kumar for the Cheranalloor Grama Panchayat, and perused the pleadings and materials on record.

8. The learned counsel for the petitioner addressed arguments in accordance with the submissions recorded above. Respective counsel appearing for

respondents have also addressed arguments basically contending that the petitioner has filled up a flowing water course and therefore, it is the duty of

the Panchayat to take necessary action to restore the water course.

9. In my considered opinion by making a reference to certain provisions of some of the relevant statutes, issues raised by the petitioner can be sorted

out. Section 218 of the Act, 1994, dealing with vesting of watercourse, springs, reservoirs, etc., in Village Panchayats, reads thus:

218. Vesting of water course, springs, reservoirs, etc., in Village Panchayats. -

(1) Notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 (8 of 1958) or in any other law for the time being in force, all public water courses (other than river passing through more areas, than the panchayat area which the

Government may, by notification in the gazette, specify), the beds and Banks of rivers, streams, irrigation and drainage channels, canals, lakes, back waters and water

courses and all standing and flowing water, springs, reservoirs, tanks, cisterns, fountains, wells, kappus, chals, stand pipes and other water works including those used by the public to such an extent as to give a prescriptive right to their use whether existing at the commencement of this Act or afterwards made, laid or erected

and whether made, laid or erected at the cost of the panchayat or otherwise, and also any adjacent land, not being private property appertaining thereto shall stand

transferred to and vest absolutely in the village panchayat:

Provided that nothing contained in this sub-section shall apply to any work which is or is connected with, a work or irrigation or to any adjacent land appertaining of

any such work.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the government may, by notification in the Gazette, assume the administration of any public source of water supply and public land adjacent and appertaining thereto after consulting the village panchayat and giving due regard to its objection, if any.

(4) It shall not be lawful for any person to remove or appropriate for himself any tree, earth, sand, metal, laterite, limeshell or such other articles of value as may be

notified by the village panchayat from any land which is transferred to or vested in the village panchayat, under this Act whether a poramboke or not except under

and in accordance with the terms and conditions of a permit issued by the village panchayat in this behalf and on payment of such fees and compensation at the rate

determined by the village panchayat.

10. On a reading of Section 218 (1) as above, it is clear that even a prescriptive right vests with the Panchayat. Moreover, the third Schedule of the Act, 1994 deals with the mandatory functions of the Village Panchayat. Entry 2 therein deals with protection of the public lands against encroachments; entry 5 deals with maintenance of waterways and canals under the control of Village Panchayats; and entry 14 deals with protection of roads and other public properties. Therefore it is explicit that all aspects raised in the writ petition are within the realm and powers of the Secretary of a Grama Panchayat.

11. The case of the petitioner is that there is no public property involved in the subject issue raised by the Panchayat and therefore, the Panchayat is not competent to issue a notice and direct the petitioner to restore the water course; but the provision discussed above shows otherwise. It is also the contention of the petitioner that no notice was issued prior to the issuance of Ext. P2 notice and therefore, the entire action of the Panchayat is tainted with mala fides and arbitrariness.

12. Having evaluated the rival submissions, I am of the considered opinion that a writ court, exercising the power under Article 226 of the Constitution of India, in a summary manner, is not expected to delve deep into the factual circumstances and decipher the truth. Chapter II of the Kerala Survey and Boundaries Act, 1961 ('Act, 1961' for short) deals with the survey of properties and Section 4A was incorporated in the Act on and with effect from 12.05.2000, which reads thus:

4A. Government may direct the survey and demarcation of any lands belonging to local authority.--Whenever a local authority as defined in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or in the Kerala Municipality Act, 1994 (20 of 1994) requests the Government for surveying and demarcating the boundaries of any land vested or owned by it, the Government or any officer or authority authorized by the Government in this behalf, by notification in the Gazette shall get the land surveyed and demarcated.

13. Therefore, it is categoric and clear that a clear procedure is prescribed under the law in order to identify any public property or other aspects empowered under the Act 1994. I am of the undoubted opinion that the Secretary of the Grama Panchayat is entitled and empowered, as of right, to

identify as to whether any public property or a prescriptive right is encroached or interfered with by any person and has filled up the same in order to

prevent a water course. However, I feel that before issuing Ext. P2 notice directing the petitioner to restore the filled up water course, necessary

opportunity should have been given to the petitioner to identify as to whether any public property is involved or a water course is prevented by the

petitioner by filling up the same interfering with the public rights in contemplation of Section 218 of Act 1994.

In that view of the matter and taking into account the provisions discussed above, I dispose of the writ petition with the following directions:

1. Ext. P2 notice bearing No. C8.7618/2014 dated 11.02.2015 issued by the first respondent, the Secretary of the Cheranalloor Grama Panchayat, shall be treated as a

show cause notice.

2. The petitioner is granted one month's time to file an objection to the same.

3. The Secretary of the Grama Panchayat shall, on receipt of the objection from the petitioner, issue appropriate request as is provided under Section 4A of the Act,

1961, carry out the measurements at the earliest possible time in order to identify whether any public property or a water course is interfered with or whether a public

waterway is filled up by the petitioner, and take a decision at the earliest possible time and at any rate within four months from the date of receipt of objection from the petitioner.