

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 29TH DAY OF JULY 2021 / 7TH SRAVANA, 1943

WP(C) NO. 21470 OF 2019

PETITIONERS:

- 1 SUMA DEVI
AGED 65 YEARS
W/O. R. SREEDHARAN NAIR, MALLELIL HOUSE, ATTACHAKKAL
P.O., KONNI, PATHANAMTHITTA DISTRICT, PIN - 689 692.
- 2 SUNIL KUMAR. V.
AGED 50 YEARS
S/O. T. V. VASUDEVAN PILLAI, MANAGING DIRECTOR, M/S.
ASSET HOMES PVT. LTD., G-129, 28/34-A, PANAMPILLY
NAGAR, ERANAKULAM, COCHIN - 682 036.

BY ADVS.
PEEYUS A.KOTTAM
JOMON J. MALICKAL
JUBIN C.VADAKKAN
RIYA REJI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 2 DISTRICT SURVEY SUPERINTENDENT,
DISTRICT SURVEY SUPERINTENDENT OFFICE, 4TH FLOOR,
COLLECTORATE ROAD, CHITTOOR, PATHANAMTHITTA, KERALA -
689 645.
- 3 THE DISTRICT COLLECTOR,
PATHANAMTHITTA, PIN - 689 645.
- 4 THE TAHSILDAR,
KOZHENCHERY, PATHANAMTHITTA DISTRICT, PIN - 689 654.
- 5 THE TALUK SURVEYOR,
KOZHENCHERY, PATHANAMTHITTA DISTRICT, PIN - 689 654.
- 6 PATHANAMTHITTA MUNICIPALITY
REPRESENTED BY ITS SECRETARY, PATHANAMTHITTA, PIN - 689

645.

- 7 ADDLR7. EXECUTIVE ENGINEER,
MINOR IRRIGATION DEPARTMENT, PATHANAMTHITTA.
SUO MOTU IMPEADED AS PER ORDER DATED 15-02-
2021.
- 8 ADDL.R8. THE EXECUTIVE ENGINEER,
PWD, PATHANAMTHITTA.
IS SUO MOTU IMPEADED AS PER ORDER DATED 23-02-
2021.

BY ADVS.
SMT. MABLE C. KURIAN, GOVERNMENT PLEADER
SRI.GEORGE ABRAHAM PACHAYIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.07.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

W.P. (C)No.21470 of 2019

Dated this the 29th day of July 2021

JUDGMENT

**The above Writ petition is filed with
following prayers:**

"a) *issue a writ of mandamus or any other appropriate writ or order or direction and thereby command the respondents 2 to 4 to fix the boundaries of petitioners property having 50 cents in Sy.No.222/5D of Pathanamthitta Village for which petitioner is paying property tax as per thandaper No.27635 of Pathanamthitta Village after complying the procedure prescribed under Survey and Boundaries Act, 1961.*

b) *Call for the entire records leading to Ext-P8 order and quash the same by issuing a writ of certiorari or any other appropriate writ, order or direction in the alternative direct the municipality to consider the petitioners Ext-P9 reply and take a final decision on the basis of Ext-P4 survey report within a stipulated time as fixed by this Hon'ble Court.*

c) *Grant such other reliefs, which are just and necessary in the*

interest of justice and deem fit, just and proper.

2. When this writ petition came up for consideration on 06.08.2019, this Court passed the following order:

"Admit. Learned Government Pleader takes notice for respondents 1 to 5. Learned Standing Counsel takes notice for the 6th respondent.

2. Further action based on the impugned proceedings of the Municipality is stayed. In the meanwhile, the Taluk Surveyor shall demarcate the property, which is the subject matter of construction, based on the title deed of the petitioners, after notice to the petitioners and the 6th respondent. This shall be done within a period of four weeks and a report shall be filed before this Court.

Any construction undertaken by the petitioners will be subject to further orders of this Court and also on condition that if it is found that the construction is made by encroaching upon the Government land, the petitioners will pull down the construction at their own cost without any delay."

3. Thereafter this matter came up for consideration on 15.02.2021 and on that day this Court passed another order which is extracted hereunder:

"I have heard Sri.Peeyus A. Kottam, the

learned counsel appearing for the petitioners and the learned Government Pleader.

2. Under challenge in this writ petition is the stop memo issued by the 6th respondent, Secretary, Pathanamthitta Municipality. None appears for the 6th respondent during hearing which was conducted through video conferencing to respond to the contentions of the learned counsel appearing for the petitioners.

3. From Exhibits P6 and P8, it appears that the petitioners have put up constructions on the retaining wall put up by the Irrigation Department separating the western Thodu with the multi storeyed apartment building being constructed by the petitioners on the strength of Ext.P5 building permit. However, the petitioner has not arrayed the Minor Irrigation Department as a party to this proceedings. As their presence is required for the effective adjudication of this matter, Executive Engineer, Minor Irrigation Department, Pathanamthitta is suo motu impleaded as an additional respondent. The learned Government Pleader shall take notice.

4. The specific contention of the petitioners is that the construction that is being carried out is strictly in tune with Ext.P5 building permit. The petitioners have not produced the sketch of the property or the possession certificate to substantiate the actual extend of property in their possession. The petitioners shall produce the possession certificate, the sketch of the property and also the plan submitted before the Municipality for obtaining Ext.P5 building permit."

4. Again when this matter came up for consideration on 23.02.2021, this Court passed yet another order which is extracted hereunder:

"I have heard Sri.Peeyus A Kottam, the learned counsel appearing for the petitioner and Sri.George Abraham, the learned Standing Counsel appearing for the Pathanamthitta Municipality and the learned Government Pleader.

2. Sri Peeyus submitted that though the 1st petitioner had acquired title and possession of property having an extent of 50 cents in Sy No.222/5D of Pathanamthitta Village on the strength of Exhibit P1 series sale deeds, she is stated to be in possession of only 44.527 cents of property. On the strength of Exhibit P2 deed the 2nd petitioner has purchased 5% of the undivided share in the 50 cents of property owned by the 1st petitioner and her son and consequent thereto the Municipality has issued a building permit to put up a multi storied residential building in the above property.

3. After commencement of construction, the petitioners have been served with Exhibit P8 order alleging that the petitioners have put up construction in violation of the permit issued by the local authority. Among other violations, It is stated that the petitioners have encroached upon 6 square meters of property owned by the local authority, that constructions have been put up above the retaining wall abutting the western thodu and that connected beams have been built linking the retaining wall with the building under

construction. According to the petitioners, these allegations are baseless and to bring out the truth of the matter, the 1st petitioner has submitted Exhibit P10 request to the District Survey Superintendent seeking to measure out the property owned by the petitioners and covered under the title deeds and revenue records.

4. By order dated 15.2.2021, the Executive engineer, Minor Irrigation Department was suo moto impleaded as additional respondent. Since it is submitted that the PWD road passes through the southern side of the property, the Executive Engineer PWD, Pathanamthitta is suo moto arrayed as additional respondent. Registry is directed to carry out the impleadment.

5. The petitioners have produced a copy of the approved plan before this Court to substantiate that they have been carrying out the construction strictly in tune with the permit issued.

Having considered the submissions advanced, I direct the 2nd respondent to initiate appropriate steps to carry out the measurement of the property in respect of which Ext.P5 permit has been issued by the local authority. While measuring the properties, the revenue records, the title deeds and the records maintained by the official respondents shall be looked into. The survey shall be conducted in the presence of the petitioners, the Executive Engineer, Minor Irrigation Department, Pathanamthitta, the Executive Engineer, PWD, (Roads) and the Municipal Engineer of the Pathanamthitta Municipality. The survey sketch shall be produced before this Court within a period of two weeks. The expenses for the same shall be met with by the

petitioners. The respondents 6 to 8 shall also report before this Court as to whether the petitioners have committed encroachment or have put up construction in violation to the permit."

5. Now the learned counsel for the petitioners submitted that as per a memo dated 23.02.2021, a survey sketch is produced by the learned Government Pleader. The learned counsel submitted that as per the survey sketch, the petitioners property is 16.47 ares. The learned counsel submitted that, based on the same, he submitted an application for revised building permit to the 6th respondent Municipality as per Ext.P22. The learned counsel submitted that, he will be satisfied, if Ext.P22 is considered by the 6th respondent within a time schedule.

6. Heard the learned counsel appearing for the petitioner, the learned Standing counsel for the 6th respondent and the learned Government Pleader.

7. The learned standing counsel for the Municipality submitted that the application for

building permit will be considered in accordance to law.

In the light of the above submission, I think this writ petition can be disposed in the following manner:

(i) Ext.P22 application submitted by the petitioners will be considered by the 6th respondent within seven days from the date of receipt of a copy of this judgment and will pass appropriate orders in accordance to law.

(ii) All the other contentions of the petitioners in the writ petition are left open.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

DM

APPENDIX OF WP(C) 21470/2019

PETITIONERS EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE SALE DEED NO.1909/2004 OF PATHANAMTHITTA SRO.
- EXHIBIT P1(A) TRUE COPY OF THE SALE DEED NO.1820/2004 OF PATHANAMTHITTA SRO.
- EXHIBIT P1(B) TRUE COPY OF THE SALE DEED NO.1821/2004 OF PATHANAMTHITTA SRO.
- EXHIBIT P2 TRUE COPY OF THE SALE DEED NO.172/2017 OF PATHANAMTHITTA SRO.
- EXHIBIT P3 THE TRUE COPY OF THE TAX RECEIPT SHOWING PAYMENT OF PROPERTY TAX FOR THIS 50CENTS OF PROPERTY IN SY,NO.222/5D OF PATHANAMTHITTA VILLAGE FOR THE YEAR 2019-2020.
- EXHIBIT P4 TRUE COPY OF THE SKETCH PREPARED BY THE TALUK SURVEYOR ALONG WITH ADDITIONAL TAHSILDAR, KOZHENCHERY ISSUED TO THE PETITIONER DATED 28.10.2013.
- EXHIBIT P5 TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 6TH RESPONDENT PATHANAMTHITTA MUNICIPALITY BEARING NO.BA 97/13-14 DATED 29/06/2016.
- EXHIBIT P6 THE TRUE COPY OF THE NOTICE NO.E2-6997/2019 DATED 29.04.2019 ISSUED BY THE 6TH RESPONDENT MUNICIPALITY.
- EXHIBIT P7 THE TRUE COPY OF THE ORDER NO.E2 7676/2019 DATED 13.05.2019.
- EXHIBIT P8 THE TRUE COPY OF THE TEMPORARY ORDER ISSUED BY THE 6TH RESPONDENT MUNICIPALITY TO THE PETITIONERS DATED 11.07.2019.
- EXHIBIT P9 THE TRUE COPY OF THE REPLY SUBMITTED BY

THE PETITIONERS BEFORE THE SECRETARY,
PATHANAMTHITTA MUNICIPALITY.

- EXHIBIT P10 THE TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE 1ST PETITIONER DATED
01.11.2013.
- EXHIBIT P11 TRUE COPY OF THE TAX RECEIPT PAYING
PROPERTY TAX FOR 6.07 ARES IN
SY.NO.222/5D FOR THE YEAR 2020-2021.
- EXHIBIT P11 (A) TRUE COPY OF THE TAX RECEIPT PAYING
PROPERTY TAX FOR 14.07 ARES IN
SY.NO.222/5D FOR THE YEAR 2020-2021.
- EXHIBIT P12 TRUE COPY OF THE MAHAZAR PREPARED BY
ASSISTANT ENGINEER, PWD IRRIGATION,
PATHANAMTHITTA WHILE ACQUIRING 6.95
ARES OF PROPERTY IN SY.NO.222/5-8 OF
PATHANAMTHITTA VILLAGE.
- EXHIBIT P13 TRUE COPY OF THE AWARD PERTAINING TO
ACQUISITION OF THIS 6.95 ARES ISSUED IN
THE NAME OF PETITIONERS PREDECESSOR IN
INTEREST SHAHUL HAMEED RASHEED..
- EXHIBIT P14 TRUE COPY OF THE STOP MEMO DATED
16.11.2020 ISSUED BY THE 6TH RESPONDENT
MUNICIPALITY.
- EXHIBIT P15 TRUE COPY OF THE APPROVED SITE PLAN OF
THE BUILDING FOR CONSTRUCTING THE
RESIDENTIAL APARTMENT IN 18.02 ARES OF
PROPERTY.
- EXHIBIT P16 TRUE COPY OF THE CERTIFICATE ISSUED BY
THE VILLAGE OFFICER, PATHANAMTHITTA
DATED 03.09.2020 FOR THE PETITIONERS
14.17 ARES OF PROPERTY IN SY.NO.222/5D.
- EXHIBIT P17 TRUE COPY OF THE CERTIFICATE ISSUED BY
THE VILLAGE OFFICER, PATHANAMTHITTA
DATED 03.09.2020 IN 6.07 ARES OF
PROPERTY IN SY.NO.222/5D
- EXHIBIT P18 TRUE COPY OF THE STRUCTURAL PLAN

APPROVED BY THE CHARTERED ENGINEER ON THE BASIS OF WHICH PILLAR AND GROUND FLOOR HAS BEEN CONSTRUCTED.

EXHIBIT P19 THE PHOTOGRAPHS SHOWING THE WESTERN BOUNDARY THROUGH WHICH THE DRAINAGE FLOWING.

EXHIBIT P20 THE PHOTOGRAPHS SHOWING RETAINING WALL CONSTRUCTED BY THE MALAYALA MANORAMA IN THE PETITIONERS' ADJACENT PROPERTY ABUTTING INTO THIS DRAINAGE.

EXHIBIT P21 TRUE PHOTOGRAPHS SHOWING THE CONSTRUCTION CARRIED OUT IN THE RETAINING WALL BY MUTHOOT FAMILY IN THE PETITIONER'S ADJACENT PROPERTY.

EXHIBIT P22 THE TRUE COPY OF THE APPLICATION FOR PERMIT SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT.

EXHIBIT P22 (A) THE TRUE COPY OF THE SITE PLAN PERTAINING TO THE PROPERTY SUBMITTED ALONG WITH EXT-P22 APPLICATION.

EXHIBIT P23 THE TRUE COPY OF ACKNOWLEDGMENT RECEIPT ISSUED FROM THE OFFICE OF THE 6TH RESPONDENT.

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE