

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 25TH DAY OF OCTOBER 2022 / 3RD KARTHIA, 1944

WP(C) NO.18654 OF 2022

PETITIONER :-

ABEYSON P JOHN, AGED 44 YEARS
S/O.PC JOHN, PUTHENPARAMBIL HOUSE,
HNO. 133E, WARD X, PADUVA P.O.,
KIDANGOOR, CHANGANCHERRY TALUK,
KOTTAYAM DISTRICT, PIN - 686 564

BY ADVS.
VIJAI MATHEWS
JOSEPH THEKKEKURUVANAL

RESPONDENTS :-

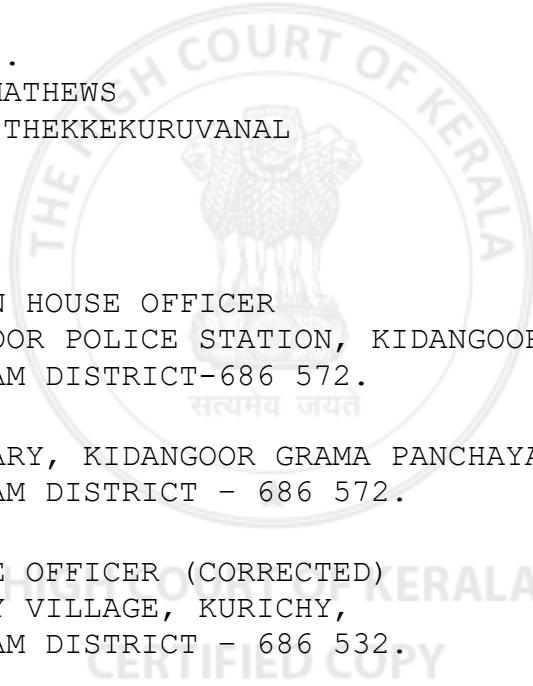
- 1 STATION HOUSE OFFICER
KIDANGOOR POLICE STATION, KIDANGOOR,
KOTTAYAM DISTRICT-686 572.
- 2 SECRETARY, KIDANGOOR GRAMA PANCHAYATH
KOTTAYAM DISTRICT - 686 572.
- 3 VILLAGE OFFICER (CORRECTED)
KURICHY VILLAGE, KURICHY,
KOTTAYAM DISTRICT - 686 532.

(NAME AND ADDRESS OF R3 IS CORRECTED AS :

'VILLAGE OFFICER, KIDANGOOR VILLAGE,
KOTTAYAM DISTRICT - 686 564''

AS PER ORDER DATED 16/06/2022 IN IA NO.1/2022)

- 4 BENNY, AGED ABOUT 55 YEARS,
KALLUVELIL HOUSE, KIDAGOOR SOUTH P.O.,
KIDANGOOR, KOTTAYAM - 686 583.
- 5 TOMY, AGED ABOUT 53 YEARS
KALLUVELIL HOUSE, KIDAGOOR SOUTH P.O.
KIDANGOOR, KOTTAYAM - 686 583.
- 6 CHARLIE, AGED ABOUT 45 YEARS
KALLUVELIL HOUSE, KIDAGOOR SOUTH P.O.
KIDANGOOR, KOTTAYAM - 686 583

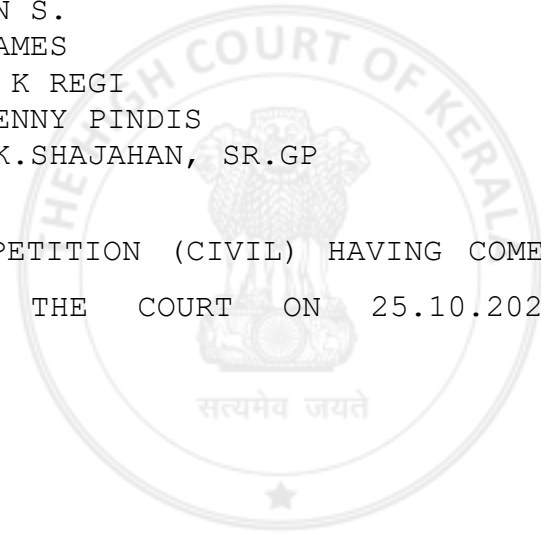




7 THOMACHAN, AGED ABOUT 58 YEARS
KANNANKULAM HOUSE, KIDAGOOR SOUTH P.O.
KIDANGOOR, KOTTAYAM - 686 583

BY ADVS.
SRI.JUSTINE JACOB, SC, KIDANGOOR GRAMA PANCHAYAT
GEORGE MATHEW
M.D.SASIKUMARAN
MATHEW K.T.
SUNIL KUMAR A.G
GEORGE K.V.
PRAVEEN S.
DIPU JAMES
STEPHY K REGI
ELSA DENNY PINDIS
SRI.T.K.SHAJAHAN, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11.10.2022, THE COURT ON 25.10.2022 DELIVERED THE
FOLLOWING:



HIGH COURT OF KERALA
CERTIFIED COPY



JUDGMENT

Dated this the 25th day of October, 2022

This writ petition is filed seeking the following reliefs :-

- i. Issue a writ of mandamus or any other appropriate writ, order or direction directing the first respondent to provide adequate and effective protection to the petitioner from the respondents 4 to 7 and their men, to carry out the works of his compound wall in accordance with the permit and plan approved by the 2nd respondent as per Exhibit P1 and Exhibit P2.
- ii. Declare that the respondents 4 to 7 have no right to obstruct the petitioner from constructing his compound wall as per the Exhibit P1 permit and Exhibit P2 plan issued by the 2nd respondent."

2. Heard the learned counsel for the petitioner, the learned Government Pleader as well as the learned counsel appearing for respondents 4 to 7.

3. It is submitted by the learned counsel for the petitioner that the petitioner is the owner of 4.5 Ares of property in Block No.16 in Re-survey No.436/1-4 of Kidangoor Village, Meenachil Taluk, Kottayam District. It is submitted that the Secretary, Kidangoor Grama Panchayat had issued a site approval and building permit to the petitioner for construction of a compound wall for his residential property. It is submitted that Ext.P2 plan



was also approved by the Panchayat on 26.4.2022. The petitioner has also produced Ext.P3 title deed of his property having an extent of 4.5 Ares. It is submitted that respondents 4 to 7 who do not share any boundary with the petitioner are illegally obstructing the construction of the compound wall as permitted in Exts.P1 and P2 and that the petitioner's complaints before the police have not evoked any response.

4. A counter affidavit is filed by respondents 4 to 7 contending that there was a compound wall already in existence separating the petitioner's property from the road in front of it and it is after demolishing the same that the petitioner is attempting to construct a new wall encroaching into the Plamoodu-Mundackal public road. It is submitted that the said road was widened after surrender of property by all owners of property on either side of the road. It is submitted that the petitioner had apparently purchased the property only in 2021 and the widening of the road had occurred two decades prior to the petitioner's buying the property. It is submitted that the petitioner's predecessors-in-interest had surrendered the property and the road had, as a matter of fact, been formed as a motorable way nearly 22 years back. It is submitted that the



road was developed and tarred using the funds of the Kottayam District Panchayat and the Pampady Block Panchayat on the specific condition that the road surface should have 6 metre width through out. It is submitted that since the petitioner had made attempts to construct a compound wall encroaching into the public road, a mass representation has been filed before the 2nd respondent, which is produced as Ext.R4(a). It is contended that there is no physical obstruction caused by anybody, but the petitioner cannot construct the compound wall on a public road which is already in existence.

5. The 2nd respondent has filed a statement contending that on an application being submitted by the petitioner along with all relevant documents, Exts.P1 and P2 building permit and site plan had been issued to the petitioner for constructing the compound wall. It is submitted that on site inspection, it was found that the width of the Panchayat road in front of the house of the petitioner is 5.8 metres and the building permit was granted. It is submitted that the details of the subject road are entered in the Asset Register in the year 1994 and thereafter, the road was widened and the width of the road was increased upto 6 metres in different places. It is further contended as follows,



“the length of the road is 1 km. Eventhough, the width of the subject road is 4 metres as per the Asset Register, it varies upto 6 metres in different places. The Block Panchayat and District Panchayat had also spent fund for the maintenance of the said road.”

6. A reply affidavit is filed by the petitioner contending that the width of the road in front of the petitioner's house and nearby areas is 5 metres and that the said width is specifically shown in Ext.P2 plan issued to the petitioner by the Panchayat. It is submitted that the petitioner does not intend to encroach into the public road and his attempt is only to construct a compound wall to protect his property. Exts.P5 and P6 photographs are also produced to show that the petitioner is not attempting to make any construction on the public road.

7. A reply affidavit is also placed on record by the petitioner to the statement filed by the 2nd respondent, wherein, a copy of the Asset Register as also the building permit issued to the petitioner for the construction of the building are produced. It is contended that the statement of the 2nd respondent that existing road had a width of 5.8 metres in front of the petitioner's property is completely incorrect and that the Panchayat had



issued a building permit, taking note of the width of the road as 5 metres. It is contended that if the width of the road is more than 5 metres, there would be no space to provide a 3 metre set back to the residential building and that the permit granted would then be rendered illegal. It is submitted that after permitting the petitioner to construct the house and the compound wall taking note of the fact that the width of the road is 5 metres, the 2nd respondent cannot take such a contradictory stand. Ext.P11 reply given under the Right to Information Act by the Panchayat is also produced.

8. The learned counsel for the petitioner also relies on a decision of the Apex Court in **Kalyani (dead) through LRs. & Ors. v. The Sulthan Bathery Municipality & Ors.** [2022 Live Law (SC) 410] to contend that if the Panchayat/Municipality takes a stand that a land was voluntary surrendered, the burden would be on the said Panchayat/Municipality to establish such voluntary surrender.

9. I have considered the contentions advanced. Ext.P1 is a building permit issued to the petitioner by the 2nd respondent for construction of a compound wall. The width of the road is shown therein as 5 metres. Ext.P2 plan would also show the said



fact. Though the respondents contend that the road has been widened to 6 metres, there is absolutely no document of any nature produced either by the 2nd respondent or by the contesting party respondents to show that there has been a widening of the road to an extent of 6 metres.

10. It is apparent that the petitioner cannot construct any boundary wall encroaching on a public road. However, in the light of Exts.P1 and P2 permit and plan which stand unchallenged even as on today, I am of the opinion that the respondents cannot contend that the petitioner cannot construct a compound wall in accordance with the permissions granted to him. In case the contesting party respondents have any case that there is a voluntary surrender of any property by the petitioner or his predecessors-in-interest, it would be for them to produce the same before the appropriate authorities and seek orders interdicting the construction. However, in view of the fact that no such documents are produced before this Court, I am of the opinion that the said contention cannot be accepted.

11. The Apex Court in **Kalyani (dead) through LRs. & Ors. v. The Sulthan Bathery Municipality & Ors.** *supra* had held that even in a case where a road was constructed allegedly



on voluntary surrender without any acquisition proceedings or transfer of rights by sale, gift or otherwise, the claim of such voluntary surrender cannot be accepted by the Court. It was held as follows :-

“17. Sole question for consideration would be as to whether the appellants had voluntarily surrendered their land to the Panchayat free of cost without raising any claim for compensation or not. The Panchayat as also the PWD have failed to produce a single piece of document or evidence in any other form in support of their defense that the appellants have surrendered their land voluntarily. The consistent stand of the appellants, on the other hand, has been that they have not given their land to the Panchayat voluntarily and that they were assured that they would be suitably compensated. The PWD proceeded to construct the road upon the land made available by the Panchayat. No doubt, the road is in the ownership and possession of the Panchayat but the land over which the road was to be constructed or widened was neither in ownership nor possession of the Panchayat. The PWD did not care to take any further clarification from the Panchayat as to whether such land has been acquired, purchased or voluntarily given by the land owners. The PWD has only stated that it received the land from Panchayat and that it was informed that such land has been made available voluntarily without any claim for compensation and free of cost.”

In the above view of the matter, I am of the opinion that the petitioner is entitled to continue with the construction of



the compound wall as permitted in Exts.P1 and P2, however, without encroaching into the public road as it exists today. If the construction of the compound wall is being made as specifically permitted and without encroaching on to the public road, the respondents shall not obstruct such construction by the petitioner. In case of any such obstruction, the petitioner may inform the Station House Officer, who shall afford adequate protection for the construction of the compound wall, however, without encroaching into the public road as it presently situated. However, this will be without prejudice to the rights of the parties to produce evidence to substantiate their contention of voluntary surrender by the predecessors-in-interest of the petitioner before the Panchayat and seek the cancellation of the permit, if such a voluntary surrender is proved.

This writ petition is ordered accordingly.

**Sd/-
ANU SIVARAMAN
JUDGE**



APPENDIX OF WP(C) 18654/2022

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE SITE APPROVAL AND BUILDING PERMIT ISSUED BY THE 2ND RESPONDENT, DATED 26-4-2022
- Exhibit-P2 TRUE COPY OF THE PLAN TO CONSTRUCT A COMPOUND WALL APPROVED BY 2ND RESPONDENT, DATED 26-4-2022
- Exhibit-P3 TRUE COPY OF THE TITLE DEED OF THE PETITIONER'S PROPERTY SITUATED IN RE-SY NO. 436/1-4 IN KDANGOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, DATED 23-12-2021
- Exhibit-P4 TRUE COPY OF THE PETITION GIVEN TO THE SHO, KIDANGOOR POLICE STATION, SEEKING POLICE ASSISTANCE, DATED 30-4-2022
- Exhibit-P5 TRUE COPY OF THE PHOTOGRAPHS OF THE COMPOUND WALL, DATED 08-03-2022
- Exhibit-P6 TRUE COPY OF THE PHOTOGRAPHS OF THE RECONSTRUCTION SITE, DATED 13-03-2022
- Exhibit-P7 TRUE COPY OF THE ASSET REGISTER OF THE KIDANGOOR GRAMA PANCHAYATH ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT, DATED NIL
- Exhibit-P8 TRUE COPY OF THE DOCUMENTS, RELATING TO THE BUILDING PERMIT , ISSUED TO ME BY THE 2ND RESPONDENT AS PER THE RIGHT TO INFORMATION, DATED 14-12-2020
- Exhibit-P9 TRUE COPY OF THE DOCUMENTS, RELATING TO THE BUILDING NUMBER ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT AS PER THE RIGHT TO INFORMATION ACT, DATED 5-7-2021
- Exhibit-P10 TRUE COPY OF THE APPLICATION SUBMITTED UNDER THE RIGHT TO INFORMATION ACT, DATED 28-6-2022



Exhibit-P11 TRUE COPY OF THE ANSWER GIVEN TO THE PETITIONER
UNDER THE RIGHT TO INFORMATION ACT, DATED 15-7-
2022

RESPONDENTS' EXHIBITS

Exhibit R4(a) TRUE COPY OF THE REPRESENTATION DATED 16/05/2022
SUBMITTED BY LOCAL RESIDENTS TO 2ND RESPONDENT



HIGH COURT OF KERALA
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