

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 16TH DAY OF NOVEMBER 2021 / 25TH KARTHIKA, 1943

WP (C) NO. 20706 OF 2021

PETITIONERS:

1 THE BAR ASSOCIATION,

IDUKKI, NO.I-247/90 KUYILIMALA, PAINAVU P.O., IDUKKI-685 603 REPRESENTED BY ITS PRESIDENT, ADV.C.K.BABU, AGED 64 YEARS, S/O. C.I. KUMAR, CHITTADICHALIL HOUSE, CHERUTHONI, IDUKKI COLONY P.O., IDUKKI-685 602.

2 ADV.GEORGE THOMAS

AGED 58 YEARS

S/O THOMAS, SECRETARY, THE BAR ASSOCIATION, IDUKKI, NO.I-247/90

KUYILIMALA, PAINAVU P.O., IDUKKI-685603 RESIDING AT MOOKKILIKAT HOUSE,

THANKAMANI P.O., IDUKKI-685609

BY ADVS.

GEORGE MATHEW

M.D.SASIKUMARAN

MATHEW K.T.

SUNIL KUMAR A.G

GEORGE K.V.

PRAVEEN S.

DIPU JAMES

STEPHY K REGI

RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

- 2 THE PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA
HOME (C) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 THE SECRETARY TO GOVERNMENT OF KERALA
LAW DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 4 THE SECRETARY TO GOVERNMENT OF KERALA
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 5 THE HIGH COURT OF KERALA,
REPRESENTED BY ITS REGISTRAR GENERAL, RAM MOHAN PALACE,
ERNAKULAM, KOCHI-682 031.
- 6 THE DIRECTOR OF PANCHAYATHS
PANCHAYATH DIRECTORATE, PUBLIC OFFICE BUILDING, VIKAS
BHAVAN, THIRUVANANTHAPURAM-695033.
- 7 THE DISTRICT COLLECTOR
IDUKKI CIVIL STATION, PAINAVU P.O., KUYILIMALA, IDUKKI
DISTRICT-685 603.
- 8 THE DISTRICT PANCHAYATH
IDUKKI, REPRESENTED BY SECRETARY, PAINAVU P.O.,
KUYILIMALA, IDUKKI DISTRICT-685 603.
- 9 THE SECRETARY, DISTRICT PANCHAYATH, KUYILIMALA, PAINAVU
P.O., KUYILIMALA, IDUKKI DISTRICT-685 603.

BY ADV JOICE GEORGE

SRI.B.G.HARINDRANATH FOR R5, SMT.DEEPAA NARAYANAN, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.11.2021, THE COURT ON 16.11.2021 DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

W.P.(C.) No.20706 of 2021

Dated this the 16th day of November, 2021

JUDGMENT

The Hon'ble Chief Justice of India in a recent speech observed like this :

"Good Judicial infrastructure for courts in India has always been an afterthought. It is because of this mindset that courts in India still operate from dilapidated structures, making it difficult to effectively perform their function. Judicial infrastructure is important for improving access to justice and to meet the growing demands of the public that is more aware of its rights and is developing economically, socially and culturally. It is baffling to note that the improvement and maintenance of judicial infrastructure are still being carried out in an ad-hoc and unplanned manner."

2. The issue involved in this case is the construction of a court complex for functioning the trial courts in the Idukki District. The trial courts are the backbone of the Indian Judiciary. They are the decision makers in a **lis**. The appellate courts are only judging their decisions. If there is no proper infrastructure and proper atmosphere for the decision makers in the trial courts, that will be a threat to the justice delivery system itself. The present case is one such case, which will show the sorry state of affairs as far as

the infrastructure of a court and the attempt to solve the issue is sabotaged because of red tape rules.

3. It is informed that 3 designated courts are functioning in District Headquarters at Idukki, namely, The Special Court under the POCSO Act, Idukki, Judicial First Class Magistrate Court, Idukki, and the Munsiff Court, Idukki. It is also informed that the Judicial First Class Magistrate Court, Idukki, and the Munsiff Court, Idukki were amalgamated and is functioning as Munsiff Magistrate Court. Attached to these courts, there are offices of Prosecutors and Government Pleaders. The courts and the attached offices are functioning now under the limited facility provided in the civil station at Kuyilimala in Idukki. It is the long standing dream of the lawyers, advocate clerks, and other litigant public to get a court complex for functioning the courts and its offices. This issue was mooted about 2 and a half decades back. On 15.1.1997, President, Bar Association, Idukki submitted a request in this regard to the Idukki Development Authority (for short 'IDA').

4. Idukki Development Authority was constituted on 21.10.1976. The Request of the Idukki bar association was entertained by IDA and the General Council meeting of the Idukki Development Authority vide resolution No.4 dated 22.2.1997

decided to earmark two acres of land for a judicial complex. Ext.P1 is the letter issued by the Secretary, IDA to the President, Bar Association on 18.3.1997. Subsequently, as per order dated 09.03.1998, the Secretary, IDA issued an order by which IDA was pleased to accord advance possession of two acres of land to the Registrar, High Court of Kerala for the construction of judicial complex with certain conditions. Ext.P2 is the order and in Ext.P2, it is also stated that the Registrar, High Court of Kerala may enter upon the said land, in the said location and start construction work. The Tahsildar, Thodupuzha handed over 322.974 hectares of Puramboke land to Idukki Development Authority on 16.9.1998 for implementing the Idukki Township Area Development Scheme sanctioned by the Government. As per Ext.P3 proceedings, IDA passed a detailed order in which it is stated that the land allotted for the judicial complex is 2 acres of land at Kuyilimala adjacent to the land allotted to Model Polytechnic on the northern side of Idukki-Thodupuzha road. In Ext.P3, it is specifically stated that the final allotment/handing over of the land will be subject to the approval of the Government. Thereafter, the Registrar (Subordinate Judiciary) addressed a letter to the Addl. Chief Secretary to Government, Home Department as evident by Ext.P4. In Ext.P4, the Registrar (Subordinate Judiciary) of High Court of

Kerala requested the Addl. Chief Secretary to Government, Home Department to take steps to transfer possession of two acres of land in Survey No. 161/1 at Kuyilimala of Idukki Village to the Judicial Department or for permissive sanction to utilize the said land for the construction of court complex at Idukki, at the earliest. In the meanwhile, the IDA was abolished on 30.3.2007. In such circumstances, Ext.P5 was sent by the Registrar (Subordinate Judiciary) to the Addl. Chief Secretary, Home Department, Thiruvananthapuram.

5. Based on Ext.P5 request of the High Court of Kerala, the Government after getting a report from other authorities issued Ext.P6 Government Order on 24.8.2019. Ext.P6 is an order passed by the Secretary, Local Self Government Department. In Ext.P6 it is clearly stated that the ownership of the land will be retained with the District Panchayat and permission was granted for using the land for the purpose of constructing a judicial complex. Ext.P7 is a proceeding of the District Panchayat. In Ext.P7 it is stated that in the light of Ext.P6 Government Order, two acres of land is given for the construction of judicial complex retaining the ownership with the District Panchayat. Based on Exts.P6 and P7, further steps were taken to construct the judicial complex. Thereafter, Ext.P8 order was passed by the Secretary, Local Self Government

Institutions on 30.06.2021, in which it is stated that Ext.P6 order is cancelled. It is also stated that to hand over the necessary land for constructing the judicial complex, a fresh proposal is to be submitted by the Panchayat Director to the Government. It seems that Ext.P8 was modified as per GO(K) No.150/2021 LSGD dated 24.07.2021, in which it is only stated that the fresh proposal is to be submitted by the Secretary, District Panchayat instead of Panchayat Director. Aggrieved by these, this writ petition is filed.

6. Heard the learned counsel for the petitioner and the learned Government Pleader. I also heard the learned counsel appearing for the 5th respondent and the learned Standing Counsel for respondents 8 and 9.

7. The learned counsel for the petitioner reiterated his contentions in the writ petition and submitted that Ext.P8 and the modified order of Ext.P8 are unsustainable and it will only further delay the construction of the judicial complex, which is the longstanding demand of the bar association of Idukki. The counsel submitted that there is no justification for passing an order like Ext.P8 by the Government even without hearing the petitioner or the 5th respondent- High Court. Ext.P8 is not a speaking order and the reason why Ext.P6 was cancelled is also not clear from Ext.P8. The learned counsel submitted that Ext.P8 may be quashed and

there may be a direction to the authority concerned to initiate appropriate steps to construct a judicial complex at Idukki, forthwith.

8. On the other hand, the learned Government Pleader submitted that Ext.P8 order is perfectly correct. The Government Pleader takes me through an order passed by the Government on 02.04.2019, in which it is stated that the revenue is entrusted with the power to transact Government land. As per the Rules of Business, if any department had taken over any land and the same is not necessary for that department, it is to be returned to the revenue department and the revenue department is the authority to allot the same to any other departments. The sum and substance of the arguments of the learned Government Pleader is that as per the Government Order dated 02.04.2019, the revenue department is the ultimate authority to assign or allocate a government land to any other department, and the Secretary, Local Self Government Institutions has no such authority and that is why Ext.P6 order was set aside. The Government Pleader also argued that, after the constitution of IDA, 322.974 hectores of purambokku land was handed over to IDA only on 10.09.1998. Even before that day, IDA issued Exts.P1 and P2 which, according to the Government Pleader, is unsustainable because as on that date, IDA was not in

possession of the land mentioned in those orders. The Government Pleader submitted that the Government has no objection in allocating land for the construction of a judicial complex at Idukki. But it can be done only in accordance to law and after following the procedural formalities. That is the reason behind Ext.P8 order is the submission. The Government Pleader also submitted that the Government will do the needful to see that the properties are handed over for the construction of the judicial complex after following the procedures.

9. On the other hand, the learned Standing counsel who appeared for the 5th respondent submitted that the Rules of Business of Government of Kerala was framed by the Governor under Article 166(3) of the Constitution of India and the 5th respondent acted only in accordance to the same. The counsel submitted that as per the Rules of Business of the Government of Kerala, the business of the Government is to be transacted by the Department specified in the 1st schedule. The counsel takes me through Chapter XV which deals with Home Department. Clause (C) of Chapter XV deals with the administration of justice. Sub-clause (1) of Clause (C) says that the Home Department is in charge of all matters relating to the administration of justice – civil and criminal constitution and organisation of courts (except High

Court) offices, and servants of the High Court. The counsel also submitted that the property where the proposed construction is situated belongs to the District Panchayat. The counsel also submitted that, as per Rule 6 of the Kerala Panchayat Raj(acquisition and disposal of property) Rules, 2005, the prior permission of the Government is required only when there is a transfer of its property by the Panchayat through a sale. According to the counsel, in the instant case, the title is retained by the Panchayat and hence no sanction from the Government is necessary. Moreover, the counsel submitted that the 5th respondent already addressed the Home department as evident by Exts.P4 and P5. According to the counsel, the further delay on technical ground may be ruled out by this Court and there may be a direction to the Government to expedite the proceedings for starting the construction of court complex immediately because the grievance raised by the petitioner is genuine.

10. I considered the contentions raised by the counsel for the petitioner and the respondents. As I observed earlier, the proposal to construct a court complex at Idukki was initiated in 1997. Now we are in 2021. Almost 24 years over. The Government may be right in saying that the orders so far passed are not in accordance to law or not as per the Government orders in vogue. But,

whatever that may be, it is the duty of the government to rectify the illegalities or any procedure irregularities committed by the departments of the Government itself. Moreover, this court can't endorse the stand of the government to cancel Exhibit P6 order dated 28.08.2019 on 30.06.2021 as per Exhibit P8 even without hearing the stakeholders, especially the 5th respondent. Now the Government Pleader relies on a Government order dated 02.04.2019 in which it is stated that the Revenue Department is the authority to allot land. I am surprised to see that the officials of the government came to know about their own mistake only after 2 years of Ext.P6 order. It will be better to extract the government order itself based on which Exhibit P8 order was passed.

കേരളസർക്കാർ

നഷ്ടശുദ്ധ

റവന്യൂ സർക്കാർ (ഭൂമിയുമായി ബന്ധപ്പെട്ട ഉത്തരവുകൾ പുറപ്പെടുവിക്കുന്നത് - മർഗ്ഗനിർദ്ദേശ നൽകി - ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു

റവന്യൂ (എസ്) വകുപ്പ്

സഉ(ഒക്ക) നം 116/019/റവ

തിരുവനന്തപുരം തീയതി 02/04/2019

പരാമർശ: - 1) സർക്കാർ നം 23479/യ്യ/11/റവ തീയതി 03/06/2010

2) സഉ(എസ് എസ്) 387/2000/റവ തീയതി 22/12/2000

കേരള സർക്കാരിന്റെ റൂട്ടിംഗ് ഓഫ്ഫീസിനനുസൃതമായി നഷ്ടശുദ്ധ റവന്യൂ സർക്കാർ വക (ഭൂമിയുടെ ഉടമസ്ഥതകൾ) ഭൂമി പട്ടണത്തിന് കൈമാറ്റം പരിചയപ്പെടുത്തിയ ശ്രമങ്ങൾ ഭൂമി പുറപ്പെടുവിക്കുന്നു

തൃക്കൂർ കർമ്മശാലയിൽ റവന്യൂ വകുപ്പിൽ നിക്ഷേപിച്ചിട്ടുള്ള എണ്ണയിൽ നിന്നുള്ള ചട്ടങ്ങൾ
ശാസിക്കാതെ റവന്യൂ വകുപ്പിന്റെ അതിവേഗ സമ്മതത്തോടെ കൂടാതെ സർക്കാർ ഭൂമി സമ്പന്നമായിട്ട്
വകുപ്പുകൾ ഉത്തരവുകൾ പുറപ്പെടുവിക്കുന്നത് റവന്യൂ വകുപ്പിന്റെ ശ്രദ്ധയിൽപ്പെട്ടിട്ടില്ലാത്ത തുടർന്ന്
സർക്കാർ ഭൂമി സമ്പന്നമായിട്ട് ഭൂമി ഏറ് വകുപ്പിന്റേതായാലും ഉത്തരവുകൾ പുറപ്പെടുവിക്കാൻ
നിലവിലുള്ള ചട്ടങ്ങൾ അനുസരിച്ച് റവന്യൂ വകുപ്പിനു മുമ്പേ അധികാരമുള്ളതാണെന്നും അതല്ലാതെ
വകുപ്പുകൾ പുറപ്പെടുവിക്കുന്ന ഉത്തരവുകൾ പലിക്കപ്പെടുന്നതിനുള്ളതാണെന്നും ജില്ലാ കലക്ടർമാർക്ക്
മറ്റ് റവന്യൂ ഉദ്യോഗസ്ഥർക്ക് നിർദ്ദേശ നൽകുകയും ബന്ധപ്പെട്ടിടയിലെ ഏല്പിച്ച വകുപ്പുകളും
ഇക്കാര്യം ശ്രദ്ധിക്കേണ്ടതും ചട്ടങ്ങൾക്ക് വിരുദ്ധമായി ഉത്തരവ് പുറപ്പെടുവിക്കുന്ന
ഉദ്യോഗസ്ഥർക്കെതിരെ യുക്തമായ നടപടി അതതു വകുപ്പുകൾ സ്വീകരിക്കേണ്ടതാണ് എന്ന്
പരമേശ്വരൻ (1) ലെ സർക്കാർ പ്രകാരം നിഷ്കർഷിക്കുകയും ചെയ്തിരുന്നു

2) കൂടാതെ ഒരു വകുപ്പിന്റെ പ്രത്യേക ആവശ്യത്തിനായി ഏറ്റെടുത്ത ഭൂമി ഏറ്
ആവശ്യത്തിനാണോ ഏറ്റെടുത്ത് അതിനോ വകുപ്പിലെ മറ്റാവശ്യങ്ങൾക്കോ ഭേദമായി
അയത്ത് റവന്യൂ വകുപ്പിന് കൈമാറുന്നതിന് നടപടി സ്വീകരിക്കാൻ ഏല്പിച്ച വകുപ്പുകൾക്ക്
പരമേശ്വരൻ (2) ഉത്തരവിൻ പ്രകാരം നിർദ്ദേശ നൽകിയിരുന്നു

3) എണ്ണയിൽ നിന്നുള്ള മിക്കവാറും ചില വകുപ്പുകളുടെ കൈവശമുള്ള ഭൂമി
നടപടിക്രമങ്ങളാണെന്നും പലിക്കാതെ റവന്യൂ വകുപ്പിന്റെ അഭിപ്രായം തേടാതെയും ഉത്തരവുകൾ
പുറപ്പെടുവിക്കുന്നതിൽ ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ട് ഇത്തരം നടപടികൾ റവന്യൂ വകുപ്പിന്റെ
ഉദ്യോഗസ്ഥർക്കു തന്നെ അപേക്ഷിച്ച് തന്നെ ഇത്തരം നടപടികൾ
ഒഴിവാക്കേണ്ടതാണ്

4) മേൽ സഹപ്രവർത്തിൽ സർക്കാർ ഭൂമി അത് ഏറ് വകുപ്പിന്റേതായാലും അതിന്റെ
ഉടമസ്ഥാവകാശം സർക്കാർ ആവശ്യത്തിനോടോ ഭൂമി ഏറ്റെടുക്കുന്നതിന് കൈമാറുന്നതിന്
പട്ടാണിന് നൽകുന്നതിന് പരിചയ നൽകുന്നതിന് എന്തിനുള്ള അധികാരം റവന്യൂ വകുപ്പിൽ
മത്രം നിക്ഷേപിച്ചിട്ടുണ്ടെന്നും വ്യക്തമാക്കിക്കൊണ്ട് ഉത്തരവ് പുറപ്പെടുവിക്കണമെന്നും

5) മേൽനിർദ്ദേശങ്ങൾക്ക് വിരുദ്ധമായി ഉത്തരവ് പുറപ്പെടുവിക്കുന്ന ഉദ്യോഗസ്ഥർക്കെതിരെ
യുക്തമായ നടപടി അതതു വകുപ്പിന്റേതാണെന്നും സ്വീകരിക്കേണ്ടതാണ്

ഗവർണ്ണറുടെ ഉത്തരവിൻ പ്രകാരം
കോ.ജെ.സ്
ചീഫ് സെക്രട്ടറി

11. In the above Government order, what is stated is that the Revenue Department is the authority to allocate land and if any land is given to a particular department and the land is not needed to that department, the same is to be returned to the Revenue Department and the Revenue department has to decide to whom

this land is to be allocated. After hearing the Government Pleader in detail, I understood that the Government has no objection in allotting the same land which is already handed over as per Ext.P6 order for the construction of court complex. If that is the case, the 1st respondent can look into this matter and can supervise the entire formalities to be followed between the departments. The Standing counsel for the 5th respondent submitted that the 5th respondent can only approach the Home department and the proposal is already pending before the Home department as evident from Exhibit P4 and P5. The Government Pleader submitted that the Revenue department has to allocate the land. If that is the case, the 1st respondent can issue the necessary direction to the Revenue department to do the needful to see that the land referred in Ext.P6 itself is allotted for the construction of the court complex at Idukki within a time frame. Therefore, according to me, necessary orders allotting the land for the construction of Idukki court complex can be issued by the Government in accordance to law and there can be a time limit also for doing the same. Once the land is allotted, the competent authority among the respondents will do the needful to see that the construction of court complex is completed immediately. Idukki is one of the important district in our State. The counsel for the

petitioners and the Standing counsel for the 5th respondent narrated the sorry state of affairs now faced by the lawyers, judicial officers, advocate clerks, and litigants because of the lack of infrastructure in the present building where the courts are functioning. As I observed earlier, without proper judicial infrastructure and a proper atmosphere to administer justice, the judiciary can not function. I am sure that the Government will cooperate with the 5th respondent and will see that the dream of the Idukki people to get a new court complex is fulfilled soon. In the light of the fact that Ext.P6 is already canceled as per Ext.P8, I think there can be a direction to the competent authority among the 1st respondent to pass consequential order immediately within a time limit to allocate the same land referred in Ext.P6 for the court complex construction.

Therefore, this writ petition is disposed of in the following manner:

(i) The Chief Secretary to the State of Kerala will do the needful, after coordinating all the departments including Revenue, Home and local self government institutions, to see that order in accordance to law is passed allocating the same land referred in Ext.P6 for the construction of court complex at Idukki within six weeks from the date of receipt of a copy of this judgment.

(ii) Once the land is allotted, the competent authority among the respondents will take immediate necessary steps to see that the dream of the litigant public including the lawyers, advocate clerks etc are fulfilled and a new court complex is constructed at least within one year from the date on which the land is allotted. All the authorities among the respondents will take earnest efforts to move all files quickly to start the construction work immediately and to fulfill the aim to complete the construction itself within the period mentioned above.

**P.V.KUNHIKRISHNAN
JUDGE**

APPENDIX OF WP(C) 20706/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF LETTER NO.272/97/IDA/T DATED 18.3.1997 OF IDA TO IST PETITIONER.
- EXHIBIT P2 TRUE COPY OF PROCEEDING NO.T272/97/IDA DATED 9.3.1998 ISSUED BY SECRETARY IDA.
- EXHIBIT P3 TRUE COPY OF PROCEEDING NO.T272/97/IDA DATED 2.7.2005 ISSUED BY SECRETARY IDA.
- EXHIBIT P4 TRUE COPY OF LETTER NO.D9(A)-55763/2011 DATED 11.2.2016 OF 5TH RESPONDENT TO 2ND RESPONDENT.
- EXHIBIT P5 TRUE COPY OF LETTER NO.D9(A)-55763/2011/D9A(2) DATED 20.6.2017 OF 5TH RESPONDENT TO 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF G.O.(ORD.) NO.1821/2019/LSGD DATED 24.8.2019 OF 4TH RESPONDENT.
- EXHIBIT P7 TRUE COPY OF PROCEEDINGS NO.T-272/97/IDA DATED 2.9.2019 OF 9TH RESPONDENT.
- EXHIBIT P8 TRUE COPY OF G.O.(MS) NO.1236/2021/LSGD DATED 30.6.2021 OF 4TH RESPONDENT.

RESPONDENTS EXTS NIL

/TRUE COPY/

P.A.TO JUDGE

DM