

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

FRIDAY, THE 29TH JULY 2011 / 7TH SRAVANA 1933

WP(C).No. 20534 of 2011(N)

PETITIONER:

M. GOVINDAN, S/O. KELAN,
THONDILERI HOUSE,
MANANTHERI P.O. - 670 643,
(VIA) KOOTHUPARAMBA, KANNUR DISTRICT.

BY ADV. SRI.ALAN PAPALI
SRI.GILBERT GEORGE CORREYA
SRI.NISHIL.P.S.
SRI.J.VIMAL

RESPONDENTS:

1. THE ADDITIONAL DISTRICT MAGISTRATE,
KANNUR-670 001.
2. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM-695 004.
3. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION,
KOOTHUPARAMBA-570 642,
KANNUR DISTRICT.
4. SMT. KAMALA, PADASSERY HOUSE,
MANANTHERI P.O.-670 643,
KOOTHUPARAMBA, KANNUR DISTRICT.
5. SRI.C.PRAKASAN, THONKISSERY VEEDU,
MANANTHERI P.O.-670 643,
KOOTHUPARAMBA, KANNUR DISTRICT.

BY SR.GOV'T. PLEADER SRI.S.ABDUL SALAM
ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B FOR R2 & 3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29/07/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : COPY OF THE PLAINT IN O.S. NO.201/2010 BEFORE THE MUNSIFF'S COURT, KOOTHUPARAMBA
- EXT.P2 : COPY OF THE INTERIM APPLICATION AND THE INTERIM ORDER THEREIN IN I.A. NO.1685/2010 DATED 27.7.2010
- EXT.P3 : COPY OF THE NOTICE NO.A6-2010/12713/13 DATED NIL 05/2011
- EXT.P4 : COPY OF THE OBJECTION FILED BY THE PETITIONER ON 18.5.2011 BEFORE THE 1ST RESPONDENT
- EXT.P5 : COPY OF THE ORDER NO.A6-2010/12713/13 DATED 10.6.2011 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 164 OF THE INDIAN ELECTRICITY ACT, 2010
- EXT.P6 : COPY OF THE SKETCH SHOWING THE LIE OF THE LAND OF THE PETITIONER

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.A. TO JUDGE

vps

P.N.RAVINDRAN, J.

W.P.(C) No. 20534 OF 2011

Dated this the 29th day of July, 2011

J U D G M E N T

Ext.P5 order passed by the Additional District Magistrate, Kannur on 10.6.2011 whereby the Additional District Magistrate permitted the third respondent to draw electricity line along a pathway for the purpose of giving electricity connection to the residence of the fourth respondent, is under challenge in this writ petition.

2. The fourth respondent applied for electricity connection in the year 2009. The pathway to the fourth respondent's property runs along the northern side of the property belonging to the petitioner. Alleging that without his consent, the officials of the Kerala State Electricity Board (hereinafter referred to as 'the Board' for short) erected two posts in his lands on 24.11.2009 for the purpose of drawing electricity line to the residence of the fourth respondent, the petitioner has instituted O.S. No.201 of 2010 in the court of the Munsiff of Koothuparamba for a mandatory injunction directing the Board and its officers to remove the electricity posts and the line drawn across his property. He has also sought

recovery of the sum of Rs.1,500/- as damages. In that suit an interim order of injunction was passed on 27.7.2010 restraining the respondents from energizing the line. The said order is still in force.

3. In paragraph 3 of the plaint in O.S. No.201 of 2010, a copy of which is produced as Ext.P1, the petitioner has categorically stated that a pathway 1^{1/2} feet wide runs along the northern boundary of the petitioner's land and that except the right to use the pathway the fourth respondent has no right over his property. In view of the interim order of injunction passed by the civil court, the Assistant Executive Engineer moved the Additional District Magistrate for permission to draw the line along the alternate route namely the pathway. By the order impugned, the said permission was granted. The main ground of challenge to Ext.P5 is that before it was passed, a copy of the application submitted by the third respondent for permission was not furnished to him. It is contended that the report of the Tahsildar referred to in the order was also not furnished. It is also contended that the line can be drawn from the residence of the 5th respondent, who is a near relation of the fourth respondent and that the line is proposed to be drawn along the pathway for the purpose of defeating the suit instituted by the petitioner.

4. It is evident from a reading of Ext.P1 plaint that a pathway runs along the northern boundary of the land belonging to the petitioner. The proposal mooted by the Board is to draw the line along that pathway. The petitioner has in paragraph 3 of the plaint conceded the fact that the fourth respondent has the right to use the said pathway. The petitioner has no case that apart from the said pathway there is any other access to the fourth respondent's property. In such circumstances as the line is to be drawn along a pathway the existence of which is not disputed, the petitioner cannot have any real grievance. The suit instituted by him does not arise out of Ext.P5 or relate to the pathway. The suit was instituted when steps were taken by the Board to draw electricity line across the petitioner's land. I am therefore of the opinion that Ext.P5 order will not prejudice the right of the petitioner to prosecute the suit.

I therefore find no grounds to entertain the writ petition. The writ petition fails and is accordingly dismissed subject to the above observation.

**P.N.RAVINDRAN,
(JUDGE)**

vps

