

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 31ST DAY OF JANUARY 2013/11TH MAGHA 1934

OP(Crl.).No. 1321 of 2012 (Q)

**[M.C. NO.105/2008 IN THE COURT OF THE SUB DIVISIONAL MAGISTRATE,
ALAPPUZHA]**
.....

PETITIONER:

**SASIKALA, MANKUZHLY VELIYIL, WARD NO.8,
MUHAMMA PANCHAYATH,
THANNEERMUKKOM SOUTH VILLAGE,
ALAPPUZHA-688 525.**

BY ADV. SRI.C.A.RAJEEV.

RESPONDENTS:

- 1. THE REVENUE DIVISIONAL OFFICER,
(SUB DIVISIONAL KMAGISTRATE)
OFFICE OF THE REVENUE DIVISIONAL OFFICER,
ALAPPUZHA-688 001.**
- 2. THE TAHASILDAR,
TALUK OFFICE, CHERTHALA, ALAPPUZHA.**
- 3. CHIDAMBARAN,
ANEESH COTTAGE, MUHAMMA.P.O.,
THANNEERMUKKOM SOUTH VILLAGE,
ALAPPUZHA-688 525.**

R1 & R2 BY GOVERNMENT PLEADER SRI. T. RAMAPRASAD UNNI.

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 31-01-2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Prv.

O.P.(CRL.). NO.1321/2012-Q:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: TRUE COPY OF THE PETITION DATED 24-7-07 OF THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXT.P2: TRUE COPY OF THE REPORT DATED 8-8-07 OF THE VILLAGE OFFICE, THANNEERMUKKOM SOUTH VILLAGE.**
- EXT.P3: TRUE COPY OF THE CONDITIONAL ORDER DATED 9-5-08 OF THE 1ST RESPONDENT.**
- EXT.P4: TRUE COPY OF THE JUDGMENT DATED 14-2-11 OF THE HON'BLE HIGH COURT IN OP(CRL) 572/11.**
- EXT.P5: TRUE COPY OF THE ORDER DATED 30-8-10 OF THE 1ST RESPONDENT.**
- EXT.P6: TRUE COPY OF THE COMMUNICATION DATED 18-5-11 OF THE 1ST RESPONDENT TO 2ND RESPONDENT.**
- EXT.P7: TRUE COPY OF THE REPLY DATED 9-1-12 FROM THE 1ST RESPONDENT TO THE PETITIONER.**
- EXT.P8: TRUE COPY OF COMMUNICATION DTD. 15/05/12 OF THE R.1. TO THE R.3.**

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE

Prv.

T.R.RAMACHANDRAN NAIR, J.

O.P.(Crl.) No. 1321 of 2012

DATED THIS THE 31st DAY OF JANUARY, 2013

JUDGMENT

The main prayer is for a direction to the respondents to implement Ext.P5 order forthwith.

2. The petitioner is having 13 ares of property in Sy. No.102/3 of Thanneermukkom Village and the third respondent is a resident on the north of the petitioner's property. There is a boundary wall on the northern boundary of the property separating her property from the property of the third respondent. Certain trees which are situated close to the said boundary wall are in a dangerous condition and the pressure from the roots of the trees resulted in developing large cracks on the boundary wall. The petitioner filed a petition under Section 133(d) of the Code of Criminal Procedure before the first respondent for a direction to the third respondent to cut and remove the trees (Ext.P1). Ext.P2 is the copy of the report of the Village Officer.

3. Even though the third respondent appeared, he did not contest the case and a conditional order was passed by the first respondent as per Ext.P3 to cut and remove the trees standing along the southern boundary of

the property of the third respondent which endanger the life and property of the petitioner and her family, within ten days or to appear before the first respondent on or before 30.5.2008 and show cause. Even thereafter he did not appear or showed cause and did not comply with the order. As no final order is passed, the petitioner approached this Court by filing O.P. (Crl.) No.572/2011 which was disposed of by Ext.P4 judgment directing the first respondent to expedite the passing of the final order. Ext.P5 is the final order passed under Section 136 Cr.P.C. whereby Ext.P3 conditional order has been made absolute. A direction was also given to the third respondent to cut and remove the trees endangering the life and property of the petitioner and her family, within 15 days of receipt of the order. The same has also been refused to be complied with by the third respondent. Again the petitioner approached the first respondent in the matter, whereby the first respondent directed the second respondent to implement Ext.P5 with the assistance of Police, as per Ext.P6 communication. This also has not been complied with. When the petitioner approached the Chief Minister's "Sutharya Keralam" programme, a reply was given as per Ext.P7 stating that the expenses to the tune of Rs.15,000/- is required. The Tahsildar has sought for release of the amount and a direction has been issued to cut and

remove the trees and to sell the same in public auction.

4. Heard learned Public Prosecutor. There is no appearance for the third respondent.

5. Learned counsel for the petitioner submits that the petitioner is prepared to remit the amount of Rs.15,000/- which is required for the cutting and removal of trees and the same may be liable to be reimbursed after the proceeds are obtained from the auction of trees. Learned Public Prosecutor also submits that the third respondent has not complied with the order and the delay has occurred since the cutting down of the trees will require so much expenses.

6. There cannot be any doubt that the order requires implementation. Necessary Police help also will be provided.

7. Accordingly, the original petition is allowed. The petitioner will deposit the required amount of Rs.15,000/- with the Tahsildar, the second respondent herein, and on deposit of the amount further action will be taken for implementation of the order Ext.P5. Necessary Police help also will be availed. After implementation of the same, the expenses met by the petitioner will be reimbursed from the amount obtained by conducting auction of the trees. Appropriate steps will be finalised within a period of

one month from the date of production of a certified copy of this judgment.

No costs.

(T.R.RAMACHANDRAN NAIR, JUDGE)

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