

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 31ST DAY OF JULY 2013/9TH SRAVANA, 1935

WP(C).No. 29863 of 2012 (G)

PETITIONER:

**V.V .JAYARAM,
S/O. N.VIDYANANDAN, AGED 38 YEARS,
RESIDING AT 'JAYALEKSHMI NIVAS'
GREENPARK, ANAYARA P.O., THIRUVANANTHAPURAM,
PIN-695 029.**

BY ADV. SRI.B.JAYASURYA.

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT COLLETOR,
CIVIL STATION, KUDAPPANAKUNNU, THIRUVANANTHAPURAM,
PIN- 695 043.**
- 3. THE REVENUE DIVISIONAL OFFICER,
THIRUVANANTHAPURAM, PIN - 695 043.**
- 4. THE SECRETARY,
THIRUVANANTHAPURAM CORPORATION,
THIRUVANANTHAPURAM, PIN - 695 043.**
- 5. PREETHAKUMAR,
T.C. 92/C/3378, GREENPARK LANE, ANAYARA P.O,
THIRUVANANTHAPURAM, PIN-695 029.**

**R1 TO R3 BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA,
R4 BY SRI.N.NANDAKUMARA MENON, SENIOR ADVOCATE,
ADV. SRI.P.K.MANOJKUMAR,
R5 BY ADV. SRI.SREEKANTH S.NAIR.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-07-2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Prv.

W.P.(C).NO.29863/2012-G:

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1- TRUE PHOTOGRAPH SHOWING THE OPENING OF WASTE WATER PIPELINE FROM THE RESIDENCE OF THE 5TH RESPONDENT TOWARDS THE PATHWAY.
- EXHIBIT P2- TRUE PHOTOGRAPH SHOWING THE WASTE WATER ACCUMULATING INFRONT OF PETITIONER'S RESIDENCE.
- EXHIBIT P3- TRUE COPY OF THE NEWS ITEM PUBLISHED IN KERALA KOUMUDI DAILY DATED 3-11-2012.
- EXHIBIT P4- TRUE COPY OF THE COMPLAINT DATED 22-08-2012 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.
- EXHIBIT P5- TRUE COPY OF THE COMPLAINT DATED 31-10-2012 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P6- TRUE COPY OF THE REPORT DATED 31-10-2012 SUBMITTED BY THE VILLAGE OFFICER, KADAKAMPALLY TO THE 3RD RESPONDENT.
- EXHIBIT P7- TRUE COPY OF THE PETITION MADE BY THE PETITIONER IN EXHIBIT P-5 BEFORE THE 3RD RESPONDENT ON 26-11-2012.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE.

Prv.

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 29863 of 2012

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Dated, this the 31th day of July, 2013

JUDGMENT

The grievance of the petitioner is with regard to the nuisance created at the instance of the 5th respondent, because of the waste water from the septic tank of the 5th respondent, flowing along the road, getting accumulated in front of the residence of the petitioner, causing much pollution and such other hardships.

2. It is the case of the petitioner that, several proceedings came to be filed so as to get the nuisance abated and despite the interventions made by various authorities, including the Ombudsman for Local Self Government, the 5th respondent has paid only scant regards to the same and the position continues as such, which is sought to be interfered by this Court by way of this writ petition.

3. A statement has been filed on behalf of the 3rd respondent., paragraph 2 of which reads as follows :

"It is submitted that the petitioner has filed petition stating that the neighbor of the petitioner the 5th respondent herein has laid a waste water pipeline which is opened towards the public pathway. The water water from the residence of the 5th respondent is collecting in

front of the residence of the petitioner. Though, the petitioner made some effort to sort out the matter in person, the 5th respondent does not yield to shift the waste water pipeline. The petitioner further stated that he also lodged a complaint before the Honourable Ombudsman for Local Self Government Institutions, Thiruvananthapuram and the authorities of Corporation of Thiruvananthapuram. The Health Inspector of the Corporation of Thiruvananthapuram has visited the site and after ascertaining the issue served a notice to the 5th respondent to remove the pipeline from there. But the 5th respondent did not take steps to remove the pipeline as per the directions issued by the authorities of the Corporation of Thiruvananthapuram.

It is further stated in paragraph 4, that the Secretary of the Corporation was directed to find out reasonable solution and to shift the waste pipeline. It is also stated that the Secretary was directed to implement the order, realizing the cost from the concerned person, if there was any disobedience.

4. The 4th respondent has also filed a counter affidavit, referring to the sequence of events and the steps taken by the Corporation to cause the nuisance abated. Paragraphs 6 and 7 of the said counter affidavit are relevant, which read as follows :

"6. It is submitted that the allegation that the septic

tank of the 5th respondent is over flowing is, found to be factually incorrect. I submit that on the basis of the complaint submitted by the Petitioner a notice dated 28.02.2012 was submitted to the 5th respondent to abate the nuisance and since he did not comply with the direction another notice dated 20.11.2012 (No. ZKH/2352/12) was issued to the 5th respondent on the basis of the report of the Health Inspector dated 03.11.2012 for compounding the offences. On receipt of the said notice, the 5th respondent filed a PVC pipe by removing the old pipe which was being used for releasing the dirty water to the road. It is submitted that an order has been passed authorizing the Health Inspector to take appropriate legal steps for prosecuting the 5th respondent for violating directions issued by the corporation.

7. Later the Hon'ble Ombudsman has passed an order dated 01.01.2013 in O.P. No. 1697/2012 filed by the petitioner before the Tribunal for Local Self Government Institutions directing the Corporation to issue one more notice to the 5th respondent and to inspect the disputed property and to find out a solution to abate the nuisance. It is further ordered by the Hon'ble Ombudsman a notice was issued to the 5th respondent fixing the time and date for inspection of the disputed property and to find out a solution to abate the nuisance. It is further ordered by the

Hon'ble Ombudsman that the expenses incurred by the Corporation for the same shall be recovered from the 5th respondent. Hence in the light to the order of the Hon'ble Ombudsman a notice was issued to the 5th respondent fixing the time and date for inspection of the disputed property. Accordingly the Health Inspector again inspected the property and had held conciliation talks with the petitioner and the 5th respondent. It is submitted that at that time the 5th respondent agreed that the pipe put up by the 5th respondent for releasing the dirty water to the road can be cut and remove and he agreed to construct a sock pit in his own compound for collecting the dirty water. The 5th respondent gave a statement before the Health Standing Committee Chairman to the above effect. Hence it is submitted that since the 5th respondent has flouted undertaking given by him before the Health Standing Committee Chairman and also has failed to comply with the directions issued by the Corporation as per the orders passed by the Ombudsman, the Corporation has authorized the Health Inspector of Kudakampally Zonal Office of the Corporation to take appropriate steps for abating the nuisance."

From the stand taken by the 4th respondent, it is clear that the 5th respondent flouted the 'undertaking' given before the Standing

Committee Chairman of the Corporation (Health) to do the needful, for preventing the nuisance and since the 5th respondent failed to honour the commitment, the Corporation has authorized the Health Inspector of Kadakampally Zonal Office of the Corporation to take appropriate steps for abating the nuisance.

5. Despite completion of service of notice, the 5th respondent has not chosen to turn up or to file counter affidavit. The factual position pointed out by the 3rd and 4th respondents virtually supports the case of the petitioner and hence the petitioner is entitled to succeed.

6. In the said circumstances, there will be a direction to the 3rd and 4th respondents to take necessary action against the 5th respondent to abate the nuisance forthwith, at any rate, within 'two weeks' from the date of receipt of a copy of this judgment. If any offence has been committed by the 5th respondent under any of the relevant provisions of law, appropriate steps shall be taken against him, including by way of prosecution proceedings, if it is sustainable.

The Writ Petition is allowed. No cost.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd