

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY ,THE 28TH DAY OF DECEMBER 2018 / 7TH POUSHA, 1940

WA.No.2521 of 2018

AGAINST THE JUDGMENT IN WP(C) 36732/2018 of HIGHCOURT

APPELLANT :

SATHYABABU, AGED 66 YEARS
S/O.LATE KRISHNAN, PANAMUKKATH HOUSE,
SARALA MANDIRAM, KEEZHATHONNAKAL VILLAGE,
THACHAPPALLY MURI, AND ALSO AT ARUVI TOURIST HOME,
PATTOM PALACE POST, THIRUVANANTHAPURAM DISTRICT

BY ADV. SRI.J.JAYAKUMAR

RESPONDENTS :

- 1 THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM,
CIVIL STATION, KUDAPPANAKKUNNU,
THIRUVANANTHAPURAM-695 043
- 2 THE EXECUTIVE ENGINEER,
N H BYPASS DIVISION, PMG
PLAMOODU ROAD, THIRUVANANTHAPURAM 695 033
- 3 THE ASSISTANT EXECUTIVE ENGINEER,
N H BYPASS DIVISION, PMG
PLAMOODU ROAD, THIRUVANANTHAPURAM 695 033

GOVERNMENT PLEADER SMT VINEETHA B

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28.12.2018, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

Shaffique, J

This appeal has been filed by the petitioner in WP(C).36732/2018. In fact the writ petition had been disposed of directing the authority who had issued Ext.P11 notice to consider the objections raised by the petitioner, and to measure the property with the help of Taluk Surveyor and to find out whether there is any encroachment into the National Highway and coercive steps for eviction/demolition as suggested in the notice was directed to be kept in abeyance.

2. The main contention advanced by the petitioner/appellant is that, before issuing Ext.P11 notice under Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002 (hereinafter referred as 'Act of 2002'), prior notice had not been issued to the petitioner. It is also his contention that, he has valid title and possession in respect of the property in question and

therefore, the summary procedure under the aforesaid Act cannot be invoked against him. That apart, the person who had issued notice was not the competent officer as contemplated under the Act of 2002.

3. The learned single Judge having taken note of the aforesaid contention had observed that, prior notice had not been issued before issuing notice under Section 26(2) of the Act, and therefore, enquiry was directed to be conducted in the matter.

4. The learned counsel for the appellant raises several contentions and one of the contention is that, if at all he is in possession of 'puramboke' land, the authorities can only take action under the Land Conservancy Act and the Act of 2002, cannot be invoked. That apart, the petitioner had filed a civil suit as O.S.No.501/2018 before the Munsiff Court, Attingal for declaration of title that the property is absolutely belongs to him and no one else has right in the property. It is also contended that, the Assistant Executive Engineer, who had issued the notice, is not the authorised

officer.

5. On the other hand, the learned Government Pleader while supporting the judgment of the learned single Judge submits that, the writ petition has been virtually allowed and appropriate direction has already been issued.

6. The petitioner's main contention is that, he is having absolute title and interest over the property. Ext.P12 reflects the manner in which he had obtained the title. While considering the aforesaid claim of the petitioner, necessarily the competent authority will have to consider whether the property which is the subject matter in Ext.P11 notice is held by the petitioner on the basis of a valid title. In the notice it is stated that, an extent of 0.67 Ares of property in Survey 1179/31A has been encroached, which forms part of the National Highway. In view of the dispute between the parties, necessarily the competent authority will have to consider the claim of the petitioner and pass appropriate orders. While doing so, the authority shall also consider the jurisdictional issues including its

competency to pass such an order, which should also reflect in the order to be passed. Once the order is passed, the petitioner shall be given six weeks' time to challenge the said order in appropriate proceedings. Until such time, coercive steps shall not be taken against the petitioner, as contemplated in Ext.P11.

With the above modification to the judgment, writ appeal is disposed of.

Sd/-

A.M. SHAFFIQUE

JUDGE

Sd/-

N. NAGARESH

JUDGE