

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942

WP (C) .No. 26171 OF 2015 (S)

PETITIONERS:

- 1 ERNAKULAM DISTRICT AUTO DRIVERS UNION,
(INTUC), VALAPPU UNIT, REPRESENTED BY ITS
PRESIDENT, WILSON K.A., S/O.ANTONY,
AGED 39 YEARS, KATTASSERY HOUSE, VALAPPU,
PUTHUVYPU, ERNAKULAM DISTRICT.
- 2 THE ERNAKULAM DISTRICT AUTO DRIVERS UNION
(CITU) VALAPPU UNIT, REPRESENTED BY ITS
PRESIDENT, T.S.JOSY, S/O. SANDHYAVU,
AGED 47 YEARS, THAINEDATH,
OCHANTHRUTHU P.O., ERNAKULAM DISTRICT,
- 3 T.P.SANTHOSH
S/O.PARAMU, AGED 43 YEARS,
THEROTH HOUSE, VALAPPU P.O.,
MALIPURAM, ERNAKULAM DISTRICT-682 511,
CONVENOR, AUTO RIKSHAW DRIVERS SAMYUKTHA
SAMITHI, VALAPPU, ERNAKULAM DISTRICT.
- 4 A.P.SAJI
S/O.PARAMU, AGED 41 YEARS,
AVISSERITHARA, OCHANTHRUTH P.O.,
ERNAKULAM DISTRICT.
- 5 SANTHOSH K.V.
S/O.KUMARAN, VACHAKKAL,
MALIPURAM, CHAPPAKADAPPURAM P.O.,
ERNAKULAM DISTRICT, SECRETARY, (CITU),
ELAMKUNNAPPuzha MEGHALA.

6 DINESH V.K.
S/O.KUMARAN, VELITHARA HOUSE,
MALIPPURAM P.O.,
ERNAKULAM DISTRICT-682 511.

BY ADVS.
SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA
SMT.C.LEENA
SMT.K.S.SUDHA

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM-695 001.
- 2 THE DISTRICT COLLECTOR
ERNAKULAM-682 030.
- 3 THE DEPUTY DIRECTOR OF PANCHAYATHS
CIVIL STATION, KAKKANAD, ERNAKULAM-682 030.
- 4 THE SUPERINTENDENT
SURVEY AND LAND RECORDS, COLLECTORATE,
ERNAKULAM.
- 5 THE ELAMKUNNAPPUZHA GRAMA PANCHAYATH
ELAMKUNNAPPUZHA-682 503,
REPRESENTED BY ITS SECRETARY.

R1-4 BY SR. GOVERNMENT PLEADER SRI.TAKECHAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-02-2019, THE COURT ON 26-02-2021 DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 26th day of February, 2021

S. Manikumar, CJ.

Ernakulam District Auto Drivers Union (INTUC), Valappu Unit represented by its President and five others have jointly filed instant writ petition for a writ of mandamus directing the Superintendent, Survey and Land Records, Ernakulam/respondent No.4, to measure and identify the encroachment made on either side of Valappu Junction-Beach Road on the basis of the sketch plan prior to resurvey and take appropriate action facilitating uninterrupted traffic through the said road.

2. Supporting the prayers sought for, petitioners have contended thus:

The petitioners are the representatives of various autorikshaw employees Union and the residents of Valappu locality of Ernakulam District. They are seeking the intervention of this Hon'ble Court since the long standing demand of the local people to get the encroachment on either side of Valappu Junction-Beach Road verified through the competent authority and get the same evicted, remain unsuccessful in spite of specific orders issued on different occasions by different authorities such as Kerala State Human Rights Commission, the District

Collector, Ernakulam and Deputy Director of Panchayats. A number of buildings were constructed on the encroached land without obtaining any kind of permit, but with the tacit support of local politicians and some of the officers of the 5th respondent Grama Panchayat. The latest among the directions issued by the District Collector, Ernakulam that too on the basis of a specific direction issued by the Kerala State Human Rights Commission is sought to be avoided on the assertion that a special order by the District Collector or judgment by this Hon'ble Court is necessary to verify the encroachment with reference to sketch plan prior to the resurvey. Hence this writ petition is filed.

3. On this day, when the matter came up for hearing, on the basis of the instructions furnished by the Additional Tahsildar, Kochi, Mr. Tekchand, learned Senior Government Pleader submitted that the autorikshaw drivers in Valappu junction are the petitioners and they have filed a petition before the District Collector about the removal of encroachments in Valappu beach road in Elamkunnappuzha Panchayat. They had complained that the encroachments cause severe traffic conjunction in that area. The District Collector directed the petition to the Additional Tahsildar, Kochi to take necessary action. In compliance with the direction from District Collector, an order was issued from the Taluk Office to the Taluk Surveyor for proper survey survey and demarcation of the puramboke road in order to remove the

encroachments. The Taluk Surveyor has identified and reported only five encroachments in that area. The approximate area of encroachments is 31 square metres. On the basis of the Taluk Surveyor's report and sketch, an 'A' form report with sketch mahazar of the identified encroachments were demanded from this office to Village Officer, Elamkunnappuzha.

4. Learned Government Pleader further submitted that petitioners were not satisfied with the survey which was conducted on the basis of the Resurvey records. They filed an appeal before District Collector in the Revenue Adalath. They requested to do the survey of the puramboke road again on the basis of old survey records. The District Collector forwarded the application to the Taluk office to take necessary action. A co-relation sketch/statement of old and Resurvey records of the puramboke road is necessary to do the survey again. Taluk Surveyor has directed to produce the same. At present the survey work is not completed. As per the order of the Additional Tahsildar, the Taluk Surveyor has done the survey of the puramboke road with resurvey records. He has identified and reported the encroachments. The approximate area of the encroachments are 31 square meters and the encroachers are Haider ($7m^2$), Jerry ($2m^2$), Sebastian ($13m^2$), Jenson ($6m^2$), Shibukuttan ($3m^2$), on the basis of Taluk Surveyor's report and sketch, an 'A' form report with sketch mahaesar of above mentioned

encroachments was demanded from the Taluk Office to Village Officer, Elamkunnappuzha.

5. However, Mr. Tekchand, learned Senior Government Pleader is not sure as to whether action for removal of encroachment as per the resurvey and measurement has been taken against the alleged encroachers or not.

6. Be that as it may, by inviting attention of this Court to the Resolution No. 5(1) of ordinary/emergent meeting held on 10.8.2020 passed by Elamkunnappuzha Grama Panchayat, Mr. K.C. Santhosh Kumar, learned counsel for the petitioners submitted that the said Panchayat has resolved to bring to the notice of the Assistant Executive Engineer, PWD to take necessary action for removal of encroachments. Resolution No. 5(1) of ordinary/emergent meeting held on 10.8.2020 passed by Elamkunnappuzha Grama Panchayat is reproduced:

“Elamkunnappuzha Grama Panchayat

The Resolution No.5(1) of ordinary/emergent meeting held
on 10.8.2020

The letter submitted by Valappu Samyuktha Auto Thozhilali Union in respect of encroachment in PWD Valappu Beach Road was discussed. It was found that PWD road which is having high traffic and gathering of general public in large number was found encroached and shops are constructed in the encroached area. It was

resolved to bring this matter to the notice of Assistant Executive Engineer, PWD to take necessary steps to examine the above matter and to evict all such encroachment facilitating smooth traffic in the area.

Sd/-
President"

7. However, no material is produced before this court as to whether the Assistant Executive Engineer has been put on notice of such resolution for removal of alleged encroachment, in accordance with law.

8. During the course of hearing, Mr. K.C. Santhosh Kumar, learned counsel for the petitioner submitted that resurvey has been done about 10 years ago. Though the writ petition has been filed in the year 2015, at this juncture, the prayer sought for to measure and identify the encroachment made on either side of Valappu Junction-Beach Road on the basis of the sketch plan prior to resurvey, cannot be granted for the reason that after ten years, there is every possibility of change of nature of land and extent of the land also. There are also possibilities of competent authorities granting assignment of Government lands on request, if they satisfied the requirement under law. When such be the position, prayer, as on date, cannot be granted.

9. However, as per the statement of the Additional Tahsildar, Kochi, some encroachments have been noticed, as stated supra. There

are no further materials to indicate as to whether action for removal of encroachments has been taken or not.

Having regard to the submission of learned counsel for petitioner and material on record, we direct Tahsildar, Kochi or Elamkunnappuzha Grama Panchayat/5th respondent, as the case may be to take appropriate action in accordance with law, for removal of the alleged encroachment within a period of three months, if not done already.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

sou.

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1 EXT.P1. TRUE COPY OF THE COMPLAINT DATED 1/2/2012 SUBMITTED BY THE 3RD PETITIONER ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P1(a) TRUE COPY OF THE COMPLAINT DATED 23/9/2011 AND REPLY DATED 20/1/2011 ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P2 TRUE COPY OF THE COMPLAINT DATED 13/3/2013 SUBMITTED BY THE PETITIONERS ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P2(a) TRUE COPY OF THE COMPLAINT DATED 22/3/2013 ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P3 PHOTOGRAPHS SHOWING THE TRAFFIC AND THE ENCROACHMENT

EXHIBIT P3(a) PHOTOGRAPHS SHOWING THE TRAFFIC AND THE ENCROACHMENT

EXHIBIT P4 TRUE COPY OF THE RESOLUTION NO.17(1) DATED 25/6/2013 OF THE 5TH RESPONDENT

EXHIBIT P5 TRUE COPY OF THE COMPLAINT DATED 19/2/2014 ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P6 EXT.P6. TRUE COPY OF THE INITMATION DATED 17/3/2014 ISSUED BY THE 5TH RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P7 TRUE COPY OF THE PETITION DATED 23/4/2014 AND THE ENDORSEMENT ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P7 (a) TRUE COPY OF THE ENDORSEMENT MADE BY THE DISTRICT COLLECTOR AS WELL AS THE SECRETARY OF THE 5TH RESPONDENT ON 24/4/2014.

EXHIBIT P8 TRUE COPY OF THE JOINT PETITION DATED 10/12/2014 ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P9 TRUE COPY OF THE INTIMATION DATED 23/12/2014 ISSUED BY THE 3RD RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P10 TRUE COPY OF THE ORDER DATED 5/1/2015 ISSUED BY THE CHAIRPERSON, KERALA STATE HUMAN RIGHTS COMMISSION, THIRUVANANTHAPURAM

EXHIBIT P10 (A) TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P11 TRUE COPY OF THE REPRESENTATION DATED 20/2/2015 SUBMITTED BY THE 5TH PETITIONER ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P11 (A) TRUE COPY OF THE ORDER DATED 20/2/2015 PASSED BY THE DISTRICT COLLECTOR, ERNAKULAM.

EXHIBIT P12 TRUE COPY OF THE REPRESENTATION DATED 20/2/2015 SUBMITTED BY THE PETITIONERS ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P12 (a) TRUE COPY OF THE ORDER DATED 20/2/2015 PASSED BY THE DISTRICT COLLECTOR, ERNAKULAM ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P13 TRUE COPY OF THE INTIMATION DATED 25/2/2015 ISSUED BY THE ADDL. TAHSILDAR, KOCHI, ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P14 TRUE COPY OF THE REPRESENTATION DATED 4/3/2015 SUBMITTED BY THE 3RD PETITIONER ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P14 (a) TRUE COPY OF THE INTIMATION DATED 25/3/2015 ISSUED BY THE SUPERINTENDENT, SURVEY AND LAND RECORDS, ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P15 TRUE COPY OF THE REPRESENTATION DATED 4.8.2020 SUBMITTED BY THE PETITIONERS BEFORE THE 5TH RESPONDENT GRAMA PANCHAYAT ALONG WITH ENGLISH TRANSLATION

EXHIBIT P16 TRUE COPY OF THE REPRESENTATION DATED 3.9.2020 SUBMITTED BY THE PETITIONERS BEFORE THE 5TH RESPONDENT GRAMA PANCHAYAT ALONG WITH ENGLISH TRANSLATION

EXHIBIT P17 TRUE COPY OF THE INTIMATION DATED 29.9.2020 AND THE ENCLOSURES ALONG WITH ENGLISH TRANSLATION.