

Kerala High Court

A.Abdul Rasheed vs The State Of Kerala on 29 June, 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 23RD DAY OF AUGUST 2017/1ST BHADRA, 1939

WP(C).No. 16280 of 2007 (K)

PETITIONER:

A.ABDUL RASHEED, S/O ALIYAR KUNJU,
AGED 51 YEARS, "CITADEL", T.C.NO.5/2353(7),
GOLF LINKS ROAD, KOWDIAR, THIRUVANANTHAPURAM.

BY ADVS.SRI.ANIL THOMAS(T)
SMT.K.V.RESHMI

RESPONDENTS:

1. THE STATE OF KERALA, REP.BY
THE PRINCIPAL SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.
3. THE ADDITIONAL THAHSILDAR,
TALUK OFFICE, THIRUVANANTHAPURAM.
4. THE VILLAGE OFFICER,
SASTHAMANGALAM VILLAGE,
THIRUVANANTHAPURAM.
5. THE THIRUVANANTHAPURAM CORPORATION,
REP: BY ITS SECRETARY,
THIRUVANANTHAPURAM.
6. THE MANAGING DIRECTOR,
JALABHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM.
7. THE ASSISTANT EXECUTIVE ENGINEER,

WATER SUPPLY PROJECT SUB DIVISION,
VELLAYAMBALAM, THIRUVANANTHAPURAM.

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WP(C).No. 16280 of 2007 (K)

8. THE SUPERINTENDING ENGINEER,
KERALA WATER AUTHORITY,
OBSERVATORY HILLS, MUSEUM,
TRIVANDRUM.

R1 TO R4 BY SRI.RENJITH THAMPAN, ADDL.ADVOCATE GENERAL
R5 BY SRI.N.NANDAKUMARA MENON (SENIOR ADVOCATE)
SRI.P.K.MANOJKUMAR, SC
R6 TO R8 BY SRI.P.BENJAMIN PAUL, SC
SMT.AMBIKA DEVI, SC
SRI.JOSEPH JOHN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-08-2017 ALONG WITH WPC. 24182/2008 & CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 16280 of 2007 (K)

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF THE SALE DEED NO.1828/01 DATED 29.6.01
EXECUTED IN FAVOUR OF THE PETITIONER.
- EXT. P2 : A TRUE COPY OF THE SALE DEED NO.15/02 DATED 3.1.2002.
- EXT. P3 : TRUE COPY OF THE LOCATION CERTIFICATE PERTAINING TO
THE PROPERTY COVERED IN EXTS.P1 AND P2.
- EXT. P4 : TRUE COPY OF THE POSSESSION CERTIFICATE PERTAINING TO
THE PROPERTY OF THE PETITIONER.
- EXT. P5 : TRUE COPY OF THE LAND TAX RECEIPT PERTAINING TO THE
PETITIONER'S PROPERTY FOR THE YEAR 2004-2005.
- EXT. P5A : TRUE COPY OF THE LAND TAX RECEIPT PERTAINING TO THE
PETITIONER'S PROPERTY FOR THE YEAR 2004-2005.

- EXT. P6 : TRUE COPY OF THE BUILDING PERMIT DATED 26.12.02.
- EXT. P7 : TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN PETITIONER
AND THE KERALA WATER AUTHORITY VIDE AGREEMENT
NO.63/2002-03 DATED 9.1.03.
- EXT. P8 : A TRUE COPY OF THE BUILDING TAX RECEIPT
DATED 29.10.05.
- EXT. P9 : A TRUE COPY OF THE NOTICE DATED 24.2.06 ISSUED BY THE
3RD RESPONDENT.
- EXT. P10 : A TRUE COPY OF THE OBJECTION FILED BEFORE THE
3RD RESPONDENT ON 14.3.06.
- EXT. P11 : A TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 1.6.06.
- EXT. P12 : A TRUE COPY OF THE NEWS ITEM PUBLISHED IN MANGALAM
DAILY DATED 21.5.07.
- EXT. P13 : TRUE COPY OF THE MALAYALA MANORAMA DAILY
DATED 6.8.2008.
- EXT. P14 : TRUE COPY OF THE SKETCH PREPARED BY THE PETITIONER
SHOWING THE PRESSURE LINE AND THE EXISTING GRAVITY.
- EXT. P15 : TRUE COPY OF THE APPLICATION DATED 21.6.2007 FILED BY
THE PETITIONER.
- EXT. P16 : TRUE COPY OF THE ARGUMENT NOTES FILED BY THE COUNSEL
FOR THE PETITIONER BEFORE THE 3RD RESPONDENT
ON 23.6.2008.

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WP(C).No. 16280 of 2007 (K)

- EXT. P17 : TRUE COPY OF THE APPLICATION DATED 12.5.2008.
- EXT.P18 : TRUE COPY OF THE REPLY OF THE ASSISTANT DIRECTOR
(SURVEY), DATED16.5.2008.
- EXT.P18A : TRUE COPY OF THE REPLY OF THE ASSISTANT DIRECTOR
(RE-SURVEY) DATED 10.6.2008.
- EXT. P19 : TRUE COPY OF THE PROCEEDINGS OF THE TAHSILDAR,
THIRUVANANTHAPURAM DATED 30.6.2008.
- EXT.P20 : TRUE COPY OF THE REPLY GIVEN BY THE KWA HAVING

EXT.P20A : TRUE COPY OF THE APPLICATION, PERSONALLY ON 11.8.2008
UNDER THE RIGHT TO INFORMATION ACT, FOR KNOWING THE
NATURE AND STATUS OF THE PIPELINE PASSING BENEATH OF
THE PROPERTY IN DISPUTE.

EXT.P20B : TRUE COPY OF THE ANSWER TO EXT.P20A WAS DELIVERED BY
THE KWA ON 4.9.2008.

RESPONDENTS' EXHIBITS:

EXT. R6 : THE TRUE PHOTOCOPY OF THE MINUTES OF THE MEETING
DATED 12.11.08.

EXT. R6A : TRUE PHOTOCOPY OF THE NOTICE DATED 25.4.09 SENT BY THE
EXECUTIVE ENGINEER, PUBLIC HEALTH DIVISION,
THIRUVANANTHAPURAM TO THE PETITIONER.

EXT. R6B : TRUE PHOTOCOPY OF THE REPLY DATED 4.5.09 SENT BY THE
PETITIONER TO THE EXECUTIVE ENGINEER, PUBLIC HEALTH
DIVISION, THIRUVANANTHAPURAM.

EXT. R6C : TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE TAHSILDAR
DATED 30.6.08.

//TRUE COPY//

P.S. TO JUDGE

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'CR'

DEVAN RAMACHANDRAN, J.

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W.P.(C) Nos.16280 of 2007, 24182 of 2008, 29162 of 2010,
38250 & 33282 of 2010 & 22769 of 2012

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Dated this the 23rd day of August 2017

JUDGMENT

At the epicenter of the controversies in these cases, is a Water pipeline laid by the Kerala Water Authority in the city of Thiruvananthapuram under an erstwhile water supply scheme called 'The Willington Water works.' According to the Water Authority, this pipeline was laid as early as in the year 1929, and started functioning in the year 1933. It appears that certain portions of this pipeline run through the properties owned by the various petitioners in this batch of writ petitions.

2. The Water Authority claims that the properties claimed by the petitioners are in fact water works 'puramboke', and that they are entitled to hold possession and ownership over the same. The essential contention of the Water Authority is that unless they hold possession and ownership of the lands in question, the water pipes installed sub terrain, cannot be maintained or repaired, if such cause arises.

3. The petitioners in W.P.(C)Nos.24182/2008, 38250/ 2010 and 22769/2012 are co-owners of 31 cents of land W.P.(C) No.16280 of 2007 and connected cases comprised of in Block No.1, Re.Sy.No.5 of the Sasthamangalam Village. As regards W.P.(C)Nos.16280/2007 and W.P.(C) No.29162/2010 are concerned, they are both filed by the same petitioner, who claims to be the owner of 17 cents of land comprised of in Survey No.184/3-A of the same village, namely, Sasthamangalam Village. It appears that the writ petitioners in W.P.(C)No.24182/2008 and the two other connected matters intend to make certain constructions in their property, which is objected to by the Water Authority whereas the writ petitioner in W.P.(C)No.16280/2007 and W.P.(C) 29162/2010 have been asked to remove certain offending constructions in his land on the allegation that such properties are also part of the water works puramboke.

4. The petitioners in W.P.(C)No.24182/2008, who will herein after be called as K.G.Abraham and his sons, attempts to construct a building in the 31 cents owned by them, for which purpose, they made an application for a building permit before the Thiruvananthapuram Corporation. When the Thiruvananthapuram Corporation refused to issue the building permit, they filed W.P.(C)No.24182/2008 seeking a direction for the issuance of the building permit notwithstanding the fact that W.P.(C) No.16280 of 2007 and connected cases there is an underground pipeline running through a portion of their property and for such other incidental reliefs. It appears that while so, proceedings were initiated by the District Collector to cancel the mutation of the properties remaining in their names, which led to the petitioners filing W.P.(C)No.22769/2012 challenging such orders. Consequent to the cancellation of the mutation, the Thiruvananthapuram Corporation issued a show cause notice and a stop memo to the petitioners and it was also threatened that the building permit would be cancelled. This lead to Sri.K.G.Abraham and his sons to challenge the show cause notice and orders of the Corporation of Thiruvananthapuram by filing W.P.(C)No.38250/2010.

5. When such proceedings were initiated by K.G.Abraham and sons, the Water Authority did not sit quiet. They filed W.P.(C) No.33282/2010 against K.G.Abraham and his sons, seeking that the building permit granted to them by the Thiruvananthapuram Corporation be set aside and that the order cancelling the mutation of the land in their name be sustained.

6. As regards W.P.(C)No.16280/2007 is concerned, it has been filed by a person called Sri.Abdul Rasheed. This writ petition was filed challenging a notice issued by the District Collector, W.P.(C) No.16280 of 2007 and connected cases under the provisions of Section 12 of the Land Conservancy Act, on the allegation that the petitioner's property is part of the water works puramboke. While the writ petition was pending, the Tahsildar issued an order, which has been produced on record as Exts.P18 and P18 (a) finding that the properties owned by the petitioners are not puramboke but patta land. However, the District Collector went on to issue final orders cancelling the mutation

which lead to the petitioner to file W.P.(C)No.29162/ 2010, where the petitioner challenges such orders of the District Collector.

7. This is the background, in a very compendious manner, in which the above writ petitions are pending before this Court.

8. I have heard the learned Senior Counsel Sri.T.A.Shaji assisted by Sri.Vincent Diadose appearing on behalf of the petitioners in W.P.(C)Nos.24182/2008, 38250/2010 and 22769/ 2012; Smt. K.V.Resmi appearing on behalf of the petitioners in W.P.(C)16280/2007 and W.P.(C)29162/2010; the learned Additional Advocate General appearing on behalf of the State of Kerala in all these cases; learned Standing Counsel Sri.Benchamin Paul appearing on behalf of the Water Authority and the learned Senior Counsel Sri.Nandakumara Menon assisted W.P.(C) No.16280 of 2007 and connected cases by Sri. P.K.Manojkumar learned Standing Counsel for the Thiruvananthapuram Corporation.

9. Even though a large volume of pleadings are part of the records in these cases, which have consumed more than 500 to 750 pages, I do not deem it necessary to delve deep into the various allegations and averments made in this writ petition for reasons I will state presently. I am proposing to dispose of all these cases by this judgment because a view taken in one of the cases would have an impact and bearing on all the others cases and the reliefs granted in one would be inter-dependent and axiomatic to the reliefs granted in other. I have heard all these cases together with the consent of the various Counsel appearing on either side and I proceed to dispose it of on the basis of the submissions made and the most constitutive pleadings on record.

10. When this matter was taken up on 19.7.2017, the learned Additional Advocate General Sri.Renjith Thamban submitted before me that the State of Kerala is certain in their contention that the entire portion of the land owned by the petitioners are, in fact, Government lands or "water works puramboke". Based on such submission, I have passed an order on 19.7.2017, as under.

W.P.(C) No.16280 of 2007 and connected cases "8. Taking into account the forceful submission of Sri.Renjith Thampan, the learned Addl. Advocate General, that the Government suspects that the area now in ownership and possession of the petitioners would also take in purambokku land, albeit at least a small extent thereof, I am firm in my mind that this is not an issue that can be left unresolved before these writ petitions can be disposed of one way or the other. I deem it necessary that the competent Authorities acting under the applicable Statutes, Rules and Regulations, take such action as is mandated or warranted to identify such purambokku area, if any, and to demarcate the same and prepare a sketch.

9. For such purpose and in the circumstances above, I direct the District Collector, Thiruvananthapuram to cause an inspection of the properties of petitioners in WP(C) Nos.22769/2008, 24182/2008 and 38250/2010 and conduct an enquiry as to whether any portion of the said properties would take in purambokku land or Government land either in small or in substantial extent. The District Collector, Trivandrum will be obligated to requisition the services of the District Surveyor and all other officers as is required and found necessary and to cause a report

along with a proper sketch prepared under the mandate of the Kerala Survey and Boundaries Act, 1961 as expeditiously as possible, but not later than one month from the date of receipt of a certified copy of this order. I direct the District Collector, Trivandrum to treat these orders as being peremptory and complete the exercise within the time granted herein because, as the learned Addl. Advocate General also fairly concedes, this process will have to be completed within the shortest possible time.

W.P.(C) No.16280 of 2007 and connected cases Needless to say, the exercise now ordered herein by me will enjoin the District Collector, Trivandrum to cause inspection, survey and measurement of the property in terms of law and untrammelled by any of the orders or proceedings in these four writ petitions and I hope and expect the said Officer to act fairly and in a manner as is expected of him under the various Statutes covering the field."

11. Based on these directions, the District Collector, Thiruvananthapuram has filed a report, along with two sketches before this Court, which are marked as Exts. R1(a) and R1(b). The sketches would show that the pipeline has been clearly mapped in that area, showing the respective properties of Sri.K.G.Abraham and his sons as also of Sri.K.A.Abdul Rasheed. However, the report does not say with certainty that the properties in question are puramboke lands. It only reflects a suspicion that it may be puramboke, because the resurvey records show that the land in Block No.1, Resurvey No.5 is such and that the properties of the petitioners are comprised in the said survey number. That being said, the extent of land in Block No.1 Resurvey No.5 is very large; and the question is whether the properties of the petitioner, which, concededly, is included in the said survey number would also be puramboke. These are not matters which the report, that has been placed on record, answers affirmatively. Before W.P.(C) No.16280 of 2007 and connected cases proceeding any further, it will be fruitful to read the report and therefore, I extract the most relevant portions of it as under. "In accordance with the direction of this Honourable Court, the properties in possession of the petitioners are surveyed through District Survey Superintendent, Thiruvananthapuram and sketches are prepared. True copy of the sketch prepared by the District Superintendent, Survey & Land Records, Collectorate, Thiruvananthapuram, is produced herewith and marked as Annexure R1(a). The land in possession of the petitioners is marked as C-D-E-F-G-H-C in the sketch, and the same is included in Old Sy.No. 184 pt, 185 pt, 187 pt. The tenure of the survey numbers are verified with settlement register. In the settlement register, the tenure of Sy.No. 184 is Dry land, Pandaravaka Otti having an extent of 4.61 acres shown in the name of one Smt. Vazhappali Purayidathil Oozhathi Bhagavathy valli, Sy.No. 185 is shown as Dry land, Pandarapattom having an extent of 1.3 acres in the name of 3 persons namely, Plavila Purayidathil Oozham Kochan Velayudhen, Kochan Neelakandan, Bhagavathi valli. Moreover, Sy. No. 187 (extent 80 cents Dry land) is noted as Pandaravaka pattom in the name of Kuzhivilakam Purayidathil Oozham Kochan Velayuden.

3. As per old survey BTR of Sasthamangalam village, land in Sy. No. 184/2, 184/3, 184/5, 185/11, 185/12, 184/13, 184/14, 184/15, 184/16, 185/2, 185/3, 185/4, 185/5, 185/6, 185/7, 185/8, 185/9, 185/10, 185/11, 185/12, 187/1, 187/3, 187/4, 187/5, 187/6, 187/7 are puramboke. The subdivision sketches of old SY.Nos. 184, 185 and 187 were not available in Village office and Central Survey Office. The sketch was requested from Superintendent, Central Archives who W.P.(C) No.16280 of

2007 and connected cases informed that the same is not available. Hence the subdivision numbers of the land possessed by the petitioners cannot be ascertained with respect of old survey subdivision.

4. As per the claim of Kerala Water Authority, a certain portion of land in old Sy. Nos. 184, 185, 187, 192 are acquired during 1929 by the Kerala Water Authority. Request was also given to Kerala Water Authority to produce land acquisition records. The Kerala Water Authority has informed that the details were not available in that office and the same has to be available with Revenue Authorities. Further we requested for Land Acquisition details from Land Deputy Collector (LA), Thiruvananthapuram. Deputy Collector (LA) Thiruvananthapuram informed that Land Acquisition details of land during 1929 for Kerala Water Authority was not available in the records.

5. Due to non availability of acquisition/subdivision sketch in old Sy. Nos. 184, 185 and 187 of Sasthamangalam Village, the District Survey superintendent has reported that he is not in a position to verify the subdivision in the survey numbers.

6. As per resurvey records, this land included in Block No.1, Re.Sy. No. 5 of Sasthamangalam Village. Resurvey records shows that land in Block No. 1, Re.Sy.No. 5 is Puramboke.

7. During 2010, District Collector, Thiruvananthapuram made enquiries regarding the possession of the underground pipeline. A sketch prepared during that time is available in the records. True copy of the sketch prepared by the Taluk Surveyor dated 06.02.2010 is produced herewith and marked as Annexure R1(b). This records shows that an underground W.P.(C) No.16280 of 2007 and connected cases pipeline runs through the old SY. Nos. 187, 184, 185. The petitioners possess land in these old survey numbers. This records show that an underground pipeline runs through the properties of the petitioners and hence this land has to be retained as puramboke land."

12. It is obvious from the portions of the report as extracted above that one cannot obtain a conclusive view from it as to whether the properties in question are puramboke or otherwise. I am, therefore, left only with the dialectical contentions of the learned Senior Counsel and the Counsel for the petitioners, on one hand, that the properties are not puramboke and that of the learned Advocate General on the other maintaining that the entire properties are puramboke. However, since there is no conclusive proof on either of these contentions, I do not deem it appropriate or possible for this Court, while acting under the Article of 226 of the Constitution of India, to enter into a view affirmatively one way or other.

13. That being said, there is no doubt that the most immediate and proximate reason why these writ petitions have been filed before this Court, is in search of the answer to the question as to whether the Water Authority can claim rights over the properties of the petitioner or portion of it as being W.P.(C) No.16280 of 2007 and connected cases puramboke lands. Fortunately, I am not now burdened to consider or answer this issue, because I am told by Sri.Benchamin Paul learned Standing Counsel appearing for the Water Authority that they have already initiated a civil suit before the Sub Court Thiruvananthapuram, claiming such rights over the properties in question. Obviously since such litigations are pending, any decision on these issues will be possible only after the competent civil court decides the matter and delivers judgment in terms of law. This is why I

have said above that it is not necessary to consider the voluminous pleadings in these cases in detail since most of such pleadings relate to the singular issue as to whether the lands involved herein are puramboke or otherwise.

14. The parties to these litigations are, however, ad idem on one factum, which is that there is a water pipe line installed by the Kerala Water Authority, under a small area or portion of their property. The question therefore is, whether they can be allowed to construct on the property in view of the rigor contained in the Kerala Water Supply and Sewerage Act, 1986 (hereinafter referred to as the 'Act' for brevity) Under Section 46A of the said Act there is a complete prohibition from making any construction over any land or pipes or mains belonging to the Water Authority W.P.(C) No.16280 of 2007 and connected cases without their permission. Section 46A of the Act reads as under: (1) No person shall without permission of the Authority construct any private street, building, wall, fence or other structure over any land or pipes or mains belonging to the Authority. (2) If any private street is constructed or any building, wall, fence or other structure, is erected on any land or pipes or mains belonging to the Authority, the Authority may remove/or cause to remove the same as may be provided in the regulations. (3) The expenses incurred by the Authority in so doing shall be paid by the owner of the private street or of the building, fence, wall or other structure or as the case may be, by the person offending and shall be recoverable as arrears of land revenue.

15. Sri.Benchamin Paul learned Counsel appearing for the Water Authority relies on the above Section and says that when pipelines are running through portions of the petitioners' property, it should be inferred that the property belongs to the Water Authority. He says that this is the proposition, based on which, they have proceeded to litigate before the civil court and he says that he is confident that the civil court will find in favour of the Water Authority. According to him, until and unless the civil court takes a decision in the matter, it will not be prudent or pragmatic to allow the petitioners to cause any further construction, since such constructions would even cause a threat W.P.(C) No.16280 of 2007 and connected cases to the water line travelling underground. He alternatively contends that even if any such construction is to be allowed, a reasonable and logical set off must be provided from the area of the pipeline, and he says that such set off will have to be decided by the Water Authority, subject to the decision of the civil court.

16. On the question of set back to be provided from the pipeline, I notice that in W.P.(C)No.16820/2007, Sri.K.A.Abdul Rasheed,the petitioner therein has produced Ext.P7, which is an agreement he had entered into with the Water Authority, where under he has been directed by the Water Authority, to provide a minimum set back of 2.5 meters from center of the pipeline. I have examined this agreement and it clearly provides that any construction to be endeavoured by Sri.K.A.Abdul Rasheed should be done only at least 2.5 meters away from the center of the pipeline on both sides. Since such an agreement has already been entered into by the Water Authority with Abdul Rasheed and since his property is adjacent to that of Sri.K.A.Abraham and his sons, I deem it reasonable, purely a temporary measure, until the civil court decides on the issue of the lands in question being Puramboke or otherwise, to accept that set back distance as a ball park figure subject to further W.P.(C) No.16280 of 2007 and connected cases modulation and enhancement, so as to provide full protection to the pipeline.

17. I notice that in W.P.(C)No.24182/2008, a report made by the Water Authority, pursuant to the directions of this Court, has been placed on record as Ext.P59, wherein a sketch is mentioned and the petitioners, Sri.K.G.Abraham and his sons submit that they have revised the building plan based on the said sketch made available to them by the Water Authority. They assert that in the revised plan, they have left more than 5 meters gap between the center of the line on one side and that on the other side they have left more than 12 meters. They therefore, maintain, that the building permit now granted to them by the Thiruvananthapuram Corporation cannot be found fault with.

18. I have considered the various factors as above to make an assessment as to the minimum relief that this court can give to all the parties in these proceedings. It is ineluctable that the question as to whether the property owned by the petitioners are water works puramboke or otherwise is now pending consideration of the competent civil court. It is also more or less obvious from the submissions made by the Learned Additional Advocate General that the State of Kerala maintains that the W.P.(C) No.16280 of 2007 and connected cases entire or some portions of the property of the petitioners are Government land. However, it is to be noticed immediately that the Government of Kerala has not taken any steps based on such contention until now under the provisions of the Land Conservancy Act. I must hasten to add that I do not propose to intervene in any of these assertions, in any manner whatsoever, in this judgment. My endeavour is only to provide an arrangement between the parties until such time as the various rights claimed by them and asserted against each other are decided either by a court of competent jurisdiction or by the competent Authorities acting under the various statutes.

19. I am, therefore of the view, after consideration of all the relevant criteria involved in these cases, that Sri.K.G.Abraham and his sons, namely the petitioners in W.P.(C)Nos.24182/2008, 38250/2010 and 22769/2012 can be allowed to make construction on the basis of the building permit which has been placed on record as Ext.P2 in W.P.(C)No.38250 of 2010 and W.P.(C) No.16280/2007. However, this is subject to a condition that before they are allowed to start construction based on this building permit, the Secretary of the Thiruvananthapuram Corporation shall call the petitioners and the concerned W.P.(C) No.16280 of 2007 and connected cases competent officer of the Water Authority for a hearing and verify, from the building permit now approved, whether there is a minimum of 5 meters set back from the center of the pipeline till the proposed construction on either side. If the setback is lower than this in the approved plan, necessarily the petitioners, namely K.G.Abraham and his sons will be obligated to make a revised plan to provide such minimum set back and the Secretary of the Corporation will be enjoined, by the terms of this judgment, to modify the building plan in such a manner so as to provide a minimum of 5 meters of set back from the center of the pipe line and the proposed construction.

20. Needless to say, nothing contained in the judgment will be construed by any party to these cases to mean that I have spoken on the ownership rights over the properties in question. These are issues that are to be decided and concluded by the competent civil jurisdictions and if any such judgment is delivered, against the petitioners at the instance of the Water Authority, by such a court and if such judgments are finalised in terms of law, the petitioners will be obligated to remove the constructions at their cost, without any equity or reservation being obtained to them and nothing contained in this judgment W.P.(C) No.16280 of 2007 and connected cases will offer them any succour against such

obligation and I reiterate that the petitioners are put on notice that any construction to be made by them on the property, even based on a valid building permit in terms of this judgment, will be at their risk and at their cost and will be subject to the judgments and decrees to be delivered by the competent civil court.

21. Since I have already found it appropriate to allow the petitioners, namely, Mr.K.G.Abraham and his sons to cause construction on the above terms, to quash the orders cancelling the mutation of their property, namely, 31 cents of property in Survey No. 184/3-1 of Sasthamangalam Village, which has been produced as Ext.P24 in W.P.(C)No.22769/2012, but make it clear that the competent Authorities under the Land Conservancy Act or such other applicable Statutes and Rules will have the liberty of initiating appropriate action based on valid materials, including judgments of the civil courts to be delivered in future, if it is so required to be done. In such event, the Authorities will certainly be obligated to follow due and prescribed procedure under the applicable Statutes and Rules. Since the orders cancelling the mutation thus stands set aside, the petitioners would also be entitled to pay the tax and receive the tax receipts for the same, W.P.(C) No.16280 of 2007 and connected cases however, subject to the decision of the court below relating to the ownership of the property.

22. Coming to the case of Sri.K.A.Abdul Rasheed, the petitioner in W.P.(C) Nos.16280/2007 and W.P.(C)No.29162/2010 is concerned, it appears that the Water Authority has not initiated any civil proceedings against them claiming ownership over his property; at least, nothing has been placed before this Court to show that any such proceedings have been initiated. In such circumstances, it will not be proper, to allow the order cancelling the mutation of the property to continue in force, since I am of the view that the said order suffers from the infirmity of not having followed due procedure under the Land Conservancy Act. It, however, goes without saying that if the competent Authority under the Land Conservancy Act or such other relevant statute deem it necessary to initiate action against the petitioner, Sri.Abdul Rasheed, with respect to his property, they would be entitled to do so, but only after following mandatory statutory procedure. Until such time as any such procedure is initiated or concluded, Sri.Abdul Rasheed will be obligated to abide by the terms of the agreement between him and the Water Authority, as contained in Ext.P7 produced in W.P.(C)No.16820/2007. W.P.(C) No.16280 of 2007 and connected cases

23. Before, parting, I must certainly place on record that I have not gone into the relative merits of the contentions of either of the parties in these writ petitions and I have only made a limited endeavour to provide relief to parties, based on the admitted facts and therefore, that they would be entitled to raise all such contentions in proceedings that may be initiated against them in future.

Leaving the parties thus with the liberty to agitate their contentions if required in future, I dispose of all these writ petitions with the directions above.

DEVAN RAMACHANDRAN JUDGE jm/