

Kerala High Court

Anilkumar.V. vs Village Officer on 19 June, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 16272 of 2008(K)

1. ANILKUMAR.V., MANAGER, OXFORD CENTRAL
... Petitioner

Vs

1. VILLAGE OFFICER, KARAVALLLOOR,
... Respondent

2. REVENUE DIVISIONAL OFFICER, KOLLAM.

3. DISTRICT COLLECTOR, KOLLAM DISTRICT,

4. MOHANAN NAIR, S/O.KRISHNA PILLAI,

5. ASHOKKUMAR, S/O.KRISHNA PILLAI,

For Petitioner :SRI.R.ARUN RAJ

For Respondent :SRI.S.SREEKUMAR

The Hon'ble MR. Justice S.SIRI JAGAN

Dated :19/06/2008

O R D E R

S.SIRI JAGAN, J.

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W.P.(C).No.16272 of 2008

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Dated this the 19th day of June, 2008

J U D G M E N T

The petitioner is the manager of a school affiliated to the Central Board of Secondary Education. There are about 1200 students studying in the petitioner's school. There was some dispute between the school and the respondents 4 and 5 in respect of the southern boundary of the school. According to the petitioner, respondents 4 and 5 have been trying to create obstruction to the functioning of the school for reasons best known to them. He further alleges that the 4th respondent is a Policeman attached to the Special Branch of Police and at his instance, the 5th respondent, the brother of the 4th respondent, is creating nuisance in the school compound to force the students to leave the school. In the above circumstances, the petitioner started construction of a compound wall to the school. Respondents 4 and 5 obstructed the same. The petitioner filed a suit before the District Court, Kollam, and obtained a decree of permanent prohibitory injunction restraining respondents 4 and 5 and their men from creating any obstruction for the construction of the compound wall. The petitioner alleges that thereafter, respondents 4 and 5 filed a complaint before the 1st respondent alleging that the compound wall is constructed in a paddy land and pursuant to the said complaint, the 1st respondent issued Ext.P4 stop memo which is under challenge in this writ petition.

2. The 4th respondent has filed a counter affidavit in which he would submit that the construction is in a paddy land and the construction would obstruct free flow of water through a canal passing through the properties of the petitioner, respondents 4 and 5, and others, which would result in flooding in the adjacent paddy fields. The learned Government Pleader would submit that considerable portion of the land is paddy land and the petitioner has not obtained any permission under the Kerala Land Utilization Order for conversion of the land and that is why, Ext.P4 order has been issued. In answer to the above contentions, the petitioner would submit that as evidenced by Ext.P5 report of the Village Officer, Karavalur, the petitioner has already applied for conversion of the land and Ext.P5 report of the Village Officer would support the petitioner's case.

3. I have considered the rival contentions in detail.

4. The petitioner does not dispute that there is a canal going through the petitioner's property. If that be so, the petitioner cannot obstruct free flow of water through that canal. As far as Ext.P4 is concerned, after having issued a stop memo, the concerned RDO has a duty to complete the proceedings in accordance with the Land Utilization Order expeditiously.

5. In the above circumstances, I dispose of this writ petition with the following directions:

The jurisdictional RDO shall pass final orders pursuant to Ext.P4 along with the application stated to have been submitted by the petitioner under the Kerala Land Utilization Order as evidenced by Ext.P5, as expeditiously as possible, at any rate, within two months from the date of receipt of a certified copy of this judgment, after affording an opportunity of being heard to the petitioner as well as respondents 4 and 5. In the meanwhile, the petitioner may continue construction of the compound wall at his risk in such a way that such construction would not in any way obstruct free flow of water through the canal admittedly passing through the properties of the petitioner and others. The 1st respondent shall see that the flow of water is not obstructed in any manner. The petitioner may continue construction of the compound wall at his risk. It would be liable to be demolished if the order to be passed by the RDO is against him. However, that itself is subject to the

right of the petitioner to challenge such orders if adverse to him and seek interim relief thereof.

Sd/-

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S.SIRI JAGAN, JUDGE

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P.A. to Judge