IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

WEDNESDAY, THE 26TH DAY OF MARCH 2025 / 5TH CHAITHRA, 1947

WP(C) NO. 13474 OF 2022

PETITIONER:

JESUS GEORGE,
AGED 56 YEARS
S/O. GEORGE, THAIKKODAM HOUSE, V.P. MARIKKAR ROAD,
EDAPPALLY P.O, KOCHI- 682024

BY ADVS.
JOHNSON MANAYANI
BENHUR JOSEPH MANAYANI
JEEVAN MATHEW MANAYANI

RESPONDENTS:

1 **KALAMASSERY MUNICIPALITY,**
MUNICIPAL COMPLEX, KALAMASSERY P.O, ERNAKULAM - 683104, REPRESENTED BY ITS SECRETARY

2 **THE SECRETARY,**
KALAMASSERY MUNICIPALITY, MUNICIPAL COMPLEX, KALAMASSERY P.O, ERNAKULAM - 683104

3 **THE TAHSILDAR,**
KANAYANNUR TALUK, TALUK OFFICE, ERNAKULAM - 682011

4 **THE TALUK SURVEYOR,**
KANAYANNUR TALUK, TALUK OFFICE, ERNAKULAM - 682011

**5 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO LOCAL SELF GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695001.**

**6 *ADDL.R6: STANLY K.J.,AGED 59 YEARS,
S/O.JACOB, KURISINKAL HOUSE, JAWAHAR LANE,
V.P.MARAKKAR ROAD, EDAPPALLY P.O., KOCHI-682 024.**

**7 *ADDL. R7:SABITH M.M., AGED 47 YEARS,
S/O.M.M. MOHAMMED ALI, MANAKKAPARAMBIL HOUSE,
JAWAHAR LANE, V.P.MARAKKAR ROAD, EDAPPALLY TOLL,
KOPCHI-682 024**

**8 *ADDL. R8:ABDUL NAZAR M.M., AGED 58 YEARS,
S/O.M.M. MOHAMMED ALI, MANAKKAPARAMBIL HOUSE,
JAWAHAR LANE, V.P.MARAKKAR ROAD, EDAPPALLY TOLL,
KOPCHI-682 024.**

(*ADDL.R6 TO R8 ARE IMPLEADED AS PER ORDER DATED 21-06-2022 IN IA 1/2022)

**BY ADVS.
SHRI.M.K.ABOOBACKER,SC KALAMASSERY MUNCIPALITY
C.S.AJITH PRAKASH
T.K.DEVARAJAN
PAUL C THOMAS
FRANKLIN ARACKAL
M.B.SOORI
BABU M.
NIDHIN RAJ VETTIKKADAN
HAARIS MOOSA
ANCY THANKACHAN**

OTHER PRESENT:
GP- RIYAL DEVASSY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VIJU ABRAHAM, J.

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W.P.(C) No.13474 of 2022

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Dated this the 26th day of March, 2025

JUDGMENT

The above writ petition is filed challenging Ext.P7 proceedings of the 2nd respondent.

2. It is averred in the writ petition that there were series of writ petitions relating to the subject property, which culminated in Exts.P1 to P3 judgments. W.P.(C)No.32141 of 2019 is filed by the petitioner herein alleging encroachment upon the Municipal puramboke and canal puramboke by respondents 2 to 5 therein. Thereupon this Court has disposed of the same as per Ext.P1 judgment directing the Tahsildar, Kanayannur Taluk to complete the survey of the property with notice to the parties and further directing that if there is any encroachment found in the survey, the Tahsildar shall communicate the same to the Municipality and thereafter the Municipality was directed to take further action in the matter. In W.P.(C)No.28823 of 2019, which was also filed by the petitioner herein seeking police protection for reconstruction of

the boundary wall, the Court found that since there is a dispute between the parties with regard to the reconstruction of the boundary wall, it is not appropriate for the Court to issue police protection and in case there is any dispute between the parties, it can be resolved only through a civil court and by Ext.P2 judgment relegated the parties to approach the Civil Court and the request for police protection was declined. Ext.P3 is the judgment in W.P.(C)No.33141 of 2019 filed by the additional respondents 6 to 8 herein, in which the petitioner herein is the 7th respondent. The said writ petition was filed seeking a direction against the Municipality to complete the tendering process for the renovation of the canal passing through Jawahar lane road and this Court has disposed of the same with a direction to the 6th respondent Tahsildar to identify the land belonging to the 7th respondent(the petitioner herein) and on the basis of the same take appropriate action. After the issuance of Exts.P1 to P3 judgments, respondents 3 and 4 made arrangements to measure the petitioner's land and they inspected the petitioner's property. Though inspection was conducted, no proper measurement was made or the survey proceedings were finalised. Since there was no measurement of the

property, the petitioner could not repair his damaged boundary wall. Thereupon a contempt of court case was filed as COC No.443/2022. While so Ext.P7 notice dated 17.03.2022 was issued by the 2nd respondent Municipality stating that the petitioner has encroached upon the Municipal properties and directed him to remove the encroachments. The petitioner would contend that after the issuance of Ext.P7, Ext.P8 notice dated 10.03.2022 was issued to the petitioner by the 4th respondent for survey and demarcation of the property. Based on Ext.P8, it is the contention of the petitioner that when notice of survey was issued to the petitioner on 10.03.2022, the direction issued in Ext.P7 to demolish the unauthorised construction on finding that there is encroachment by the petitioner on Municipal property is absolutely arbitrary and illegal. Thereupon Ext.P9 request was submitted by the petitioner.

3. A detailed statement has been filed by the 3rd respondent Tahsildar wherein it is stated that in obedience to Ext.P1 judgment issued by this Court in W.P.(C)No.32141 of 2019, the Taluk Surveyor was directed to measure the land with prior notice to the parties. Though notice was issued regarding the survey to be conducted on 08.12.2020, the survey could not take place on that

day and the same was postponed to 28.12.2020 with notice to the petitioner and the affected parties as evident from Ext.R3(a) notice. After the site inspection and measurement, the Taluk Surveyor prepared Ext.R3(b) sketch report and submitted it to the 3rd respondent and to the Secretary, Kalamassery Municipality which would reveal that an extent of 0.28 ares of Puramboke land in Survey No.77/19 part of block 5 in Thrikkakkara North Village is encroached upon by the petitioner. While so a contempt of court case No.443/22 was filed by the petitioner and in the said circumstance copy of the survey sketch was again sent to the Secretary, Kalamassery Municipality on 28.02.2022 for compliance of the Court Order and a direction was given to the Taluk Surveyor to pegmark the alleged property. It is also stated that Ext.P7 notice was issued by the Municipality based on the survey sketch & report given by the 3rd respondent and later on 16.03.2022, the Taluk Surveyor pegmarked the alleged land as directed by the 3rd respondent with prior notice to the parties based on the survey sketch already prepared by him.

4. A detailed counter affidavit has been filed by additional respondents 6 to 8 wherein based on Exts. R6(a) to R6(d) it is

contended that a proper survey was conducted as directed in Ext.P1 judgment. As there was a delay in completing the measurement, the respondents submitted a request before the Municipality to evict the encroachment on the thodu and to renovate the canal. Thereafter the 2nd respondent again issued a letter to the Taluk Surveyor, Kanayannur with a request to remove the encroachment as per Ext.R6(i). It is further submitted that it is on the basis of the sketch and measurement forwarded to the Kalamassery Municipality that Ext.P7 notice was issued. It is contended that there is absolutely no merits in the contention raised by the petitioner and sought for dismissal of the writ petition.

5. Respondents 1 and 2 have also filed a counter affidavit, wherein it is stated that pursuant to the direction issued by this Court as per Ext.P1 judgment, survey was conducted and the report and sketch was forwarded to the local authority which reveals that some extent of puramboke land is in the possession of the petitioner which is marked as 'C' and coloured as pink in the survey sketch and it is on the basis of the same that the Municipality issued Ext.P7 notice. The contention taken in the

counter affidavit is that in the Commission report filed by the Advocate Commissioner appointed by this Court the property is mentioned as 'Nalithuvazhi' which, in common parlance means a passage which is being used from time immemorial.

6. This Court has appointed an Advocate Commissioner and the Advocate Commissioner filed a detailed report, wherein it is reported that during the inspection the Commissioner has seen a thodu in the aforesaid 0.49 Ares of land in Sy. No.77/18 and the said thodu does not find a place in the municipal records. It is further reported that as intimated by the Surveyor, 0.30 Ares of land in Sy. No.77/19, which is in the possession of the petitioner is seen as 'Naalathuvazhi' in the BTR and the Commissioner was also informed by the Surveyor that 'Naalathuvazhi' is not under the ownership of anyone including the Municipality, as the same is in existence from time immemorial and not marked in any records. The petitioner relies on the finding No.(d) in the Commission report that as per Annexure C2 sketch of the Taluk Surveyor, there is no encroachment by the petitioner.

7. I have heard the rival contentions on both sides.

8. Though the petitioner has a specific case that no further

steps were taken pursuant to Ext.P1 to survey and demarcate the property, it has come out in evidence that the survey was conducted with notice to the petitioner and report and sketch was prepared and forwarded to the Municipality for taking appropriate action. In the reply affidavit filed by the petitioner to the counter affidavit filed by additional respondents 6 to 8, there is an admission that originally notice of inspection was given intimating the date of inspection as 08.12.2020, which was adjourned to 28.12.2020. This makes it clear that the petitioner was issued with notice of the survey and in the said survey conducted, going by the statement filed by the learned Government Pleader, an extent of 0.28 Ares of puramboke land comprised in Sy.No.77/19 part of block 5 in Thrikkakkara North Village is in the custody of the petitioner. Based on the same that Ext.P7 notice was issued.

9. Another aspect to be noted is the issuance of Ext.P7 notice, wherein a reference was made to the report of the Tahasidar Kanayannur dated 28.02.2022, which is the sketch prepared and on the basis of the same that Ext.P7 notice was issued contending that the petitioner has encroached upon the road and has constructed the compound wall encroaching upon the road and directed the

petitioner to remove the said encroachment. The statement filed by the 3rd respondent Tahsildar also reveals that the sketch and report was prepared much earlier to the notice to the petitioner and other affected parties. But later a contempt of court case was filed by the petitioner and in view of the same the copy of the survey sketch and plan was again sent to the Secretary of the Kalamassery Municipality on 28.02.2022 vide letter No.H4-9482/2020 in compliance with the direction in Ext.P1 judgment. But the said report also reveals that a direction was given to the Taluk Surveyor to pegmark the alleged property and report it to the Court. In the counter affidavit filed by respondents 6 to 8, Ext.R6(e) communication has been produced, which is the communication issued by the Tahsildar to the Secretary of the Kalamassery Municipality whereby the survey sketch and report was forwarded to the Municipality for appropriate action and also intimating that the Taluk Surveyor has been intimated to pegmark the subject property so that appropriate action could be taken. Exts.P8 could be treated only as a notice based on the direction issued to the Taluk Surveyor to pegmark the subject property. But it is a fact that Ext.P7 notice has been issued even before the pegmarking was

completed as per Ext.P8, inasmuch Ext.P8 notice is dated 10.03.2022 whereas Ext.P7 notice is dated 07.03.2022. The learned Government Pleader as well as the learned counsel appearing for the respondents and the learned counsel for the Municipality would submit that Ext.P7 notice has been issued based on the survey sketch and report prepared by the Tahsildar as directed in Ext.P1 judgment. Whatever that be Ext.R6(e) communication would reveal that a direction was issued to the Taluk Surveyor by the Tahsildar to pegmark so that appropriate action could be taken. It is without any doubt that Ext.P7 order has been issued before completing the proceedings for pegmarking pursuant to Ext.P8 notice.

10. Though there is a finding in the Commission report that as per the Annexure C2 sketch of the Taluk Surveyor there is no encroachment by the petitioner, the Commissioner has not stated as to how the Commissioner came to such a conclusion in the Commission report. Further aspect to be noted is that the property in Sy.No.77/19 of Thrikkakara North Village is shown as 'Nalithuvazhi' in the BTR and that the said property is not under the ownership of anyone including the Municipality and the same was in existence from time immemorial.

11. Therefore, I am of the view that the writ petition could be disposed of as follows:

i) Ext.P7 order is set aside.

ii) There will be a direction to respondents 1 & 2 to see that further proceedings in this regard shall be taken only on the basis of the survey sketch and report submitted and also on the basis of the pegmarking of the subject property, which is stated to have been done pursuant to Ext.P8 notice.

Iii) Before proceeding further, the petitioner as well as the additional respondents 6 to 8 shall also be put to notice and appropriate action shall be taken after affording an opportunity of being heard to the petitioner as well as additional respondents 6 to 8.

Sd/-

VIJU ABRAHAM
JUDGE

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APPENDIX OF WP(C) 13474/2022

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE JUDGMENT IN WP(C) NO. 32141/2019 DATED 18.03.2020 OF THE HON'BLE HIGH COURT OF KERALA,**
Exhibit P2	**TRUE COPY OF THE JUDGMENT IN WP(C) NO. 28823/2019 DATED 18.03.2020 OF THE HON'BLE HIGH COURT OF KERALA,**
Exhibit P3	**TRUE COPY OF THE JUDGMENT IN WP(C) NO. 33141/2019 DATED 18.03.2020 OF THE HON'BLE HIGH COURT OF KERALA,**
Exhibit P4	**TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER'S COUNSEL DATED 30.11.2020 TO THEN, TALUK SURVEYOR AND TAHSILDAR.**
Exhibit P5	**TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER'S COUNSEL TO THE 3RD RESPONDENT DATED 27.01.2022.**
Exhibit P6	**TRUE COPY OF THE CONTEMPT OF COURT CASES NO.443/2022 FILED BY THE PETITIONER WITHOUT THE ANNEXURES DATED 16.02.2022.**
Exhibit P7	**TRUE COPY OF THE NOTICE DATED 7.3.2022 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
Exhibit P8	**TRUE COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DATED 10.03.2022 TO THE PETITIONER AND TO THE LOCAL RESIDENTS.**
Exhibit P9	**TRUE COPY OF THE LETTER ISSUED BY THE PETITIONERS COUNSEL TO THE 2ND RESPONDENT DATED 17.03.2022.**

RESPONDENT EXHIBITS

Exhibit R6 A	**A TRUE COPY OF THE NOTICE DATED 3/7/2019 ISSUED BY THE TALUK SURVEYOR, TO THE PETITIONERS AND OTHERS**
Exhibit R6 B	**A TRUE COPY OF THE NOTICE DATED 21/12/2020 ISSUED BY THE TALUK SURVEYOR, TO THE PETITIONERS AS WELL AS TO THE ADDITIONAL RESPONDENTS.**
Exhibit R6 C	**A TRUE COPY OF THE REPORT DATED 8/12/2020 OF THE SURVEYOR MR.RAJEEV JOSEPH ISSUED BY THE PUBLIC INFORMATION OFFICE OF THE TALUK OFFICE.**
Exhibit R6 D	**A TRUE COPY OF THE SKETCH OF THE DISPUTED PROPERTY ISSUED BY THE TALUK SURVEYOR IS OBTAINED UNDER THE RTI ACT**
Exhibit R6 E	**A TRUE COPY OF THE LETTER BY THE THAHASILDAR (LR) DATED 28/2/2022 FORWARDED TO THE SECRETARY, KALAMASSERY MUNICIPALITY**
Exhibit R6 F	**A TRUE COPY OF THE MASS REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT**
Exhibit R6 G	**A TRUE COPY OF THE REPLY UNDER THE RTI ACT ISSUED BY THE AE AND PUBLIC INFORMATION OFFICER OF THE 1ST RESPONDENT DATED 27/11/2019**
Exhibit R6 H	**A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE RESPONDENTS DATED 7/8/2021 BEFORE THE RESPONDENTS DATED 7/8/2021 BEFORE THE SECRETARY, KALAMASSERY MUNICIPALITY**

Exhibit R6 I	**A TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE TALUK SURVEYOR DATED 23/12/2021**
Exhibit R6 J	**A TRUE PHOTOCOPY OF THE SURVEY STONE LAID BY THE TALUK SURVEYOR AND OVERSEER OF THE MUNICIPALITY**
Exhibit R6 K	**A TRUE COPY OF THE PHOTOGRAPH SHOWING THE MARKING OF ENCROACHED AREA**
Annexure R3(a):	**True copy of notice sent to the petiitioner by registered post.**
Annexure R3(b):	**A true copy of sketch**
Exhibit R8(a)	**A TRUE COPY OF THE PHOTOGRAPH OF THE REAL SITUATION OF THE CANAL IN QUESTION DATED 26/07/2022.**
Exhibit R8(b)	**A TRUE COPY OF THE PHOTOGRAPH OF THE REAL SITUATION OF THE CANAL IN QUESTION DATED 11/07/2022.**
Exhibit R8(c)	**A TRUE COPY OF REPRESENTATION DATED 11/07/2022 SUBMITTED BY THIS DEPONENT ALONG WITH 11 OTHERS BEFORE THE SECRETARY, KALAMASSERY MUNICIPALITY.**
Exhibit R8(d)	**A TRUE COPY OF THE RECEIPT ISSUED BY KALAMASSERY MUNICIPALITY DATED 16/07/2022.**
Annexure C1	**Original of the sketch dated 31/10/2022 showing the properties of additional respondents 6 to 8 prepared by the Taluk Surveyor**

Annexure C2	**Original ofthe sketch dated 31/10/2022 showing the petitioner's property prepared by the Taluk Surveyor**
Annexure C3	**True copy of the survey sketch dated nil marking the properties of 7th and 8th additional respondents**
Annexure C4	**True copy of the survey sketch dated nil marking the property of 6th additional respondent**
Annexure C5	**True copy of Survey Sketch dated 14/06/1982 marking the property of the petitioner**
Annexure C6	**Original of the sketch dated 30/01/2023 showing the entire length and width of the Jawahar lane prepared by the Advocate Commissioner**