

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh.M., Additional Munsiff

Wednesday, the 10th day of September, 2025/ 19th Bhadram, 1947.

IA No.06/2025 in O.S. No.244/2019

(Filed on 20.02.2025)

Petitioners/ Plaintiffs:-

1. Sukumaran, aged 75,
S/o Raman, Reshma Nivas, from
Palackatharayil, Perunnermangalam Muri,
Mararikkulam North Village.
2. Reshma, aged 44, D/o Sukumaran,
Reshma Nivas, Perunnermangalam Muri,
Mararikkulam North Village.

By Adv.V.N.Subhangan

Respondents/Defendants:-

1. Kerala State Electricity Board,
represented by Secretary, Vaidyuthi Bhavan,
Pattom.P.O, Thiruvananthapuram.
2. Assistant Executive Engineer, K.S.E.B,
Electrical Sub Division, KSEB Office, S.L.Puram.
3. Assistant Engineer, S.L.Puram,
Electrical Major Section K.S.E.B Office, Muhamma.

R2 by Adv.K.J.Sunny

This petition having been finally heard on 10.09.2025 and the court on the same day passed the following :-

ORDER

This is a petition filed under Order 39 Rule 1 and 2 r/w Sec.94 and 151 of the Code of Civil Procedure, 1908. The Plaintiff filed this petition seeking an order of interim mandatory injunction to restore the subject matter of the suit as on the date of suit.

2. Petition averments in brief -

The petitioner is the second plaintiff in the above suit. This petition is filed on behalf of the other plaintiff also. The property described as Item No. 1 in the plaint schedule, comprising 0.30 Ares, falls under old Survey Nos. 123/6A, 123/5B, and 123/6, and re-surveyed as 611/1. Out of this, 12 cents were purchased by the petitioner's father from Madhavan Sukumaran of Pokkathuveetil vide Document No. 2934/1978, and the remaining 12 cents were purchased from Vasudeva Mallan of Kandailath house vide Document No. 2565/1951. Accordingly, the petitioner's father acquired full ownership, took possession, mutated the property in his name, paid land tax, and constructed a residential house on the western portion of the property. Since 1982, the petitioner, along with his father and family, has been residing there. From birth, the petitioner has continuously resided with his father in the said property, and both have jointly possessed and enjoyed the plaint schedule properties. The property situated to the northeast of Item No. 1, previously owned by the Kundailat family, was acquired by the first defendant subject to the petitioner's right of way. The entire property forming the access route has been included as Item No. 2 in the plaint schedule. Since 1982, the petitioner's father has been using the pathway from Item No. 1 through the gate on the northern boundary, proceeding northeast, then slightly northwest, and finally northward to reach the gate on the eastern boundary of the BSNL property, and from there eastward to the National Highway. This route has been used by the petitioner, his father, and

family members for ingress and egress. Initially, the pathway from Item No. 1 to the BSNL gate measured approximately 20 meters in length and 2.5 meters in width. To facilitate access for neighboring residents, the Panchayat Member requested the petitioner's father to shift the northern wall slightly southward, which was done. Consequently, the pathway was widened to 3 meters, and the Panchayat laid gravel to form a road. Thereafter, two-wheelers and cars have been regularly used on this route for vehicular access to Item No. 1. The gravel-laid portion of the pathway has been included as Item No. 3 in the plaint schedule. The petitioner and others have acquired a casement right of way by prescription over Item No. 3. To establish this right, the petitioner and his father jointly filed the above suit, along with Commission Application I.A. No. 1609/2019, which was allowed, and a Commission Report was submitted on 04.06.2019. Until final disposal of the suit, the defendants or any persons claiming under them shall not forcibly enter Item No. 3, make any constructions therein, or obstruct the petitioner and others from using the said property for vehicular and pedestrian access. Accordingly, the petitioner and his father filed I.A. No. 1608/2019 seeking an interim injunction. However, due to a caveat filed by the Electricity Board, the petition was not immediately allowed and notice was issued to the defendants. The defendants appeared through counsel, and the second defendant, an officer under the first defendant, filed objections. After hearing both sides, the Hon'ble Court, by order dated 24.06.2019, directed all parties to maintain status quo as per the Commission Report regarding Item No. 3. The defendants are aware of this order and are bound to comply with it. However, in deliberate violation of the said court order, during the second week of January 2025, the defendants, under their direction, demolished the existing foundation and wall on Item No. 3 and constructed a new wall with a granite foundation. Upon noticing this, the petitioner and his father filed I.A. No. 5/2025

on 17.01.2025 seeking punitive action and a fresh Commission Report. As of now, the defendants have not filed any objections to I.A. No. 5/2025. The defendants have blatantly and willfully violated the court's directions and altered the status quo on Item No. 3 through unauthorized construction. These actions have caused substantial obstruction to the petitioner's right of way, rendering the earlier court order ineffective. Therefore, the constructions made by the defendants in violation of the order must be removed within a specified time frame, and the status quo as recorded in the Commission Report dated 04.06.2019 must be restored. The petitioner and the first petitioner have a strong prima facie case, and the balance of convenience is in their favour. Hence this petition.

3. Respondents filed objection contending as follows –

The petition is not maintainable. The averments contained in the petition are false. The respondents contends that petitioners have never had any right, title, or easement over the property belonging to the Kerala State Electricity Board (KSEB) at any point in time. The report submitted by the Commissioner pursuant to the order in I.A. No. 1609/2019 does not establish any right of way in favor of the petitioners over the property in question. The respondents have not caused any obstruction whatsoever in respect of the property alleged in the petition. No order on merits has been passed in I.A. No. 1608/2019. The status quo order issued therein was purely an interim arrangement. The said order pertains only to the pathway identified by the Commissioner and not to the property described as Item No. 3 in the plaint schedule. The alleged construction activities said to have occurred in January 2025 were not carried out on the pathway identified during the initial site inspection by the Commissioner. The second Commission Report has clarified

the factual position and confirmed that the alleged constructions were made on a different portion of the property. The respondents have filed detailed objections to I.A. No. 5/2025. The petitioners have sought to mislead the Court by requesting a determination as to whether new constructions have been made on Item No. 3, rather than seeking clarification on whether any changes have occurred to the previously identified pathway. It is pertinent to note that the respondents have consistently disputed the existence of any pathway over Item No. 3. The Commissioner, during the initial inspection, did not identify any such pathway. The respondents have not violated any directions issued by this Court. No status quo order has ever been issued in respect of the property described as Item No. 3 in the plaint schedule. The status quo order pertains only to the pathway identified by the Commissioner during the initial inspection. The petitioners have misrepresented this fact before the Court by alleging that the status quo order applies to Item No. 3, and have filed I.A. Nos. 5/2025, 6/2025, and 7/2025 on that basis. Consequently, there is no necessity for police protection to enforce the status quo order. The petitioners have sought a Commission to determine whether new constructions have been made on Item No. 3, rather than whether any changes have occurred to the pathway identified in the earlier report. It is noteworthy that the petitioners have not requested verification of any deviation to the pathway marked as “C Schedule” in the previous report. Instead, they have sought a general inspection of the entire property to identify any changes, which is clearly intended to mislead the Court. Hence the petition is liable to be dismissed.

4. Heard both sides.

5. The following points are raised for consideration;

1. Whether the plaintiff/petitioner is entitled to get an interim

mandatory injunction as prayed for?

2. What is the order ?

6. Point No.1 –

The case of the petitioner is that the respondents have violated the status quo order passed by this court by erecting a compound wall and constructing a foundation after the order. On the contrary, the respondents contend that the status quo order passed by this court pertains only to the pathway identified and reported by the advocate commissioner in the commission report dated 04/06/2019. According to the respondents, no alterations have been made to the said pathway. The respondents contend that the foundation and compound wall constructed by them are not included within the pathway reported by the commissioner. Hence, according to them, the status quo order has not been violated. Before addressing the merits of the case, it will be apposite to reproduce the status quo order passed by this court. It reads as follows; “*All parties are directed to maintain status quo in respect of the plaint schedule item no.3 property as reported by the commissioner.*” Now let us analyse the dimensions of plaint schedule item no.3 reported by the advocate commissioner. The commissioner have reported the same as follows “അന്യായ പട്ടിക വസ്തു ഒരു പൂഴി റോഡ് ആണ് . ടി റോഡിനു പടിഞ്ഞാറു വശം B S N L വക മതിലും വടക്കു വശം B S N L വക കോൺക്രീറ്റ് റോഡും തെക്കു വശം 1 ആം നമ്പർ വസ്തുവും കിഴക്കു വശം KSEB വക വസ്തുവുമാണ്. ടി റോഡ് B S N L വക വസ്തുവിന്റെ കിഴക്കേ മതിലിനോട് ചേർന്ന് തെക്കു വടക്കായാണ് സ്ഥിതി ചെയ്യുന്നത്. ടി റോഡിനു നിലവിൽ വടക്കും concrete റോഡിൽ നിന്ന് തെക്കും വാദി വക ഗേറ്റ് വരെ ഉദ്ദേശം 45 മീറ്റർ നീളമുള്ളതും ടി റോഡ് പടിഞ്ഞാറോട്ട് തിരിയുന്ന ഭാഗം വരെ ഉദ്ദേശം 42 മീറ്റർ നീളമുള്ളതും ടി റോഡിനു വടക്കും ഉദ്ദേശം 320 മീറ്റർ വീതിയുള്ളതായി തിട്ടപ്പെടുത്തിയിട്ടുള്ളതും തുടർന്ന് തെക്കോട്ടുള്ള ഭാഗത്തു മുൻ വകുപ്പിൽ വിവരിച്ച പ്രകാരം നിർമ്മാണപ്രവർത്തനം നടന്നത് മൂലം വിവിധ ഭാഗങ്ങളിൽ ടി റോഡിനു ഉദ്ദേശം 2.30 cm , 2.40 cm , 2.50 cm വീതികൾ ഉള്ളതായി അളന്നു തിട്ടപ്പെടുത്തിയിട്ടുള്ളതാണ്. ടി റോഡ്

പൂഴിയും കുരികല്ലും മറ്റും ഇട്ടു ഉറപ്പിച്ച നിലയിലും ടി റോഡ് നല്ല ഉറച്ച നിലയിൽ സ്ഥിതി ചെയ്തിരുന്നതും ടി റോഡ് പരിശോധിച്ചതിൽ നിന്ന് ഉദ്ദേശം 10 വർഷത്തിനടുത്തു പഴക്കമുള്ളതായി അനുമാനിക്കാം. മേൽ വിവരിച്ച നിർമ്മാണ പ്രവർത്തനങ്ങൾ മൂലം ടി റോഡിന്റെ വശം ഇടിഞ്ഞു തുടങ്ങിയ നിലയിൽ ആണ് സ്ഥിതി ചെയ്യുന്നത്. ടി റോഡ് തുടർന്ന് പടിഞ്ഞാറോട്ടും തുടർന്ന് തെക്കോട്ടും അതിനു ശേഷം പടിഞ്ഞാറോട്ടും സഞ്ചരിക്കുന്ന നിലയിലാണ്. From the detailed description of Item No. 3 provided by the Commissioner, it is evident that the opening portion of the said pathway has a width of 3.20 meters. Additionally, the Commissioner has reported that, owing to the construction activities carried out by the respondents, the width of the Item No. 3 pathway progressively reduces towards the south, measuring 2.30 meters, 2.40 meters, and 2.50 meters at different points. The Commissioner has further detailed the construction works being undertaken by the respondents on the eastern side of the Item No. 3 property, specifically for the purpose of erecting a compound wall. These works include excavation, foundation laying, and the placement of granite stones, among other activities. It is also discernible from the Commission's report that Item No. 3 is a gravel road. The plaintiff has instituted the present suit seeking a declaration of his right of prescriptive easement over the Item No. 3 pathway, along with consequential reliefs by way of mandatory and prohibitory injunctions. According to the plaint schedule, the width of the Item No. 3 pathway, as claimed by the plaintiff, is three meters. The respondents, in their written statement, have denied that the pathway at any time measured three meters in width. The question as to whether the plaintiff has acquired a right of prescriptive easement over the Item No. 3 pathway, and whether the said pathway indeed had a width of three meters, are matters that involve factual determinations which cannot be adjudicated at this interim stage. What emerges from the Commission's report is the existence of a pathway having a width of 3.20 meters at its opening portion, which narrows as it

proceeds southwards due to the construction activities carried out by the respondents. It is pertinent to note that the plaint itself contains the allegation that the respondents have encroached upon the Item No. 3 pathway and commenced construction of a compound wall, thereby reducing its width. On this basis, the plaintiff has sought the relief of a mandatory injunction. As already stated, the disputes concerning the exact width of the Item No. 3 pathway and the rights claimed by the parties can only be conclusively resolved after evidence has been duly adduced in the course of the trial. In light of the above, this Court passed the status quo order with regard to the plaint Item No. 3 property, as reported by the Commissioner, with the object of preserving the subject matter of the suit pending final adjudication on the merits. The status quo order passed is not intended to derogate from or prejudice the rights of the petitioner, who claims a prescriptive easement over a three-meter pathway. Nor does the order imply or restrict the petitioner/plaintiff's right of way solely to the portion of the pathway identified and reported by the Commissioner. The object and purpose behind the issuance of the status quo order is to safeguard and maintain the core subject matter of the dispute until such time as the rights of the parties are decided upon merits. Accordingly, it must be emphasized that the status quo order passed by this Court does not confer upon the respondents any license or authority to undertake constructions or alterations within the disputed area in this suit.

7. In this backdrop, let us delve in to the allegations put forth by the petitioner in this petition. The petitioner's allegation is that after the institution of the suit and after the passing of status quo order the respondents have completed the construction of the compound wall on the eastern side of the plaint item No.3 property. Inorder to prove his allegations the petitioner has taken out a commission. The commissioner have visited the spot and filed the

commission report. As per the same it is reported as follows; “മുൻ റിപ്പോർട്ടിൽ നിന്ന് വ്യത്യസ്തമായി (ടി 3-ാം നമ്പർ വഴിയുടെ കിഴക്കുവശം) 2-ാം നമ്പർ വസ്തുവിന്റെ പടിഞ്ഞാറ് ഭാഗത്ത് വാനം വെട്ടി കരികല്ല് നിരത്തിയതായി പറഞ്ഞ ഭാഗത്ത് വടക്കുത്ത് നിന്ന് തെക്കോട്ട് ഉദ്ദേശം 18.80 മീറ്റർ നീളത്തിൽ ഇഷ്ടിക കൊണ്ട് നിർമ്മിച്ച് സിമന്റ് പൂശി വെള്ള നിറത്തിലുള്ള കുമ്മായം പൂശിയ മതിൽ നിർമ്മിച്ചിട്ടുള്ളതായി കണ്ടു. ടി മതിലിന് ഉദ്ദേശം 1.60 മീറ്റർ ഉയരമുള്ളതായി കണ്ടു. ടി മതിലിനെ തുടർന്ന് തെക്കോട്ട് പട്ടിക ഒന്നാം നമ്പർ വസ്തുവിന്റെ വടക്ക് കിഴക്കേ മൂലവരെ ഉദ്ദേശം 26.50 മീറ്റർ നീളത്തിലും (4 മീറ്റർ ഫൗണ്ടേഷൻ കമ്മീഷണറുടെ ആദ്യ സന്ദർശന സമയം പൂർത്തീകരിച്ചത്) ഉദ്ദേശം 60 സെന്റി മീറ്റർ വീതിയിലും ഫൗണ്ടേഷൻ നിർമ്മിച്ചിട്ടുള്ളതായി കണ്ടു. ആദ്യ സന്ദർശന സമയം ഉണ്ടായിരുന്ന പൂഴി റോഡിന്റെ സ്ഥാനത്ത് നിലവിൽ റോഡ് കോൺക്രീറ്റ് ചെയ്ത നിലയിൽ സ്ഥിതി ചെയ്യുന്നതായും ടി റോഡിന് വടക്കുറ്റം ഉദ്ദേശം 3.20 മീറ്റർ വീതിയുള്ളതായും തുടർന്ന് തെക്കോട്ട് ടി റോഡിന്റെ വീതി പരിശോധിച്ചതിൽ ടി റോഡിന് പല ഭാഗങ്ങളിൽ 3.10, 3.00, 2.90 എന്ന നിലയിൽ വീതിക്കുറവ് സംഭവിച്ചതായും തുടർന്ന് മതിലിന്റെ തെക്ക് പടിഞ്ഞാറ്റും ടി റോഡിന് 2.80 മീറ്റർ വീതിയുള്ളതായി കണ്ടു. തുടർന്ന് തെക്കോട്ട് നിർമ്മിച്ച ഫൗണ്ടേഷനും BSNL വക വസ്തുവിന്റെ കിഴക്കുവശമുള്ള മതിലിനുമിടയിൽ ടി റോഡിന് പല ഭാഗത്തും വടക്ക് നിന്ന് തെക്കോട്ട് 2.80, 2.70, 2.60, 2.50, 2.40, 2.30 മീറ്റർ വീതിയുള്ളതായും അപ്രകാരം ടി ഭാഗങ്ങളിൽ വീതികുറഞ്ഞ് ഉദ്ദേശം 2.30 മീറ്റർ വീതി വരെ കുറയുന്നതായി കണ്ടു.” From the above findings of the Advocate Commissioner, it is discernible that the respondents have completed the construction of the compound wall on the eastern side of the Item No. 3 pathway after the passing of the status quo order in this case. The Commissioner has also reported that the nature of the Item No. 3 pathway has changed from a gravel road to a concrete road. Moreover, the respondents have admitted that they carried out the constructions as alleged in the petition. Therefore, from the admission of the respondents and the findings of the Commissioner, it becomes clear that the respondents have altered the status of the plaint schedule properties during the pendency of the suit.

8. Now, let us analyse the contentions advanced by the respondents. The sole contention of the respondents is that the status quo order pertains only to the

pathway identified and reported by the Commissioner, and that no construction has been carried out within the said pathway. They further contend that the width of the pathway has not been reduced as a result of such construction. Accordingly, the respondents assert that there has been no violation of the status quo order. This Court, however, finds no merit in the aforesaid contention. The status quo order passed in this case was not intended solely to preserve the pathway identified by the Commissioner. Rather, its primary purpose was to restrain any further construction or alteration pending adjudication of the parties' rights. The rights of the plaintiff over the three-meter width pathway, as claimed in the plaint schedule, are currently under consideration before this Court. Until such rights are finally determined, the respondents cannot be permitted to undertake any construction activities on the said pathway, as such acts would directly impinge upon the rights the plaintiff seeks to enforce in this suit. It is pertinent to reiterate that the plaintiff has also sought relief by way of a mandatory injunction to remove the foundation and granite stones, which are alleged to have been unlawfully erected by encroaching upon the Item No. 3 property. It is upon this foundation that the respondents have subsequently constructed a compound wall. When an allegation of illegality attaches to the foundation itself, it was improper on the part of the respondents to raise a compound wall thereon, especially in view of the status quo order issued by this Court. The very object of a status quo order is to preserve the existing state of affairs between the parties and to preclude either party from making any changes or alterations to the subject matter of the suit. The Commissioner, in his initial report, has observed a reduction in the width of Item No. 3 pathway as a consequence of the construction activities undertaken. Having regard to this, it was incumbent upon the respondents to refrain from carrying out any further construction until the suit is finally disposed of. If, as contended by the learned

counsel for the respondents, the construction of the compound wall was necessitated by some compelling reason, there existed no impediment to the respondents seeking the prior permission of this Court before proceeding with such construction. Until the precise width and extent of the Item No. 3 pathway is conclusively determined by this Court, any construction carried out thereon must be regarded as illegal, having regard to the status quo order in force. The respondents cannot take refuge in a hyper-technical interpretation of the status quo order by asserting that it applies only to the pathway identified by the Commissioner, particularly when the Commissioner has himself reported a reduction in the width of the pathway due to the construction of the foundation. Without a clear determination that the foundation has not been constructed by encroaching upon the Item No. 3 pathway, any further construction undertaken by the respondents would amount to a clear violation of the status quo order. Furthermore, even in the absence of a status quo order, there exists a fundamental duty cast upon the parties to a suit to refrain from altering the status of the suit property. The respondents herein have manifestly altered the status of the property in question, as is evident from the Commission report. The respondents, being statutory authorities and their officers, must be presumed to have knowledge of the law in these matters.

9. The Hon'ble High Court of Kerala in **Thomas T. K. and Another v. Antony K. V. @ Jose and Another (2018 (4) KHC 320)** has held that "*An interim mandatory injunction can be granted only in exceptional circumstances. It is not proper to grant interim mandatory injunction when the suit itself was for the grant of the very same relief by way of a decree of mandatory injunction. But when the party seeks to restore ante status quo position of the suit property, the legal position would be different and it would be an exceptional*

circumstance under which the Court can grant a mandatory injunction directing to remove the obstruction, whatever structure or construction made in the property after the institution of the suit. If it is for restoring the ante status quo position as on the date of the institution of the suit and when there is prima facie evidence, it would cast a duty on the Court to preserve the property as such as on the date of its institution, hence granting of interim mandatory injunction for restoring ante status quo position of the suit property is the rule and not the exception.” Hence, this Court is of the opinion that the constructions carried out by the respondents after the passing of the status quo order must be removed, and the Item No. 3 property must be restored to the condition as reported by the Commissioner in the report dated 04/06/2019. Hence this point is found in favour of the petitioner.

10. Point No.2 –

In view of the findings in point No.1, the I.A. is allowed as follows;

- i. The respondents are hereby directed to restore the item No.3 pathway to the same condition as reported by the advocate commissioner in the commission report dated 04/06/2019. The respondents shall remove all the new structures erected by them subsequent to the passing of the status quo order issued by this court within 30 days from the date of this order.**
- ii. If the respondents fails to do as above in the stipulated period, then the petitioner can do the same through the process of the court at the expense of the respondents.**
- iii. The work shall be done under the supervision of Advocate commissioner Adv.R.Renjith. The batta of advocate commissioner is fixed as Rs.3000/-. The batta**

shall be borne by the respondents.

- iv. The petitioner is entitled to get the costs of this petition from the respondents.**

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 10th day of September, 2025.)

Sd/-
MAHESH M.
ADDITIONAL MUNSIFF

APPENDIX :-

Documents relied by the petitioner

- 1) Commission report dated 04/06/2019 by Advocate R.Renjith.
- 2) Commission report dated 28/05/2025 by Advocate R.Renjith.

Documents produced by respondents

- 1) Certified copy of Thandapper Register.
- 2) Certified copy of Award in L.A. No.64/1985.
- 3) Certified copy of Survey plan.
- 4) Certified copy of Mahazar prepared by Village officer, Mararikulam North Village office.
- 5) Tax receipt dated 09/04/2025.

Sd/-
ADDITIONAL MUNSIFF