

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Sri. Anirudhan T K, Additional Munsiff

Monday the 7th day of October, 2024/15th Ashwina,1946

I.A. No. 2/2022 in O.S. No. 103/2022

Petitioner/Plaintiff:-

Sindhu, W/o.Sreekumar P K, aged 54 years, Odampally Parambil House, Thoppumpady Village, Thoppumpady PO, Kochi-682005

By Advs . Safeena V J & Ann Mary Bernard

Respondents/Defendants:-

- 1 M/s.Ambedkar Cultural Forum, 14/614/B, Statue Road, Pandikudy, Kochi-682002 represented by its President.
- 2 Corporation of Cochin, represented by its Secretary, Corporation Office, Ernakulam, Pin-682011
- 3 Assistant Executive Engineer, Corporation of Cochin, Zonal Office, Mattancherry, Pin-682002

R1 By Advs. Praveen Thankappan & Sanil Kunjachan
R2 & R3 No Vakkalath

This petition come up for hearing before me on 28.09.2024 and the court on 07.10.2024 passed the following:-

ORDER

The petition is for temporary injunction.

2. **Petitioner's contentions in brief, is as follows:**The petitioner is the plaintiff in the above suit. The petitioner states that she is the owner and in possession of 1.72 Ares of land in Sy.No.1200/4 of Thoppumpady village, Kochi Taluk and a building therein bearing CC.No.10/347. This property is

described as plaint A schedule property. The petitioner obtained plaint A schedule property as per settlement deed No.2623/2006 of SRO, Kochi. The adjoining property to the plaint A schedule property on the western side is having an extent of 23 cents in Sy.No.1109 of Thoppumpady belonging to Kochi Corporation. This land is learnt to have entrusted over to the 1st respondent by Kochi Corporation. This land is a vacant land except a building belongs to the 1st respondent and the property is not separated by compound wall. This property is described herein as petition B schedule property and it is having road frontage on the west. It is a public road where through the petitioner and her predecessors in interest was enjoying a right of pathway for the last more than 50 years.

3. From the western boundary of petition A schedule property there is a motorable way starting from Santo Gopalan road and reaching to petition A schedule property, which passes through plaint B schedule property which is the only property lying in between petition A schedule property and the public road. This motorable pathway having approximate length of 11 meters and a width of 3 ½ meters is described herein as petition C schedule property. The petitioner is residing in the petition A schedule property for more than 50 years. The petitioner and her family were using petition A schedule property for their ingress and egress to the petition A schedule

property. The C schedule property was being used by the petitioner openly, continuously, uninterruptedly and as of right for more than 50 years and the petitioner is also having a car. A car portch also is constructed in front of her house. She has prescriptive easement right over the petition C schedule property.

4. On 18.03.2024 the respondents and their men were seen engaged soil excavation from the south-eastern portion of petition B schedule property with an intent to construct a compound wall blocking petition C schedule pathway over which petitioner has already perfected her right of easement by prescription. The respondents and their men have started excavation work from southern side and running towards north. Then the petitioner felt some doubt on the mischevous act of the respondents and their men, had made enquiries but none of them responded properly and avoided her. But on detailed enquiry it was revealed that the respondents are going to construct a boundary wall on all sides of the B schedule property. As the petitioner and her family are using C schedule pathway which is a motorable way, for their ingress and egress to the petition A schedule property from PWD road namely Santo Gopalan Road. The respondents are fully aware that the petitioner's predecessors in interest and

now the petitioner and her family are using the C schedule way as their only motorable access from petition A schedule property to Santo Gopalan road.

5. At present the respondent wanted to construct a boundary wall on all sides of petition B schedule property and excavation work was started as its first steps by doing so the respondents are attempting to obstruct the C schedule motorable way. The respondents have no right or authority to construct the boundary wall by obstructing peaceful enjoyment of C schedule motorable way. The petitioner apprehend that the respondents may take the law into their hand and forcefully constructed boundary wall with their political influence, money power and man power and the petitioner approached this court and filed the petition.

6. The 1st respondent/defendant filed counter stating that the petition as well as the suit is not maintainable either in law or on facts of the case. The 1st respondent is a registered society. The petitioner had approached this court by suppressing the material facts. This is an experimental suit filed without any bona fide in fact there is a thodu in between the property of the petitioner and petition B schedule property. This thodu was reclaimed and covered with concrete slabs and formed a pathway in north-south direction with two meters width. The petitioner and her family is using this

pathway for their ingress and egress for more than 2 ½ years. In addition to this 2 meters pathway the petitioner has her original pathway lying towards east for her ingress and egress which is shown in her title deed. Therefore the petition A schedule property and B schedule property are not at all adjoining properties. This thodu was developed and made as a pathway using M.P funds sanctioned for the 1st respondent. In the title deed of the petitioner the boundary of the property the western boundary is shown as thodu and not petition B schedule property.

7. The petition B schedule property is not a vacant land with only one building in fact there is an open air stage in the property. A public road on the western side of petition B schedule property is admitted. But the statement that the petitioner and her predecessors were enjoying a right of pathway for the last more 50 years is false. The original access to the petitioner's property is towards east as seen in her title deed. Later 2 meters width pathway also was made available by reclaiming the thodu. The 1st respondent has every right to construct a compound wall/curb wall. As they are rightly entrusted with the land by the Corporation authorities and their right confirmed by the Hon'ble High Court of Kerala through various writ petitions.

8. According to the 1st respondent the actual facts are as follows that

the 1st respondent is a registered cultural forum formed for the promotion and upliftment of members of scheduled casts living in and around in Ernakulam District. The 1st respondent cultural forum has been registered under the provisions of the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955 with Reg.NO.1031/99. It has got its registered office at Statue Road, Pandikudy, Kochi. During the past years the 1st respondent cultural forum had implemented several welfare programmes for the overall development and promotion of the members of the scheduled caste community. In recognition of the said services the 2nd respondent Corporation of Kochi has granted the management rights over 23 cents of property (petition B schedule property). The 1st respondent has constructed a public library/reading room and an open air stage in the property. Further the 2nd respondent corporation by a separate resolution has permitted the 1st respondent to construct a compound wall/curb wall around the petition B schedule property so as to prevent various encroachments in the property.

9. Later a stop memo was issued on the basis of mistaken facts and the 1st respondent has approached the Hon'ble High Court of Kerala by challenging this stop memo by filing WP(C)4319/2009. The Hon'ble High Court by its judgment dated 30.05.2012 by directing the 2nd respondent

Corporation that it would be open to the Corporation to implement its resolution relating to the curb wall within a period of six months from the date of receipt of copy of the judgment. It was also directed that in the event if the Corporation has failed to do so, after expiry of the above period the Corporation should call upon the 1st respondent cultural forum to do the work as resolved in the resolution. When again the authorised parking of vehicles had become serious menace the 1st respondent was constrained to approach the Hon'ble High Court again by filing writ petition WP(C)25169/2016. Then the earlier petitioner Sri. K.R.Mani has also approached the Hon'ble High Court by another writ petition as WP(C)24966/2016. Both these petitions were also disposed by the Hon'ble High Court by common judgment dated 24.10.2016. By the said judgment the unauthorized parking of vehicles was completely stopped by the Hon'ble High Court and 1st respondent was given liberty to approach the District Collector and alert to take appropriate action against such unauthorized parking. Though an appeal was preferred against the judgment that was also dismissed by the Hon'ble High Court.

10. As stated above the construction of the curb wall around the petition B schedule property was eluding away for one reason or another, obstructions were placed in the matter of construction of curb wall. As a

result of unauthorized encroachment/used, the open air stage and public library/reading room constructed in the property could not be functioned effectively. As a last resort few residents who were in no way connected with the petition B schedule property have approached the Hon'ble High Court through WP(C)26426/2012 and WP(C)2400/13 stating that the construction of compound wall would lead to the obstruction of access to their homes. But those writ petitions were disposed of by declining any relief to such persons as the Hon'ble High Court as specifically found that they have got no right to object the construction of the compound wall around the petition B schedule property and all the residents in the locality have got separate alternate access to their homes.

11. The 5th petitioner in WP(C)26426/2012 was the mother of the petitioner herein. The mother of the petitioner and herself are living under the same roof and therefore the petitioner is well aware about the facts regarding various orders of the Hon'ble High Court in favour of the 1st respondent with respect to the B schedule property. In the common judgment dated 16.08.2017 in WP(C)26426/12 and 2400/13 it was directed to the Corporation to take care to implement its resolution to finishing the construction as directed within a period of six months or else the 1st respondent would be entitled to carry out such construction. Thus all the

dispute regarding the construction of compound wall/curb wall enclosing the petition B schedule property and also pertaining to the entrustment of the above property with the 1st respondent were concluded. Due to the above long drawn litigation the 1st respondent was constrained to wait for number of years for the construction of curb wall so as to effectively use the property and 1st respondent also had to spend huge amount of money for conducting various cases. Ultimately due to the judgment in writ appeal No.2242/2017 and 2249/17 the 2nd respondent Corporation has passed a resolution for the construction of the curb wall around petition B schedule property and including the same in the MP fund for the financial year 2018-19. Moreover, 80% of the work was completed and the bill was submitted however balance 20% of the remaining work was stopped on the alleged ground that the same was nearby residents have raised some dispute regarding the boundary of the petition B schedule property. Accordingly the 2nd respondent has issued a communication to 3rd respondent for determining the boundaries of the petition B schedule property so as to resolve the dispute now raised by some of the nearby residents.

12. Actually there was no genuine and true dispute relating to the boundary of the petition B schedule property since none of the residents have adjoining boundary. Now it is learnt that due to heavy political

pressure on the 2nd and 3rd respondents in the matter of effectively completing the work. The work cannot be completed. Therefore again the 1st respondent approached the Hon'ble High Court and filed writ petition WP(C)12806/21 and an interim order has been ordered by the Hon'ble High Court on 09.08.2021 for conducting the survey of the plaint B schedule property and to file report within one month and as per the order survey has been conducted and report also submitted on 17.09.2021. The matters being so, the petitioner herein though know each and every proceedings before the Hon'ble High Court with malafide intention and to establish imaginary right over the property entrusted to the 1st respondent filed the above case suppressing the material facts. Therefore there is no merit in the petition. Hence to dismiss the petition.

13. Heard both sides.

14. **The following points arise for consideration:-**

1. Whether the petitioner has made out a prima facie case?
2. Is the balance of convenience in petitioner's favour?
3. Whether the petitioner would suffer irreparable injury or hardships if injunction is not granted?
4. What shall be the proper order?

15. Point Nos. 1 to 4:- The petitioner is the owner in possession of 1.72 Ares of land comprised in Sy.No.1100/4. The property was obtained as per settlement deed No.2623/06 of SRO, Kochi executed by his mother in favour of the petitioner and its photocopy is marked as Ext.A1. Plaint B schedule property is having 23 cents of land in Sy.No.1109 is belonged to the 2nd respondent Corporation which is entrusted by the Corporation to the 1st respondent cultural forum for their welfare activities. The tax receipt of the petition A schedule property is marked as Ext.A2 and there is a building in the petition A schedule property bearing No.CC.10/347. The building tax receipt was marked as Ext.A3. Ext.A4 is another tax receipt regarding the building. Ext.A5 is photocopy of the rough sketch filed by the Adv.Commissioner along with Ext.C1 commission report. The 23 cents of land is in the possession of the 1st respondent and it is a vacant land except a building therein and is lying without any compound wall. But, 1st respondent has made it clear that, there are other constructions also in the B schedule property such as open air stage and library/reading room. The petitioner's specific case is that on the western side of their property is a motorable pathway having 3 ½ meters width and 11 meters length ie, C schedule property. According to the petitioner, she and her predecessors were using this pathway for more than 50 years. Therefore, she has easement by

prescription over the pathway. The way is wide enough to take her car through it and Ext.C1 has reported that there is a car parked in the plaint A schedule property.

16. The 1st respondent is a cultural forum holding the land for the benefit of scheduled caste in Ernakulam area who stated that the Hon'ble High Court of Kerala, after a long legal fighting was allowed it to construct a compound wall/curb wall around the B schedule property. The B schedule property was possessed by 1st respondent as per resolution dated 12.01.2005 issued by the 2nd respondent Corporation. The photocopy of the resolution is marked as Ext.B1. The 1st respondent forum is a registered one. The photocopy of the registered certificate is marked as Ext.B2. There is an open air stage in the petition B schedule property and various cultural programmes are being conducted in the property. The library/reading room is also being conducted by the 1st respondent in the property. Due to the influence of the local people when the 1st respondent had tried to construct compound wall in the petition B schedule property a stop memo was issued by the 2nd respondent. Against this stop memo 1st respondent approached the Hon'ble High Court and as per it's judgment in WP(C)4319/2009 dated 30.05.2012 the Hon'ble High Court directed to the 2nd respondent Corporation for the construction of curb wall and if 2nd respondent fails to

do so within six months the petitioner shall allow to complete the work in the petition B schedule property. This judgment was marked as Ext.B3.

17. Ext.B4 is a common judgment in WP(C) 24966/2016 of the Hon'ble High Court and WP(C)25169/16. WP(C) no.24966/2016 was filed by one Mani who is a workshop owner, who used to park his vehicles which come to his workshop, seeking abatement of air and sound pollution in the B schedule property. But, that was dismissed by the Hon'ble High Court along with the other writ petition filed by the 1st respondent herein. These writ petitions were disposed by the Hon'ble High Court and again directed the 2nd respondent to take all the measures to curb wall and unauthorized parking vehicles in the petition B schedule property. Ext.B5 is a common judgment in WA No.2201/16 in WP(C)25169/16 filed by above K.R.Mani against Ext.B4 judgment but that was also dismissed in favour of the 1st respondent. Ext.B6 is the judgment in WP(C)26426/12 and this petition was filed by six persons of the locality against the construction of the compound wall and therefore the pathway will be obstructed. The 5th petitioner is the mother of the petitioner/plaintiff. Therefore, it is evident that the petitioner is well aware about all these judgments. But that writ petitions were also dismissed as per the said judgment. Ext.B7 is judgment in WA.No.2249/17 that also was dismissed by the Hon'ble High Court. Thus, all the attempts

of the local people to obstruct the construction of curb wall was defeated and favourable orders were received from the Hon'ble High Court to the 1st respondent still the compound wall could not be constructed.

18. Ext.B8 document shows that in order to construct the curb wall the boundaries of petition B schedule property to be fixed and Asst.Executive Engineer, Fortkochi was directed for that purpose. Ext.B9 is a letter from District Collector, Ernakulam to the Secretary of 1st respondent intimating that as the dispute regarding the construction of curb wall is existing no work could be completed regarding the compound wall. Then the 1st respondent approached the Hon'ble High Court by filing WP(C)12806/21 and as per Ext.B10 order it was directed to complete survey of the petition B schedule property within a month and in these circumstances the petitioner came before this Court and filed a suit and obtained a temporary injunction.

19. Due to the temporary injunction of this Court, the respondent is not in a position to proceed with the work of the curb wall. The 1st respondent further pointed out an important aspect in this case. As per Ext.A1 settlement deed the western boundary of the petition A schedule property is not C schedule pathway as claimed by the petitioner. It is only a

puramboku thodu and recently that thodu was covered with concrete slabs by the 2nd respondent Corporation thus 2 meters width way was formed and petitioner is using that pathway and she had never used the pathway through petition B schedule property. Moreover, as per Ext.A1 settlement deed the pathway provided for petition A schedule property is to eastern direction from their property and as per Ext.A1 6 links width pathway has been provided on the eastern side of the petition A schedule property. Thus, from the document produced by petitioner herself it is very much clear that there is no boundary sharing between petition A and B schedule properties. Petitioner has no case that slabs over the 'thodu' was made more than 50 years ago, but 1st respondent pointed out that it is made only 2.1/2 years ago. Therefore, prima facie it is evident that the petitioner and her predecessors were not using the pathway through petition B schedule property for the last 50 years. No right is created in favour of the petitioner through unauthorized use of petition B schedule property. The property is exclusively entitled to possess by the 1st respondent only. Therefore, the petitioner is not entitled for any relief. The petitioner is unnecessarily creating obstructions from protecting the petition B schedule property by the 1st respondent. It is seen that as per Ext.A1 settlement deed the western side of the petition A schedule property is only a thodu and not petition B

schedule property. This fact is suppressed by the petitioner in her pleadings and she has a pathway through the slab provided by the 2nd respondent Corporation and she is also having 6 links pathway to east which is shown as per Ext.A1 settlement deed. Therefore, the petitioner failed to made out a prima facie case in her favour. Thus, prima facie it is clear that there was no age old pathway as claimed by the petitioner through petition B schedule property. Thus, the above points can be answered against the petitioner and I do it so.

In the result

The Petition stands dismissed with costs to the 1st respondent.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 7th day of October 2024)

Sd/-
Anirudhan T K
Additional Munsiff

APPENDIX :

Petitioner's Exhibits:-

A1	25.05.2006	Copy of settlement deed No.2623/06 of SRO Kochi
A2	08.07.2021	Copy of land tax receipt issued by Village Officer, Thoppumpady
A3	18.06.2021	Copy of building tax receipt issued by Kochi Municipal Corporation
A4	18.06.2021	Copy of building tax receipt issued by Kochi Municipal Corporation
A5	—	Copy of Rough sketch

Respondent's Exhibits:-

B1	12.01.2005	Copy of Resolution issued by Kochi Corporation
B2	–	Photocopy of registered certificate
B3	30.05.2012	Certified copy of Judgment in WP(C) No.4319/2009 of Hon'ble High Court
B4	24.10.2016	Certified copy of Common Judgment in WP(C) Nos.24966/16 and 25169/2016 of Hon'ble High Court
B5	14.11.2016	Certified copy of Common Judgment in WA Nos.2201/16 and 2211/2016 of Hon'ble High Court
B6	16.08.2017	Certified copy of Judgment in WP(C) No.26426/12 (C) of Hon'ble High Court
B7	23.11.2017	Certified copy of Judgment in WA Nos.2248 and 2249/2017 of Hon'ble High Court
B8	10.11.2020	Copy of letter issued by the Assistant Engineer Fortkochi to Tahasildar (Land Records) Kochi Taluk
B9	23.02.2021	Letter from District Collector
B10	09.08.2021	Copy of the Order in WP (C) No.12806/2021A of Hon'ble High Court

Court's Exhibits:-

C1 31.03.2022 Commission report filed by Adv. P S Dipu

Petitioner's Witness:- Nil

Respondent's Witness:- Nil

Court's Witness:- Nil

Witness Exhibits Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

ORDER

I.A. No.5/2024

O.S. No. 1/2022

Dated : 07.10.2024