

IN THE COURT OF THE MUNSIFF, PUNALUR
PRESENT :-Smt. Reshma R.S, Civil Judge, Junior Division
Saturday the 25th day of October 2025, 3rd day of Karthika, 1947.

IA 2/2025 in OS 246/2025

Between

Applicants/

Plaintiffs

- : 1. Sreelal K.C, aged 53, S/o. Chellappan Pillai, residing at Koppara House, Vilakkudy Muri, Vilakkudy Village, Pathanapuram Taluk.
2. Ramachandran Nair K G, aged 75, S/o.K.Gopalan Nair, residing at Sree Narayana Vilasom, Vilakkudy Muri, Vilakkudy Village, Pathanapuram Taluk.

(By Adv. K.Sureh Babu)

And

Respondents/

Defendants

- : 1. M/s Indian Oil Corporation Ltd, represented by its Chairman and Managing Director, Indian Oil Bhavan, G-9, Ali Youvar Jung Marg, Bandra East, Mumbai- 400051
2. The Divisional Manager, Indian Oil Corporation Ltd., Vallakadavu P.O, Thiruvananthapuram District.
3. K.K Sreejith, aged about 45, S/o.K.N.Krishnan Nair, Karakkattu House, Elanthoor, Kizhakkum Muri, Elanthoor Village, Konni Taluk
4. Simi Mol.B, aged about 40, W/o. K.K Sreejith Karakkattu House, Elanthoor, Kizhakkum Muri, Elanthoor Village, Konni Taluk

**(By Adv. M. Sethumohan and
Adv.Mathew Geroje for D3 & D4)**

This petition is coming on for hearing before me on 25.10.2025 and on the same day court passed the following.

ORDER

Application filed under Order XXXIX Rule 1 and Section 151 of the Code of Civil Procedure, 1908.

2. **The application averments in brief are as follows:** The applicants are the plaintiffs in the suit. The suit is filed for perpetual as well as mandatory injunctions. Defendants 5 to 8 are the respondents in this application. 8th defendant is the wife of the 7th defendant. 7th defendant has 11.93 Ares of property in survey No.505/1A of Pathanapuram Village. That property is scheduled as plaint 1st schedule property. The defendants 7 and 8 encroached and illegally occupied the road purampokku at the west of plaint 1st schedule property to a width of about 18 meters, at the north 6 meters, at the south to a length of about 36 meters from north to south, in survey No.502/12 of Pathanapuram village. They also encroached upon a portion of the public road at the north-western corner of plaint 1st schedule property to an extent of 10 square meters in survey No. 505/9. Both these encroachments lie contiguous to each other. The said encroached land, having an extent of approximately 442 square meters, at the west and north-western side of plaint 1st schedule property annexed to the plaint 1st schedule property, is scheduled as plaint 2nd schedule property. The land now occupied by the 7th and 8th defendants includes portions of public road

and road purampokku. The original western boundary of plaint 1st schedule property has a curve towards the east in the middle. But after encroachment of plaint 2nd schedule property, it is now a straight line. The defendants 1 to 4 did not take any action to evict the 7th and 8th defendants from plaint 2nd schedule property. There are willful negligence and omission to do the statutory duties vested in them. Apart from that, the defendants 7 and 8 annexed portions of the water stream and wetland also on the eastern side of their property, by dumping ordinary earth there. They raised its surface level. On 10/06/2025, the applicant got reliable information about the preparations of defendants 7 and 8 to construct shops and other commercial establishments, including a petrol pump, on their property. Hence, the 1st applicant issued an advocate notice dated 11/06/2025 to the 2nd and 4th defendants on 12/06/2025. The encroachment on plaint 2nd schedule property infringes the public right and persons civil right of the applicants as well as general public. There are 3 houses situated within a distance of 30 meters from the plaint 1st schedule property, wherein the proposed fuel retail outlet is to be set up. That is a violation of the guidelines and circulars issued by the relevant authorities. On the eastern side of plaint 1st schedule property, a water stream and wetland are situated, which is also a violation of the guidelines issued by the Central Pollution Control Board. It is learnt that the 2nd defendant issued a no objection certificate (NOC) to the 7th and 8th defendants to set up a new petrol pump in the plaint

1st schedule property. The 5th defendant has accorded its dealership to the 7th and 8th defendants through the 5th defendant. The issuance of NOC and dealership is in blatant violation of the guidelines issued by the Central Pollution Control Board. The 2nd and 6th defendants have given their consent to operate the proposed fuel retail outlet, ignoring the public right. From 14/06/2025 onwards, the 5th to 8th defendants have started speedy preparations and construction works in the plaint schedule properties to set up a new petroleum outlet. More than 15 labourers have been deputed for work with the aid of machinery, including JCBs. The works are still in progress. The applicants are unable to defend them. The illegal acts of the respondents are a public nuisance that will affect the public at large. Hence, they are to be restrained. The applicants have a prima facie case. The balance of convenience is in their favour. If this application is allowed, it would cause irreparable injury and hardship to the applicants. Hence, this application.

3. **The 1st and 2nd respondents filed objection, contenting the following:** The application is not maintainable either in law or on facts. The applicants do not have any locus standi to file the present suit and application. They do not have a legitimate cause of action. The applicants do not have any legal right over the petition schedule property. They won't suffer any injury, nor is there any infringement of their rights. The present suit is an abuse of the process of the court. The present suit is not

maintainable as the dispute falls within the definition of a commercial dispute u/S. 2(c)(vii) of the Commercial Courts Act 2015. The 3rd and 4th respondents obtained the requisite NOC and all other statutory clearances for the installation of the petroleum outlet. The 3rd and 4th respondents produced certificates from competent authorities to the effect that the proposed site was free of any local bodies or residential areas within a 50 meter radius in compliance with the norm laid down by the National Green Tribunal and Central Pollution Control Board. In pursuance of frivolous petitions filed by various persons before the revenue officials, a stop memo dated 17/06/2025 was issued. Later, after a meticulous and scientific site survey done by the assistant engineer PWD, it was revealed that no encroachment was there in the purampokku land, public road, water body or any other government property, thereby conclusively refuting the allegations made by the applicants and other complainants. Thereafter, the Village Officer revoked the stop memo on 20/06/2025. The property owned by the 3rd respondent is clearly demarcated as per the latest revenue records and site survey, and all boundaries are maintained in strict accordance with the law. The respondents carried out no unauthorised construction. No part of any public road, purampokku land or water body has ever been annexed or encroached upon for the installation of a petroleum outlet. The applicants failed to produce any documentary evidence to prove their contentions. On the contrary, the demarcation by the

Village Officer, supported by the latest survey and revenue records, confirms that the boundaries remain unchallenged. All requisite no objection certificates, environmental clearances, and statutory permissions for the installation of the petroleum outlet have been newly obtained from competent authorities. Allegations of fraud are baseless. All construction activities were done strictly within the boundaries of the property owned by the 3rd respondent. The applicants do not have a prima facie case. Neither they have any balance of convenience. No irreparable injury will be caused to the applicants. In contrast, the balance of convenience is in favour of respondents. Hence, this application is liable to be dismissed with costs.

4. The 3rd and 4th respondents filed objection contenting the following: The application is not maintainable either in law or on facts. The 3rd and 4th respondents are husband and wife. The 3rd respondent has 11.93 ares of landed property in Sy. No. 505/1A of Pathanapuram village. The 3rd and 4th respondents never encroached upon any portion of any natural stream, wetland, public road or government purampokku land. The respondents inherited the property. The respondents never violated any law or any guidelines. The respondents submitted genuine land records to obtain the necessary sanctions for installing a petrol pump. The respondents obtained all the required certificates, including NOC, to establish the petroleum outlet. The 2nd respondent approved the application after satisfying all criteria. The work for the petrol pump started months

before, and it will never be detrimental to the public, nor will there be any public nuisance. The commencement of the petrol pump is a developmental activity. This application is filed with a malafide intention at the instigation of other petrol pump owners at Pathanapuram. The applicants do not have a prima facie case. They have no right to file a suit against the respondents. The 3rd and 4th respondents are original owners, and they inherited the property. They have right to construct buildings or commercial establishments after complying with all legal formalities. The balance of convenience is in favour of the defendants 3 and 4. If this application is allowed, it would cause irreparable injury and hardships to the respondent. Hence, this application is liable to be dismissed with costs.

5. Heard both sides and perused all available records.

6. From the side of the applicants, Exts. A1 to A11 marked. From the side of the respondents, Exts. B1 to B21 marked. Ext. C1 series also marked.

7. The points that arise for consideration in this application are as follows:

- i. Whether the applicant has a prima facie case in her favour?
- ii. Whether the balance of convenience is in favour of the applicant, and whether the denial of the injunction will cause irreparable injury and hardships to the applicant?
- iii. Relief and costs?

8. Point Nos. 1 to 3: - These points are considered together for brevity, convenience and to avoid repetition of facts. The present application is filed to restrain the respondents from installing any petrol pump in the plaint schedule properties and restraining the 7th and 8th defendants from constructing any shops or buildings in the plaint 2nd schedule property, and also from using any of its portions by enclosing the same with the petition 1st schedule property for their business or commercial activities by an order of temporary injunction till the final disposal of the suit. The grievance of the applicants is that the respondents encroached upon the plaint 2nd schedule property, annexed it with the plaint 1st schedule property and are intending to install a new petroleum retail outlet in the plaint schedule properties.

9. Here, the applicants filed the suit after obtaining leave u/S. 91 of CPC. The specific case of the applicants is that the plaint 1st schedule property belongs to the 3rd and 4th respondents. After encroaching on the portions of the plaint 2nd schedule property, they intend to start a petrol pump therein. It was also contended that the government is not taking action, and hence, the suit was filed.

10. On the other hand, the contention of the 3rd and 4th respondents is that they never encroached upon any government purampokku land or portions of any wet land. According to the 3rd and 4th respondents, there is no such natural stream near the plaint 1st schedule property. According to the 3rd and 4th respondents, they lawfully obtained all necessary documents,

including the NOC for the installation of a petroleum outlet in their property in accordance with the law. According to the 3rd and 4th respondents, the applicants do not have any locus standi to file the present suit or the application. It was also contended that no irreparable injury would be caused due to the installation of the petroleum outlet. The 1st and 2nd respondents also challenged the locus standi of the applicants to file the present suit and application. According to the 1st and 2nd respondents, the present suit is not maintainable as the dispute falls within the definition of a commercial dispute u/S. 2(c)(vii) of the Commercial Courts Act 2015. According to the 1st and 2nd respondents, the 3rd and 4th respondents obtained the requisite NOC and all other statutory clearances for the installation of the petroleum outlet. It was contended that the 3rd and 4th respondents produced certificates from competent authorities to the effect that the proposed site was free of any local bodies or residential areas within a 50 meter radius in compliance with the norm laid down by the National Green Tribunal and Central Pollution Control Board. It was also contended that in pursuance of frivolous petitions filed by various persons before the revenue officials, a stop memo dated 17/06/2025 was issued. Later, after a meticulous and scientific site survey done by the assistant engineer PWD, it was revealed that no encroachment was there in the Purampokku land, public road, water body or any other government property, thereby conclusively refuting the allegations made by the

applicants and other complainants. Thereafter, the Village Officer revoked the stop memo on 20/06/2025. According to the 1st and 2nd defendants, the property possessed by the 3rd respondent is clearly demarcated as per the latest revenue records, site survey, and all boundaries were maintained in strict accordance with the law. It was also contended that no unauthorised construction was carried out by the respondents.

11. The first and foremost thing to be considered is the existence of a prima facie case in favour of the applicants. To prove their contentions, the applicants produced Exts. A1 to A11 documents, which includes advocate notice, postal receipts, acknowledgment cards, copies of survey plans, copies of settlement register, official memorandum issued by Central Pollution Control Board, circular issued by Kerala State Pollution Control Board, copies of plans of the proposed petroleum outlet and official memorandum issued by the Ministry of Commerce and Industry. On the other hand, the respondents produced copies of the NOC, and other relevant permissions, clearances, etc., obtained by them to commence the petrol pump.

12. Here, the allegation is that the 3rd and 4th respondents encroached upon plaintiff 2nd schedule property and started construction for the installation of a petroleum outlet. The applicants did not produce any documents to prima facie satisfy the court that there is an encroachment on the government land. However, from the documents produced by the 3rd

and 4th respondents, it can be seen that, on an allegation of encroachment, the Village Officer, Pathanapuram, issued a stop memo dated 17/06/2025 to the 3rd respondent to stop construction works on the property. The reason for issuing the stop memo was stated as the various complaints filed by people alleging encroachment. Thereafter, as per the order dated 20/06/2025, the Village Officer vacated that stop memo, stating that the encroachment has been removed. On the basis of the stop memo issued by the revenue authorities and on the basis of the undertaking filed by respondents 3 and 4, this court ordered to keep the status quo as on the date of the visit of the advocate commissioner.

13. From the materials produced by the applicants, it cannot be said that there exists a prima facie case in their favour. However, from the documents produced by the respondents, it can be seen that there was an encroachment, which was removed. There is no dispute to the fact that the 3rd respondent is the absolute owner of the plaint 1st schedule property. The specific allegation is that the respondents encroached upon the adjoining government land and obtained the necessary documents.

14. The advocate commissioner filed a detailed report, mahazar and rough sketch before the court. As per the report of the advocate commissioner, the plaint 1st and 2nd schedule properties lie together as a single plot and hence, to identify the plaint 2nd schedule property, the assistance of a surveyor is necessary.

15. The proceedings of additional District magistrate, Kollam dated 12/08/2025 was produced before the court. A perusal of the same makes it clear that as per the report of the surveyor there was an encroachment in survey No.502/1 regarding property having an extent of 0.70 Ares of public road purampokku. Further it is stated that as per the site inspection report Assistant Engineer PWD reported that there is no permanent construction in that encroachment and the earlier boundary structure was removed. It was further stated that at present there is no such encroachment and hence reported to vacate the stop memo. പ്രസ്തുത സ്ഥലത്തെ റോഡ് പുറമ്പോക്ക് തിട്ടപ്പെടുത്തി സെച്ച് സഹിതം സർവ്വേയർ റിപ്പോർട്ട് സമർപ്പിച്ചതിൽ സർവ്വേ 502/1 ൽ 0.0070 ആർ സ്ഥലം പി.ഡബ്ല്യു.ഡി റോഡ് പുറമ്പോക്ക് കൈയേറ്റം ഉള്ളതായി ബോധ്യപ്പെട്ടിട്ടുള്ളതായും, കേരളാ ഭൂസംരക്ഷണ നിയമം 1957 പ്രകാരം റോഡ് പുറമ്പോക്ക് കൈയേറ്റം ഒഴിപ്പിക്കുന്നത് പൊതുമാതൃകയ്ക്ക് വകുപ്പിന്റെ ചുമതലയായതിനാൽ ആയതിന്മേൽ നടപടി സ്വീകരിക്കുന്നതിന് പി.ഡബ്ല്യു.ഡി അധികൃതർക്ക് സെച്ച് സഹിതം നിർദ്ദേശം നൽകിയിരുന്നതായും ആയതു പ്രകാരം പെട്രോൾ പമ്പ് നിർമ്മാണത്തിലിരിക്കുന്ന സ്ഥലം പരിശോധിച്ചതിൽ റോഡ് പുറമ്പോക്കായി തിട്ടപ്പെടുത്തിയിട്ടുള്ള ഭാഗത്ത് നിലവിൽ സ്ഥിര സ്വഭാവമുള്ള നിർമ്മാണങ്ങൾ ഒന്നും നിലവിലില്ലായെന്നും നേരത്തേ പി.ഡബ്ല്യു.ഡി ഉണ്ടായിരുന്ന മതിൽ വേലി മാറ്റിയിട്ടുള്ളതായി കാണപ്പെടുന്നുവെന്നും അസി.എഞ്ചിനീയർ റിപ്പോർട്ട് ചെയ്തിട്ടുള്ളതും. ആയതിന്റെ അടിസ്ഥാനത്തിൽ സ്ഥല പരിശോധന നടത്തി കൈയേറ്റം

നിലവിലില്ലായെങ്കിൽ നിരോധന ഉത്തരവ് പിൻവലിക്കാവുന്നതാണെന്ന് പത്തനാപുരം വില്ലേജ് ഓഫീസർക്ക് നിർദ്ദേശം നൽകിയിരുന്നതും. നിരോധന ഉത്തരവ് പിൻവലിച്ചിട്ടുള്ളതുമാണെന്നും സൂചന (9) പ്രകാരം പത്തനാപുരം തഹസിൽദാർ റിപ്പോർട്ട് ചെയ്തിട്ടുള്ളതാണ്.

16.It is specifically stated in Ext. B14 that, as per the site inspection report, there is no natural stream near the property in survey No.505/1A where the proposed petroleum outlet is coming. It was further stated that the eastern side property is comprised in survey Nos. 504/8 and 504/7, which were categorised as wet land as per the settlement register. But now there are tapping rubber trees and other teak trees, and hence it is now dry land. It was further stated that the IOC company produced a revised sketch before the revenue authority.

17.Hence, it is evident that the encroachment was already removed and the revenue authorities have decided all complaints on merits. It can also be seen that there are no such restrictions, such as wetlands or natural streams, near the site. Considering all these things, this court is of the view that the applicants failed to establish the existence of a prima facie case in their favour.

18. In **Kashi Math Samsthan and Another v. Srimad Sudhindra Thirtha Swamy and Another**, 2010(1) SCC 689, the Hon'ble Supreme Court held as follows: *"It is well settled that in order to obtain an order of injunction, the party who seeks or grant of injunction has to*

prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if the party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted”.

19. As the applicants failed to establish the existence of a prima facie case, the other two necessary ingredients need not be considered. Even otherwise, the balance of convenience and irreparable injury is in favour of the respondents, as they would be denied an opportunity to commence the petroleum outlet even after obtaining all necessary procedural sanctions. Hence, all points are answered accordingly. In light of the above discussion, this court is of the view that this application is liable to be dismissed.

In the result: This application is dismissed. There shall be no order as to costs.

Pronounced in open court on this, the 25th day of October 2025.

Sd/-
Civil Judge (Junior Division)

Appendix

Exhibits for the plaintiff

A1	:	11.06.2025:	Copy of Legal Notice.
A2	:	:	Postal Receipts (Nos.2).
A3	:	:	Acknowledgement Cards (Nos.3).
A4	:	16.06.2025:	Survey plan from Central Survey Office, Thiruvananthapuram
A5	:	16.06.2025:	Copy of Settlement Register from Central Survey Office, Thiruvananthapuram
A6	:	01.07.2020:	Copy of Memorandum of guideliness of the Central Pollution Control Board.
A7	:	16.08.2021:	Copy of Memorandum of addendum guideliness of the Central Pollution Control Board.
A8	:	18.08.2020:	Copy of Circular of Kerala State Pollution Control Board.
A9	:	:	Copy of Plans of the proposed petroleum outlet.
A10	:	:	Copy of state plan of the proposed site for petroleum outlet.
A11	:	25.07.2024:	Official Memorandum issued by the Ministry of Commerce and Industry.

Exhibits for the Respondents:

B1:	30.06.2025	:	Copy of minutes at 3.00 pm Leadership of of Addl. District Magistrates.
B2:	25.06.2025	:	Copy of Order of the Hon'ble High Court of Kerala.
B3:	09.10.2024	:	Copy of No Objection Certiciate issued by Indian Oil Corporation Ltd, Thiruvananthapuram Division.

- B4 :10.09.2024 : Copy of certificate issued by Taluk Office, Pathanapuram.
- B5:11.11.2024 : Copy of building permit issued from Gramapanchayath, Pathanapuram.
- B6: 25.05.2024 : Copy of report from Executive Engineer, PWD Wing, Kollam.
- B7: 27.05.2024 : Copy of letter from District Fire Officer, Kollam
- B8 :16.06.2024 : Copy of report from District Police, Kollam Rural Office.
- B9:15.02.2024 : Copy of acknowledgment from Indian Oil Corporation Ltd, Thiruvananthapuram Divisional Office.
- B10:17.06.2025 : Copy of Temporary Injunction Memo from Village Office, Pathanapuram.
- B11: 20.06.2025 : Copy of Letter from Village Office, Pathanapuram.
- B12: 31.08.2024 : Copy of Certificate and sketch from Pathanapuram Grama Panchayath.
- B13: 23.07.2024 : Copy of Reply Letter from District Collector, Kollam to Right Information Act.
- B14: 12.08.2025 : Copy of Interim Order of Additional District Magistrate, Kollam.
- B15: 11.07.2025 : Copy of Report from District Survey Superintendant, Kollam
- B16: 08.08.2025 : Copy of Order from the Hon'ble High Court of Kerala.
- B17: 08.03.2021 : Copy of Sale Deed No.I/378/2021
- B18: 21.03.2025 : Copy of Order from the Hon'ble High Court of Kerala.
- B19: 06.08.2025 : Copy of Report and Sketch(No.2) from Indian Oil Corporation Ltd, Thiruvananthapuram Divisional Office.

- B20: 12.09.2025 : Copy of Order from the Hon'ble High Court of Kerala.
- B21: 12.09.2025 : Copy of Order of WP (C).32667/2025 of Hon'ble High Court of Kerala.

Court Exhibits

- C1 : 27.06.2025: Commission report prepared by the Advocate Commissioner Aiswarya Muralidhar
- C1(a):27.06.2025: Mahazar prepared by the Advocate Commissioner Aiswarya Muralidhar
- C1(b):27.06.2025: Rough sketch prepared by the Advocate Commissioner Aiswarya Muralidhar

Id/-
Civil Judge (Junior Division)

//True Copy//

Typed by : Sobhy.N
Compared by :

Civil Judge (Junior Division)