

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 24TH DAY OF JULY 2014/2ND SRAVANA, 1936

Crl.Rev.Pet.No. 1206 of 2014

(AGAINST THE ORDER PASSED BY THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA IN A12-3878/2014 DATED 17.6.2014

REVISION PETITIONER/RESPONDENT:

LILLY GEORGE, AGED 62 YEARS,
W/O. GEORGE JAMES, NEEROLICKAL HOUSE,
ARAKKUZHA VILLAGE, PERUMBALLOOR P.O.,
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT, PIN-686673.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENT/PETITIONERS AND STATE:

1. P.N.PURUSHOTHAMAN,
PUTHUPARAMBIL HOUSE, ARAKKUZHA VILLAGE,
PERUMBALLOOR P.O., MUVATTUPUZHA TALUK
ERNAKULAM DISTRICT, PIN-686673.
2. SARADA PURUSHOTHAMAN,
W/O. SRI. P.N.PURUSHOTHAMAN, PUTHUPARAMBIL HOUSE,
ARAKKUZHA VILLAGE, PERUMBALLOOR P.O.
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT, PIN-686673.
3. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA, PIN-686661.
4. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682031.

R3, R4 BY PUBLIC PROSECUTOR SRI.GITHESH.R
R1,R2 BY ADV. SMT.M.LALITHA NAIR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 24-07-2014, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

Crl.Rev.Pet.No. 1206 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I: COPY OF THE PETITION DATED 9.12.2013

ANNEXURE II: COPY OF THE NOTICE DATED 4.5.2014

ANNEXURE III: COPY OF THE REPORT DATED 11.12.2013

ANNEXURE IV: COPY OF THE STATEMENT OF THE PETITIONER DATED
21.5.2014

ANNEXURE V: COPY OF THE STATEMENT OF THE 1ST RESPONDENT DATED
21.5.2014

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.R.P No.1206 of 2014

Dated this the 24th day of July, 2014

O R D E R

An order passed by the Revenue Divisional Officer, Muvattupuzha in his capacity as Executive Magistrate in a proceeding brought under Section 133 of the Code of Criminal Procedure is under challenge in this revision. Finding that the impugned order does not show the nature of the dispute or the purport the order, the Revenue Divisional Officer was directed to appear in Court in person. Accordingly, he appeared and filed a statement that he acted on a complaint alleging obstruction to pathway. There is reason to believe that the Revenue Divisional Officer initiated proceedings on a complaint under Section 133 Cr.P.C

2. The respondents made appearance on getting notice on admission. On hearing both sides, and on a perusal of the impugned order, I find the absolute necessity of sending the matter back to the court below for proper procedure, enquiry and decision. If it is in fact a proceeding under Section 133

Cr.P.C, the Executive Magistrate will have to first enquire whether the dispute relates to any public way or whether it involves any public right. If so satisfied, he will have to make a provisional order, requiring the respondents to make appearance and to file objection if any. If contest is made by the respondents, the Executive magistrate will have to conduct a proper enquiry and record evidence as is done in a summons trial. Then, on the basis of evidence or material, the Executive Magistrate will have to pass a final order, which alone can be challenged by way of criminal revision. In this case the impugned order shows that no such procedure was complied with by the Executive Magistrate, and he simply passed an order as Revenue Divisional Officer. It appears that he does not know that he has dual capacity; one as an officer of the Revenue as Revenue Divisional Officer, and the other as Executive Magistrate whose functions are quasi judicial in nature under the Code of Criminal Procedure. In this case he simply acted as an officer of the revenue, and casually passed orders without understanding what orders can be passed by him, and how he will have to act or function as Executive Magistrate. I am not at all happy in the way in which he dealt with the matter. The matter requires proper and legal consideration as

provided under the Code of Criminal Procedure. Of course, the Executive Magistrate will have to first enquire whether the dispute involves any public way or public right. He will get jurisdiction only if it involves any public way or public right. If it is only a private dispute, he will have no power under the law, and the parties will have to approach the competent civil court.

In the result, this revision petition is allowed. Accordingly, the impugned order passed by the Revenue Divisional Officer, Muvattupuzha is hereby set aside, and the matter is remitted to the court below for proper procedure, enquiry and decision as prescribed under the law.

The parties will make appearance before the Executive Magistrate on 25.8.2014.

**Sd/-
P.UBAID
JUDGE**

//True Copy//

P.A to Judge

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