

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.P.RAY

FRIDAY, THE 29TH DAY OF JUNE 2012/8TH ASHADHA 1934

WP(C).No. 4850 of 2012 (E)

PETITIONER:

K.J.THOMASKUTTY,
KANNAMTHANAM, MEDANADA, MALAYAM P.O.
THIRUVANANTHAPURAM.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)
SMT.NISHA JOHN
SRI.ENOCH DAVID SIMON JOEL
SMT.TINA ALEX THOMAS
SRI.S.SREEDEV

RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD
VYDYUTHI BHAVAN, THIRUVANANTHAPURAM - 695 001
REPRESENTED BY ITS MEMBER SECRETARY.
2. THE ASSISTANT EXECUTIVE ENGINEER
ELECTRICAL SECTION, K.E.S.B, MALAYINKEEZHU
THIRUVANANTHAPURAM - 695 011.
3. R.GOPALAKRISHNAN
PLAVILA VEEDU, CHOOZHAMUKOTTA, MALAYAM P.O.
THIRUVANANTHAPURAM - 695 001

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI
SRI.P.K.NIJOY
SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB
SRI.K.I.SAGEER IBRAHIM, ADVOCATE COMMISSIONER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29-06-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

: Page numbers :

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P-1 TRUE COPY OF THE APPLICATION DTD 05.08.2011 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P-2 TRUE COPY OF THE RECEIPTS DTD 03.10.2011 AND 07.12.2011 SHOWING THE PAYMENT OF RS.92,329/- BY THE PETITIONER.
- EXT.P-3 TRUE COPY OF THE SKETCH SHOWING THE PRESENT ROUTE OF THE ELECTRIC LINES AND ALSO THE ALTERNATE ROUTE SUGGESTED BY THE PETITIONER AND WHICH WAS ACCEPTED BY THE 2ND RESPONDENT.
- EXT.P-4 TRUE COPY OF THE NOTICE DTD 13.02.2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS :

- EXT.R3(a): TRUE COPY OF THE SKETCH SHOWING THE PLACEMENT OF THE ELECTRIC POSTS AND THE AREA TO WHICH IT IS PROPOSED TO BE SHIFTED.

//True Copy//

P.A to Judge.

B.P. RAY, J.

W.P.(C) No. 4850 of 2012

Dated this the 29th day of June, 2012.

JUDGMENT

Heard the learned counsel for the petitioner, Shri. Bechu Kurian Thomas, the learned Standing Counsel for KSEB and the learned counsel for the 3rd respondent.

2. The petitioner challenges Ext.P4 notice issued by the 2nd respondent and he seeks a direction to respondents 1 and 2 to draw electric line through the alternate path suggested by the petitioner and approved by the 2nd respondent.

3. The case of the petitioner is as follows:

The petitioner submitted Ext.P1 application before the 2nd respondent seeking to shift the electric post to a higher ground in his property and approval was granted for such shifting. The petitioner has deposited the cost of shifting of Rs.92,329/- with the 2nd respondent. The 3rd respondent who is a former employee of KSEB, objected the shifting of line.

4. The learned counsel for the petitioner submits that the 3rd respondent has no right to object the shifting of the posts as it will not cause any inconvenience to him.

5. The learned Standing Counsel submits that even though work has started, it could not be completed due to the objection of the 3rd respondent.

6. By interim order dated 20.06.2012, an Advocate Commissioner has been appointed. He submitted a report stating that there is a magazine's house in the property of the 3rd respondent for storing explosives and if the line is drawn through the proposed route, it may cause danger to the property of the 3rd respondent.

7. The learned counsel for the petitioner vehemently opposed the same and submitted that even if there is a magazine's house in the property of the 3rd respondent, he does not have any valid licence for the same, and the objection raised by the 3rd respondent is on account of an ego clash, and the 3rd respondent who is a retired officer of the KSEB is trying to influence the authorities of the KSEB. Since there is a serious dispute between the parties with regard to the question of fact, this Court cannot resolve the dispute by invoking the power under Article 226 of the Constitution of India. Therefore, I permit the petitioner to file an application under Section 17 of the Indian Telegraph Act before the Additional District

Magistrate having the jurisdiction of Neyyattinkara Taluk, Thiruvananthapuram District. If such an application is filed within two weeks from the date of receipt of a copy of this judgment, the same shall be disposed of within two months thereafter after making a spot visit, if necessary. A copy of a brief of this case shall also be supplied to the ADM for perusal and necessary orders shall be passed taking into consideration all relevant facts.

This writ petition is disposed of as above.

sd/- B.P. RAY, JUDGE.

rv

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