

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 5TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P. (C) TMP. NO.260 OF 2020

Petitioners

1. Midhun C.N, aged 35 years, S/o. C. A. Nadarajan,
Karuna, M.T. Teresa Lane, Near AJ Hall, Kaloor,
Ernakulam - 682 017.
2. Vincent Sebastian M.T., aged 72 years,
S/o. M.L. Thomas, Mulakayath House,
Kaloor, Ernakulam - 682 017.

By Adv. John Prakash Bavakkat

Respondents

1. Corporation of Kochi, Represented by the Secretary,
Corporation Office, Park Avenue Road, Kochi -18.
2. Mayor, Corporation of Kochi,
Corporation Office, Park Avenue Road, Kochi -18
3. Kerala Water Authority,
Represented by its Managing Director,
Nandavanam, Jalbhavan, Velayambalam,
Thiruvananthapuram - 695 033.
4. District Collector, Ernakulam Collectorate,
Kakkanad, Ernakulam - 682 030.
5. Executive Engineer, Kerala Water Authority,
Market Road, Ernakulam.-18
6. Executive Engineer (Roads & Bridges),
Public Works Department Division,
Palarivattom - Edappally Road,
Near NGO Quarters, Devankulangara,
Edappally, Ernakulam - 682 024

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON
05.05.2020, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER

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Dated this the 5th day of May, 2020

This writ petition is filed seeking a direction to remove the illegal encroachments made on a public canal known by the name “Seena Thodu” which according to them, starts from the Main road near the Indian Oil Petrol pump at Kaloor, Ernakulam.

2. It is the contention of the petitioner’s that for the last several years they have been suffering immensely, during the rainy seasons especially, due to the “Seena Thodu” overflowing. Filled with waste water, Seena Thodu when overflows, the filthy water seeps into their properties and at times even into their houses, so contends the Counsel for the Petitioner. It is also the contention of the petitioner’s that by passage of time, few of the inhabitants around the canal had found it ideal to encroach upon the

canal for their selfish interests and due to the ineptness of the officials of the Corporation as well as the Revenue Administration, the same still continues. The encroachments, have resulted in narrowing the width of the canal. It is also contended that some of the encroachers have even appropriated portion of the canal and attached it to their own private property by constructing compound walls, including the canal within their property. The illegal constructions, over the canal and in the canal, have resulted in preventing effective cleaning and desilting operations on the canal. It is alleged that for the last 20 years, officials of the 1st respondent have failed to act even though a master plan was prepared. Petitioners have further alleged that several multistoried apartments that had come up in the recent past have also found it fit to drain the waste water from the flats into this canal and yet again the Officials of the 1st respondent remain as mute spectators. According to the petitioner's, respondents have shown callous

indifference and lethargy for the past several years, and seek the intervention of this court for ameliorating the grievances of the petitioner's and the people in general.

3. I have heard Sri. John Prakash Bavakkat for the petitioner, the learned Government Pleader as well as the learned Standing Counsel for the Corporation. After hearing the submissions of the learned counsel for the petitioners, I feel that petitioners have made out a case which merits consideration.

4. I find from Ext. P1 judgment, that this Court had as early as in 2005, directed the Revenue Officials to complete the survey and demarcation work that had already been started and furnish the Corporation with a copy of their report and thereafter the Corporation was directed to take necessary steps to evict the encroachers from the area covered by the canal within a further period of 4 months from the date of receipt of the report. The Revenue Officials and the police were also directed to give assistance to the

Corporation in that regard.

5. It was incumbent upon the Corporation as well as the Revenue Officials to have acted with deftness, pursuant to Ext. P1 judgment and remove the encroachments, if any found on such survey and demarcation. If there was any failure to act in consonance with the judgment in Ext. P1, it will be a reflection upon the inefficiency of the officials of both the Corporation as well as the Revenue Authorities.

6. In the above circumstances, I direct the 1st respondent Corporation of Cochin through its Secretary to file an affidavit as to the steps initiated by the Corporation to remove the encroachments and blockages on the Seena Thodu as directed by a Division Bench of this Court in Ext. P1 judgment (Judgment dated 07-09-2005 in WPC No. 6436/2005). The 4th respondent District Collector shall, either through himself or through the Tahsildar, Kanayannur Taluk, also file an affidavit mentioning the details of the survey and demarcation carried out by them and produce for

the perusal of this Court, the report of survey and demarcation as mentioned in Ext. P1 judgment. This shall be done positively before 22-05-2020.

7. In the meantime, the 1st respondent shall take appropriate steps to de-silt the 'Seena Thodu' in preparation for the onset of monsoons for the year 2020. The fourth respondent shall also consider including this project as part of the 'break through operation project' now being carried out. However the consideration as to whether this project should be included in the break through project or not shall not prevent desilting operations from being carried out without fail in a time bound manner.

Post the writ petition on 22.05.2020.

**BECHU KURIAN THOMAS
JUDGE**

APPENDIX

<u>Exhibit P1</u> True copy of the Judgment in W.P. (c) No. 6436 of 2005 dated 07.09.2005
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<u>Exhibit P2</u> True copy of the Representation dated 30.10.2019.
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<u>Exhibit P3</u> True copy of the paper report dated 20.04.2020 published in the New Indian Express.
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