

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 1418 of 2015 (B)

PETITIONER(S) :

1. SUMI JIMMY AGED 34 YEARS
WIFE OF JIMMY JOSE, KIZHKETHOTTAM, G-245
PANAMPILLY NAGAR, ERNAKULAM DISTRICT, KOCHI-682036

2. SUNI GEORGE,
WIFE OF GEORGE PAUL ANTHRAPER, NO.1028
PRESTIGE KENSINGTON GARDENS, 17, HMT MN ROAD
JALAHALLI, BANGALORE-560 013
PRESENTLY RESIDING AT G-245, PANAMPILLY NAGAR
ERNAKULAM DISTRICT, KOCHI-682036

BY ADVS.SRI.A.V.THOMAS (SR.)
SMT.M.M.JASMIN
SRI.NIDHI SAM JOHNS

RESPONDENT(S) :

1. DISTRICT COLLECTOR,
ERNAKULAM, COLLECTORATE, KAKKANAD
KOCHI-682030

2. COMMISSIONER OF POLICE,
ERNAKULAM, SHANMUGHAM ROAD, ERNAKULAM
KOCHI-682031

3. SUB INSPECTOR OF POLICE,
MARADU POLICE STATION, MARADU, ERNAKULAM DISTRICT
PIN:682304

4. T.K. BHARGAVIKUTTY AMMA,
WIFE OF LATE DAMODARA MENON
VADAKETHELAPPARAMBIL HOUSE, VINYAKA APARTMENT
ELMANA ROAD, THRIIPPUNITHURA, ERNAKULAM DISTRICT
PIN:682301

5. T.K. RAMACHANDRAN,
SON OF T.K. BHARGAVIKUTTY AMMA
VADAKETHELAPPARAMBIL HOUSE, VINAYAKA APARTMENT
ELMANA ROAD, THRIPPUNITHURA, ERNAKULAM DISTRICT
PIN-682301

6. T.K. GANGADHARAN,
SON OF T.K. BHARGAVIKUTTY AMMA
VADAKETHELAPPARAMBIL HOUSE, VINAYAKA APARTMENT
ELAMANA ROAD, THRIPPUNITHURA, ERNAKULAM DISTRICT
PIN:682301

7. LATHA D.MENON
DAUGHTER OF T.K. BHARGAVIKUTTY AMMA
VADAKETHELAPPARAMBIL HOUSE, VINAYAKA APARTMENT
ELAMAN ROAD, THRIPPUNITHURA, ERNAKULAM DISTRICT
PIN;682301

8. TREESA,
DAUGHTER OF LATE RAPHAEL, NEDUNILATH HOUSE
MARADU (P.O), ERNAKULAM DISTRICT, PIN:682304

9. EMILI,
DAUGHTER OF LATE RAPHAEL, NEDUNILATH HOUSE
MARADU (P.O.), ERNAKULAM DISTRICT, PIN:682304

R7 SR. ADVOCATE SRI. R.D. SHENOY FOR R5 TO 7,
BY ADV. SRI.ABRAHAM P.GEORGE, & ADV. SRI.

K.P.ARAVINDAKSHAN

R4 BY ADV. SRI.P.V.GEORGE (PUTHIYIDAM)

R8-R9 BY ADV. SRI.A.B.JALEEL

R5 BY ADV. SRI.M.H.HANIS

BY GOVERNMENT PLEADER SRI. C.R. SHYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 10-03-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP (C) .No. 1418 of 2015 (B)

APPENDIX

PETITIONER (S) ' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER DATED
17.08.2000, OF THE LAND TRIBUNAL, ERNAKULAM, IN
S.M. P.62/91

EXHIBIT P2; TRUE COPY OF THE JUDGMENT DATED
11.06.2009 OF THE LAND REFORMS APPELLATE
AUTHORITY, ALAPPUZHA IN A.A. 45/2005

EXHIBIT P2(A); ENGLISH TRANSLATION OF EXHIBIT P2
JUDGMENT

EXHIBIT P3: TRUE COPY OF THE ORDER DATED
22.02.2010 IN C.R.P.337/2009 PASSED BY HIGH COURT OF
KERALA

EXHIBIT P4: TRUE COPY OF THE JUDGMENT DATED
13.12.2010 IN O.P. (C) NO.780/2010 PASSED BY THE HIGH
COURT OF KERALA

EXHIBIT P5; TRUE COPY OF PURCHASE CERTIFICATE
NO.88/2011 DATED 24.02.2011 ISSUED BY THE SPECIAL
TAHSILDAR (9LR), LAND TRIBUNAL, ERNAKULAM,
TRIPPUNITHURA

EXHIBIT P5(A) ENGLISH TRANSLATION OF EXHIBIT

EXHIBIT P6: TRUE COPY OF ORDER DATED 11.02.2011
PASSED BY THE HON'BLE SUPREME COURT IN SPECIAL
LEAVE TO APPEAL (CIVIL) NO. 2743/2011.

EXHIBIT P7: TRUE COPY OF THE ORDER DATED
21.07.2011 IN REVIEW PETITION (CIVIL) D 12882/2011 OF
HON'BLE SUPREME COURT

EXHIBIT P8: TRUE COPY OF THE JUDGMENT DATED 11.09.2012 IN W.P.(C) NO.24861/2011 PASSED BY THE HIGH COURT OF KERALA

EXHIBIT P9: TRUE COPY OF THE ORDER DATED 21.01.2013 IN REVIEW PETITION NO. 892/2012 IN C.R.P.337/2009 OF KERALA HIGH COURT

EXHIBIT P10: TRUE COPY OF THE COMMON JUDGMENT DATED 29.06.2009 IN O.S. NOS. 1162/2008 AND 1222/2008 OF THE MUNSIFF'S COURT, ERNAKULAM

EXHIBIT P11: TRUE COPY OF THE LAND TAX RECEIPT NO.4715365 DATED 08.07.2011 ISSUEDBY MARADU VILLAGE OFFICE IN THE AME OF RESPONDENTS 8 AND 9.

EXHIBIT P12: TRUE COPY OF THE POSSESSION CERTIFICATE NO.5818/2011 (2) DATED 12.07.2011 ISSUED BY MARADU VILLAGE OFFICE IN THE NAME OF RESPONDENTS 8 AND 9

EXHIBIT P13: TRUE COPY OF THE JUDGMENT DATED 27.02.2012 IN W.P.(C) NO. 2471/2012 OF THE HIGH COURT OF KERALA.

EXHIBIT P14:TRUE COPY OF SALE DEED NO.2905/2012 OF MARADU SUB REGISTRY OFFICE DATED 28.09.2012 EXECUTED BY RESPONDENTS 8 AND 9 IN FAVOUR OF THE PETITIONERS

EXHIBIT P15:TRUE COPY OF THE LAND TAX RECEIPT NO.5106735 DATED 04.12.2014 ISSUED BY MARADU VILLAGE OFFICE

EXHIBIT P16:TRUE COPY OF THE BUILDING PERMIT BEARING NO.BA-592/12-13 DATED 19.04.2014 ISSUEDBY THE SECRETARY,MARADU MUNICIPALITY

EXHIBIT P 17:TRUE COPY OF THE ORIGINAL PETITION DATED 20.12.2011 IN O.P.(INDIGENT)NO.45/2011 FILED BY THE 7TH RESPONDENT IN THE SUB COURT ERNAKULAM

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EXHIBIT P18: TRUE COPY OF THE PLAINT IN O.S. 184/2013 FILED BY THE 5TH RESPONDENT IN THE MUNSIFF'S COURT ERNAKULAM

EXHIBIT P19: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS HEREIN IN O.S. 184/2013 OF MUNSIFF'S COURT ERNAKULAM

EXHIBIT 19(A): ENGLISH TRANSLATION OF EXHIBIT P-19

EXHIBIT P20: TRUE COPY OF THE COMPLAINT DATED 10.12.2014 SUBMITTED BY THE PETITINER TO 3RD RESPONDENT

EXHIBIT P20(A): ENGLISH TRANSLATION OF EXHIBIT P20

EXHIBIT P21: TRUE COPY OF THE COMPLAINT DATED 15.12.2014 FILED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT

EXHIBIT P21(A): ENGLISH TRANSLATION OF EXHIBIT P21

EXHIBIT P22: TRUE COPY OF THE COMPLAINT DATED 15.12.2014 FILED BY THE PETITINERS BEFORE THE 2ND RESPONDENT.

EXHIBIT P22(A); ENGLISH TRANSLATION OF EXHIBIT P22.

EXT.P23: TRUE COPY OF THE VAKALATH DATED 5-6-1992 FILED ON BEHALF OF 4TH RESPONDENT IN THE LAND TRIBUNAL, ERNAKULAM IN SMT 62/1991

EXT. P24: TRUE COPY OF THE VAKALATH DATED 7-1-1993 FILED ON BEHALF OF RESPONDENTS 5 TO 7 IN THE LAND TRIBUNAL , ERNAKULAM IN SMP 62/1991

4TH RESPONDENT EXHIBITS

EXT.R4 (A): TRUE COPY OF THE APPLICATION TO SUB
INSPECTOR OF POLICE, HILL PALACE POLICE STATIOJ,
TRIPUNITHURA SUBMITTED BY RECEIVER DATED 21-
1-1976

EXT. R4 (B): TRUE COPY OF THE POSSESSION
CERTIFICATE DATED 31-5-2005 ISSUED BY THE
VIALAGE OFFICER, MARADU

EXT. R4 ©: TRUE COPY OF THE PRELIMINARY ORDER
DATED 29-6-2000 IN SMP NO. 62/1991 OF THE COURT OF
THE LAND TRIBUNAL, ERNAKULAM, TRIPUNITHURA

EXT. P4 (D): TRUE COPY OF THE JUDGMENT IN C.C NO.
32/2002 DATED 19-6-2006 OF THE ENQUIRY
COMMISSIONER AND SPECIAL JUDGE, THRISSUR

EXT. P4(E): TRUE COPY OF THE ORDER PASSED BY
THE IST RESPONDENT ON 4-7-2011

EXT. P4 (F): TRUE COPY OF THE ORDER DATED 27-6-
2012 PASSED IN W.P.C. NO. 24861/2011.

ASHOK BHUSHAN , Ag. CJ,
&
A.M.SHAFFIQUE, J.

.....
W.P. (C) No. 1418 of 2015 – B
.....

Dated this the 10th day of March, 2015

JUDGMENT

Shaffique, J.

Petitioners have approached this Court seeking police protection, inter alia, complaining that obstruction is being caused by respondents 4 to 7 in the construction activities undertaken by the petitioners.

2. Facts involved in the Writ Petition would disclose that the petitioner had purchased an extent of 21.750 cents of land in Sy. No.271/1 and 272 of Maradu Village from respondents 8 and 9. It is submitted that respondents 8 and 9 have obtained purchase

certificate from the Land Tribunal which proceedings have become final. Earlier two suits were disposed of by the Civil Court which resulted in the judgment dated 29-6-2009. At that time, there was a scramble for possession between respondents 8 and 9 and respondents 4 to 7. O.S. No. 1162/2008 filed by respondents 8 and 9 who is the predecessor-in-interest of the petitioners was decreed by the Civil Court and O.S. No. 1222/08 filed by two of the private respondents namely; Smt. T.K. Bhargavikutty and T.K. Ramachandran, was dismissed. In the said judgment, the Civil Court found in paragraph 16 and 17 as under:

“16. Issue No. 2 in O.S. No. 1162/08 and issue No. 3 in O.s. No. 1222/08: Since I have found that plaintiffs in O.S. No. 1222/08 are in not possession of the plaint schedule property they are not entitled to get a decree for injunction. At the same time, plaintiffs in O.S. No. 1162/08 are entitled to get a decree for injunction. Issues answered accordingly.

17. Issue No. 3 in O.S. No.1162/08 & Issue No. 4 in O.S. No. 1222/08:- Since O.S. No. 1162/08 is liable to be decreed, plaintiffs in that suit are entitled to get costs. Similarly, in O.S. No. 1222/08, defendants 1 to 3 are entitled to get costs. Issues are answered accordingly.

In the result:

1) O.S. No. 1162/08 is directed as follows:- Defendants, their men and agents are restrained by a decree of permanent prohibitory injunction from inducting any strangers in to the plaint schedule property or from creating any documents in respect of the plaint schedule property or from alienating or encumbering the plaint schedule property. Defendants shall pay costs of the suit to the plaintiffs therein.

2. O.S. No. 1222/08 is dismissed with costs of the defendants 1 to 3 therein”.

On this basis it is contended that the private respondents have no right to interfere with the possession of the petitioners who are subsequent purchasers of the property from respondents 8 and 9.

3. Petitioners submit that another suit came to be filed by the 7th respondent as O.S. No. 184 of 2013 before the Munsiff's Court, Ernakulam, alleging fraud in obtaining the purchase certificate by respondents 8 and 9. During the pendency of the said suit, without knowing the said pendency, the petitioners have purchased the property. However, on verification of the title, it was clear that respondents 4 to 7 have no right in respect of the property and they cannot even enter into the said property in view of the decree passed by the Munsiff Court in O.S. No.1162/08, which had become final.

4. It is submitted that respondents 4 to 7 have been initiating several proceedings and two such proceedings are pending before this Court in separate Writ Petitions. Petitioners have applied for a building permit which was granted by the Corporation as Ext. P16. When the petitioners attempted to start construction activities, it was obstructed by private respondents. Though complaints were given to the police, no action has been

taken by the police to render necessary protection and accordingly, the petitioners have approached this Court.

5. Learned Sr. Counsel Sri. R.D. Shenoy appearing on behalf of respondents 5 to 7, after having referred to the averments in the Writ Petition and the counter affidavit, submits that if the petitioners are entitled to claim any right on the basis of the judgment of the Munsiff's Court in O.S. No. 1162/2008, the remedy is to approach the Civil Court to execute the decree, if at all there is any obstruction by respondents or if there is any violation of the order of permanent prohibitory injunction. The averments in the Writ Petition does not disclose any cause of action for approaching this Court and it is only an apprehension expressed by the petitioners. That apart, when the rights of the parties have to be decided in a pending civil suit, there is no reason for the petitioners to approach this Court seeking police protection.

6. Learned counsel appearing for the 4th respondent

having filed a counter affidavit submits that the material on record clearly indicates that fraud has been played by the private respondents 8 and 9, and the validity of the purchase certificate is now being questioned on the ground of fraud, which matter is pending before the Civil Court. That apart, an application for injunction has been filed before the civil court which is pending consideration. It is pointed out that the petitioners cannot claim any right based on the title deed they have obtained during the pendency of the suit.

7. Learned Government Pleader, on instructions, would submit that on the basis of the building permit obtained by the petitioners when they started construction, it was obstructed by the private respondents and, on enquiry, it was understood that the issue involved is title dispute between respondents 4 to 7 and the petitioners. Therefore, the police cannot interfere in the matter.

8. Learned Sr. counsel appearing on behalf of the

petitioners submit that the records clearly indicate that the private respondents had been creating hindrances in the matter relating to enjoyment of property by respondents 8 and 9 and after purchase of the property by the petitioners, petitioners are also prevented from enjoying the property and the fact that they have also obstructed the construction activity, is evident from the statement of the learned Government Pleader.

9. Having regard to the above factual issues, we do not think that this Court will be justified in entering into the question relating to dispute on title raised by the private respondents. Petitioners contend that they have valid title to the property on the basis of the assignment deed executed by respondents 8 and 9, who had obtained valid purchase certificate in accordance with law. It is pointed out that the Land Tribunal proceedings which resulted in issuance of purchase certificate had become final after several proceedings. The local authority after having verified the credentials of the

petitioners has already issued a permit, and in such circumstances, if the petitioners proceed to construct the building in the property which they have purchased, nobody can obstruct the same, unless they had a better title, appropriate orders are to be obtained from the Civil Court. As far as respondents 4 to 7 are concerned, their right to claim the property arises, only if they establishes their title from the Civil Court. There is no prohibitory order as matters stand now against the petitioners for proceeding with the construction. Whereas the judgment Ext. P10 clearly reveals that the respondents 4 to 7 are not in possession of the property.

Under such circumstances, if there is any physical obstruction by respondents 4 to 7 in the matter relating to construction of the building by the petitioners the police is bound to ensure that law and order is maintained. However, this will be subject to any order that might be passed by the civil court or any other court in the pending matters or any other proceedings, that

might be filed by the private respondents. In the said circumstances, we dispose of the Writ Petition as under:-

The 3rd respondent is directed to ensure that no unlawful obstruction is being created by respondents 4 to 7 in the matter relating to the construction of the building by the petitioners as per Ext. P16 building permit.

Sd/- ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

Sd/- A.M.SHAFFIQUE,
JUDGE

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/truecopy/

P.S.toJudge