

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 18069 of 2013 (G)

PETITIONER(S) :

1. JOHN MATHEW@ RAJU, AGED 48 YEARS,
S/O.MARIAMMA, MEMANAYYA KALLIPPARA HOUSE,
KURIYANNUR MURI, THOTTAPPUZHASSERI VILLAGE,
THIRUVALLA TALUK, NOW RESIDING AT MEMNA KANDATHIL HOUSE,
KARUVANKUZH P.O., PULLADU MURI, KOIPURAM VILLAGE.
2. SAM M.MATHEW, AGED 39 YEARS,
S/O.MARIYAMMA, MEMANAYA KALLIPPARA HOUSE,
KURIYANNUR MURI, THOTTAPPUZHASSERI VILLAGE,
THIRUVALLA TALUK.
3. MARIYAMMA K.V. @ MOLLY, AGED 45 YEARS,
W/O.LATE ZACHARIAH MATHEW,
MEMANAYA KALLIPPARA HOUSE, KURIYANNUR MURI,
THOTTAPPUZHASSERI VILLAGE, THIRUVALLA TALUK.
4. SHANI ZACHARIAH,
D/O.LATE ZACHARIAH, MEMANAYA KALLIPPARA HOUSE,
KURIYANNUR MURI, THOTTAPPUZHASSERI VILLAGE,
THIRUVALLA TALUK, NOW RESIDING AT KALARIPARAMBIL HOUSE,
THIRUVAVDOOR VILLAGE.
5. MARIYAMMA ZACHARIAH, AGED 23 YEARS,
D/O.LATE ZACHARIAH MATHEW, MEMANAYA KALLIPPARA HOUSE,
RAMBANADU P.O., KOIPURAM.
6. SHIJU ZACHARIAH, AGED 21 YEARS,
S/O.ZACHARIAH MATHEW, MEMANAYAYA KALLIPPARA HOUSE,
KURIYANNUR MURI, THOTTAPPUZHASSERI VILLAGE,
THIRUVALLA TALUK.

BY ADV. SRI.P.HARIDAS

RESPONDENT(S) :

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY,
DEPARTMENT OF HOME AFFAIRS, THIRUVANANTHAPURAM - 695 001.
2. DEPUTY SUPERINTEND OF POLICE,
PATHANAMTHITA - 689 645.

3. CIRCLE INSPECTOR OF POLICE,
KOZHENCHERRY, PATHANAMTHITTA - 689 501.
4. SUB INSPECTOR OF POLICE,
KOIPURAM, PATHANAMTHITTA- 689 501.
5. JOSEPH, AGED 63 YEARS,
PEEDIKEPPARAMBIL HOUSE, KURIYANNUR MURI,
THOTTAPPUZHASSERI VILLAGE, THIRUVALLA TALUK- 689 101.
6. SANTHAMMA,
PEEDIKEPPARAMBIL HOUSE, KURIYANNUR MURI,
THOTTAPPUZHASSERI VILLAGE, THIRUVALLA TALUK- 689 101.
7. DAVID MATHAI,
PEEDIKEPPARAMBIL HOUSE, KURIYANNUR MURI,
THOTTAPPUZHASSERI VILLAGE, THIRUVALLA TALUK- 689 101.
8. MARRY,
PEEDIKEPPARAMBIL HOUSE, KURIYANNUR MURI,
THOTTAPPUZHASSERI VILLAGE, THIRUVALLA TALUK- 689 101.
9. REJO.P.MATHEW, D/O.MARRY,
PEEDIKEPPARAMBIL HOUSE, KURIYANNUR MURI,
THOTTAPPUZHASSERI VILLAGE, THIRUVALLA TALUK- 689 101.
10. LIJO.P.MATHEW, S/O.MARRY,
PEEDIKEPPARAMBIL HOUSE, KURIYANNUR MURI,
THOTTAPPUZHASSERI VILLAGE, THIRUVALLA TALUK- 689 101.
11. BENCY.P.BABY, D/O.MARRY,
PEEDIKEPPARAMBIL HOUSE, KURIYANNUR MURI,
THOTTAPPUZHASSERI VILLAGE, THIRUVALLA TALUK- 689 101.

R1 TO R4 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R5, R7 TO R10 BY SRI.K.RAMAKUMAR (SENIOR ADVOCATE)

ADVS. SRI.S.M.PRASANTH
SMT.SMITHA GEORGE
SMT.G.ASHWINI
SMT.AMMU CHARLES
SMT.ASHA BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE SALE DEED NO.1534/88 DATED 15.12.1988.**
- EXHIBIT P2: TRUE COPY OF THE DECREE AND PLAN APPENDED THERETO IN OS.NO.396/96 OF MUNSIFF COURT, THIRUVALLA DATED 31.07.2002.**
- EXHIBIT P3: TRUE COPY OF THE EXECUTION WARRANT DATED 18.09.2012 IN OS.NO.396/96 OF MUNSIFF COURT, THIRUVALLA.**
- EXHIBIT P4: TRUE COPY OF THE DELIVERY NOTE DATED 18.09.2012 IN OS.NO.396/96 OF MUNSIFF COURT, THIRUVALLA.**
- EXHIBIT P5: TRUE COPY OF THE TAX RECEIPT DATED 18.04.2013.**
- EXHIBIT P6: TRUE COPY OF COMPLAINT MADE BY THE PETITIONERS DATED 1ST MAY 2013.**
- EXHIBIT P7: TRUE COPY OF THE JUDGMENT IN WP(C)NO.11787/2013 OF THIS HONOURABLE COURT.**
- EXHIBIT P8: TRUE COPY OF COMPLAINT MADE BY THE PETITIONERS DATED 11.07.2013.**
- EXHIBIT P9: TRUE COPY OF COMPLAINT MADE BY THE PETITIONERS DATED 13.07.2013.**
- EXHIBIT P10: TRUE COPY OF THE ORDER IN I.A.NO.42/2009 IN O.S.NO.10/2009 DATED 20.08.2009 OF LEARNED MUNSIFF, THIRUVALLA.**

RESPONDENT(S)' EXHIBITS :

- EXHIBIT R10(A): TRUE COPY OF PETITION DATED 27.06.2013 SUBMITTED BY THE 7TH RESPONDENT.**
- EXHIBIT R10(B): TRUE COPY OF LAWYER NOTICE DATED 09.07.2013 SENT ON BEHALF OF THE 7TH RESPONDENT.**
- EXHIBIT R10(C): TRUE COPY OF LETTER DATED 04.03.2013 BY THE VILLAGE OFFICER, THOTTAPUZHASSERY.**
- EXHIBIT R10(D): TRUE COPY OF REPLY NO.23/13 DATED 12.08.2013 BY THE PUBLIC INFORMATION OFFICER (VILLAGE OFFICER), THOTTAPUZHASSERY.**
- EXHIBIT R10(E): TRUE COPY OF REPLY NO.14/12 DATED 04.03.2013 BY THE PUBLIC INFORMATION OFFICER (VILLAGE OFFICER), THOTTAPUZHASSERY.**

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**EXHIBIT R10(F): TRUE COPY OF THE PLAINT O.S.NO.335 OF 2013 ON
THE FILE OF THE MUNSIFF'S COURT, THIRUVALLA.**

**EXHIBIT R10(G): TRUE COPY OF NOTICE DATED 16.07.2013 ISSUED BY
THE TALUK OFFICE, THIRUVALLA.**

//TRUE COPY//

PA.TO JUDGE.

Msd.

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.P. (C) No. 18069 of 2013

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Dated this, the 8th day of December, 2015

J U D G M E N T

Shaffique, J.

Petitioners have approached this Court seeking the following reliefs;

“(i) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding respondents 1 to 4 to take all necessary action to prevent commission of any offences against petitioners, their vendee and workers by respondents 5-12 including offences of trespass and wrongful restraint and to render adequate, effective and meaningful protection to life and properties of petitioners, their assignees and workers so that they can enjoy the property covered by Exhibit P-1 to P-5 peacefully and also to enable them to cut and remove the trees standing in the said property directly or through assignees and workers.”

2. In fact, according to the petitioners, respondents 5 to 11 have threatened the petitioners and his workers when attempts were made to cut the trees in the property. It is stated

that the petitioners have obtained title to the property and on account of a civil dispute, OS No.396/96 was filed before the Munsiff's Court, Thiruvalla and a decree was passed in favour of the petitioners which was executed and Ext.P4 is the delivery note. Thereafter petitioners have paid tax for the property. When attempts were made to cultivate the property with rubber and in order to facilitate the same, the trees existing in the property were to be cut and removed, obstruction was created by respondents 5 to 11.

3. Petitioners also submit that in an earlier instance, WP (C) No.11787/13 has been filed which resulted in judgment dated 18/6/2013 by which direction was issued to the police to take action if there is any criminal trespass. According to the petitioners, despite the said judgment, when complaint was given, police did not take any action and hence they had again approached this Court.

4. Counter affidavit has been filed by respondents 5, 7 to 10 *inter alia* stating that despite the judgment in WP(C) No.11787/13, petitioners did not move the Civil Court. It is further stated that the petitioners have right in respect of the property

and the police cannot adjudicate on ownership and possession of the land and the trees standing thereon. It is also stated that suit filed as OS No.10/2010 is pending before the Munsiff's Court, Thiruvalla in respect of the said property.

5. Having regard to the aforesaid factual situation, it is clear that in the earlier occasion when the petitioners had approached this Court by filing WP(C) No.,11787/13 making the very same allegations, this Court passed the following judgment;

"After fighting for a long time, the petitioners herein had obtained possession of the property through execution petition where delivery warrant was executed. However, after securing possession of the property, when the petitioners intend to cut and remove trees from the property, party respondents are objecting and interfering with their peaceful possession and enjoyment. In spite of approaching the police with Ext.P6 no relief was granted. Therefore, they are before this Court.

2. On going through the contents of the writ petition and Ext.P6, we note that Ext.P6 is not lodged as a complaint for commission of any crime but seeking police protection. If respondents are interfering with the peaceful possession and enjoyment of the property held by the petitioners, they can always restrain them from doing so by approaching the civil court. If there is any

complaint of criminal trespass, then it is the duty of the police to look into the matter and do the needful in accordance with the procedure without interfering with the civil rights of the parties.

With the above observations, the Writ Petition is disposed of."

6. It is clear that there is no change in circumstances. This Court did not interfere in the matter and police protection was not granted for enjoyment of the property and it was observed that the petitioners will have to approach the Civil Court if there is any obstruction regarding the enjoyment of property. Only in instance when there is criminal trespass that the police can look into the matter and take appropriate action.

7. Having regard to the fact that the rights of the parties cannot be decided by the police and this Court had already taken such a view in an earlier writ petition filed by the petitioners, we do not think that the petitioners were entitled to re-agitate the matter in this writ proceedings. An interim order had already been passed by this Court on 10/10/2013 by which police was directed to take action if there is any criminal trespass. Other than such direction, we do not think that any further direction can be issued to the police in this proceedings.

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-:5:-

In such circumstances, reserving the right of the petitioners to take appropriate proceedings in accordance with law, this writ petition is closed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp8/12/2015

//True Copy//

P.S to Judge