

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C). No. 21756 of 2015 (T)

PETITIONER(S):

**PRAHALADAN, AGED 48 YEARS,
S/O.BALAN GURUKKAL, THOZHIYOOR DESOM, CHAVAKKAD TALUK,
TRICHUR DISTRICT, PIN 680520**

BY ADV. SMT.VANAJA MADHAVAN

RESPONDENT(S):

- 1. JAWAHAR,
MALAPPATT HOUSE, P O THOZHIYOOR, PIN 680520,
THRISSUR DISTRICT,**
- 2. SANTHA, C/O.P K BALAN GURUKKAL,
POONGHAT HOUSE, THOZHIYOOR PO, PIN 680520.**
- 3. ASST.POLICE COMMISSIONER, GURUVAYOOR**

**R1 & R2 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R3 BY SENIOR GOVERNMENT PLEADER SRI.P.IDAVIS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 21756 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1:- PHOTO COPY OF COMPLAINT DTD 11/7/2015.
ENGLISH TRANSLATION OF EXT P1.**

**P2:- PHOTO COPY OF DOCUMENT DTD 1/1/2005.
ENGLISH TRANSLATION OF EXT P2.**

RESPONDENT(S)' EXHIBITS:-NIL

KRJ

//true copy// PA to Judge

**ASHOK BHUSHAN, C.J &
A.M.SHAFFIQUE, J.**

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W.P(C) No.21756 of 2015

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Dated this the 11th day of December, 2015

JUDGMENT

Shaffique, J

Petitioner has approached this Court seeking police protection to remove the obstacles, viz., steel fence on the pathway to the *Kalari* i.e. being conducted by the petitioner and to ensure that there is free ingress and egress to the *Kalari*.

2. The facts in the writ petition would disclose that the petitioner being owner of P.K.B.Kalari Sangham which was registered as an association as early as in 1964, is carrying on activities of training and teaching in *Kalari*, which is a traditional martial arts form in State of Kerala. The *Kalari* is also undertaking various other activities and imparting training to students enrolled in the class. There are almost 50 students whom could be accommodated in one batch of class starting at 5'O clock in the morning and evening classes are also being conducted. The entrance to the *Kalari* was through the property of the second respondent, which they have been using since 1964. In the meantime, it seems that three cents of land which is lying in front of

the *Kalari* which belonged to the second respondent was sold to the first respondent on 10.7.2015. It is alleged by the petitioner that on 10.7.2015 at midnight, the entrance to the *Kalari* has been closed. When the petitioner as usual was proceeding to the *Kalari* in the morning, he could not enter into the *Kalari* and there was a steel fence. Petitioner noticed the same at about 5.30 am on the same day. The students also could not enter into the *Kalari* and they were sent back.

3. Petitioner immediately gave complaint (Ext.P1) to the police. It is stated by the petitioner that his father purchased a plot of land for a way to *Kalari* as per Document No.2 of 2005 and the document indicates that petitioner and successors will not have any hindrance to the pathway. Ext.P2 is the said document. It is stated that though complaint was given to the police, no action was taken for restoring the pathway which the petitioner was using from 1964.

4. Counter affidavit has been filed by the first respondent, *inter alia*, stating that he had right to purchase the property having an extent of 3 cents from the second respondent and he has the right to fence the property, and accordingly fencing was provided. It is stated that the *Kalari* has other entrance and the contrary

allegations were untrue. The respondent also stated that being a civil dispute, the police has no reason to interfere in the matter.

5. During the pendency of the writ petition, we have called upon the third respondent to file a report before this Court and accordingly, a statement is filed by the third respondent wherein it is stated that the petitioner does not have a proper access to the property. Paragraphs (2) and (3) of the said report reads as follows:

2. It is submitted that the petitioner herein had been running a Kalari by name "PKB Kalari Sangham" in his property and the access to this Kalari was through 3 cents of property lying in front of the Kalari which belonged to the father of the petitioner. The father of the petitioner, Late Balan Gurukkal, assigned this 3 cents of land to the 2nd respondent, the step mother of the petitioner, who on 10.07.2015 assigned the said 3 cents to the 1st respondent herein. Immediately after the assignment, the 1st respondent fenced the entire 3 cents of land, thereby blocking the entrance to the Kalari being conducted by the petitioner.

3. It is respectfully submitted that the 1st respondent is also running a Kalari very near to the Kalari being conducted by the petitioner. By obstructing the pathway to the kalari, the entrance to the kalari has been blocked and as a result of the same the petitioner had to close down his Kalari w.e.f 11.07.2015. Now the access to the Kalari of the petitioner is only through a small pathway on the rear side having a width of less than 1½ feet through the property of the 2nd respondent and this

pathway also is not a permanent access to the Kalari of the petitioner since it is through the property of the 2nd respondent. Thus virtually the access to the property of the petitioner is now blocked by the 1st respondent in view of the fencing of the 3 cents by the 1st respondent.”

6. Heard learned counsel for the petitioner, learned counsel appearing for the respondents, and learned Government Pleader.

7. It is true that from the facts as disclosed in the writ petition as well as from the counter affidavit and statement of the police authorities, that a pathway which was being used by the petitioner since 1964 has been suddenly blocked by the first respondent by constructing a fence.

8. There is no dispute regarding the fact that the petitioner was using the entry through the property of the second petitioner to the *Kalari*. Even according to the police, the alternate way is a very narrow way having width of 1 ½ feet and that too, has to pass through the property of the second respondent. According to the petitioner, the entry which was closed was being used since 1964. Though the petitioner can approach the civil court for necessary relief, it would take substantial time and by the time, the petitioner will not be in a position to run the *Kalari*.

9. Under such circumstances, we are of the view that status quo prior to 11.7.2015 has to be maintained until and the parties can be relegated to the civil court for seeking proper reliefs. Accordingly, the writ petition is disposed of as under:

(a)The third respondent shall ensure that a passage is provided to the petitioner's *Kalari* as it existed earlier through the property of the first respondent and shall also ensure that free ingress and egress to the *Kalari* and that law and order situation is maintained.

(b)This, however, is without prejudice to the right of the petitioner as well as the first respondent to initiate appropriate civil proceedings for establishing their respective rights and this arrangement shall be subject to further orders passed by civil court in this regard.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M.SHAFIQUE
JUDGE