

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**

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 34686 of 2014 (I)

PETITIONER(S):

**JOHN MATHEW,
VELIYATH , KODUMON P.O, ADOOR
PATHANAMTHITTA DISTRICT, PIN 691 555.**

**BY ADVS.SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.VINU SASIDHARAN
SRI.MATHEW JOHN (JMA)
SRI.K.P.RAJEEVAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, HOME DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN 695 001.**
- 2. THE SUB INSPECTOR OF POLICE,
KODUMON POLICE STATION, KODUMON P.O,
PATHANAMTHITTA DISTRICT, PIN 691 555.**
- 3. THE DISTRICT POLICE CHIEF
PATHANAMTHITTA, PIN 689 645.**
- 4. THE DISTRICT COLLECTOR
PATHANAMTHITTA, PIN 689 645**
- 5. THE REVENUE DIVISIONAL OFFICER, ADOOR, PIN 691 523.**
- 6. THE SURVEY SUPERINTENDENT, PATHANAMTHITTA, PIN 689 645.**
- 7. THE VILLAGE OFFICER, KODUMON, KODUMON P.O, PIN 691 555.**
- 8. RAJU, S/O.KUNJUKUNJU
IKKADUVILAYIL (KUZHIKKOTTU KIZHAKKETHIL)
KODUMON EAST P.O, ADOOR
PATHANAMTHITTA DISTRICT, PIN 691 555.**

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...2/-

WP(C).No. 34686 of 2014 (I)

9. GOPALAN

S/O. ADICHAN

**KULATHINAL VADAKKEKARA KODUMON EAST P.O, ADOOR
PATHANAMTHITTA DISTRICT, PIN 691 555**

R1-R7 BY STATE ATTORNEY SRI.P.VIJAYARAGHAVAN

R8-R9 BY ADVS. SRI.R.HARIKRISHNAN

SRI.E.RAMACHANDRAN

SRI.R.RAMESH

SRI.R.UMASANKAR

SMT.A.SINDHULAKSHMY

SRI.K.SUDHINKUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 THE TRUE PHOTOCOPY OF THE POWER OF ATTORNEY DATED 2-6-2014

EXHIBIT P2 THE TRUE PHOTOCOPY OF THE POWER OF ATTORNEY DATED 2-6-2014

EXHIBIT P3 THE TRUE PHOTOCOPY OF THE POWER OF ATTORNEY DATED 8-12-2014

**EXHIBIT P4 THE TRUE PHOTOCOPY OF THE FIR AND THE FI STATEMENT DATED
1-11-2014**

EXHIBIT P5 ORDER OF THE REVENUE DIVISIONAL OFFICER DATED 1-11-2014

**EXHIBIT P6 THE TRUE PHOTOCOPY OF THE SALE DEED NO 1490/1994 OF THE
ADOOR SUB REGISTRY DATED 20-05-1994 TOGETHER WITH ITS ENGLISH
TRANSLATION**

**EXHIBIT P7 THE TRUE PHOTOCOPY OF THE SALE DEED NO.1491/94 OF THE ADOOR
SUB REGISTRY DATED 20/594 TOGETHER WITH ITS ENGLISH
TRANSLATION**

**EXHIBIT P8 THE TRUE PHOTOCOPY OF THE JUDGMENT IN WPC NO 26088/2007
DATED 15-06-2010**

**EXHIBIT P9 THE TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE DISTRICT
SURVEY SUPERINTENDENT DATED 30-08-2010 TOGETHER WITH ITS
ENGLISH TRANSLATION**

EXHIBIT P10 THE TRUE PHOTOCOPY OF THE TAX RECEIPT DATED 20-04-1993

EXHIBIT P11 THE TRUE PHOTOCOPY OF THE TAX RECEIPT DATED 8-12-1994

EXHIBIT P12 THE TRUE PHOTOCOPY OF THE TAX RECEIPT DATED 8-12-1994

**EXHIBIT P13 THE TRUE PHOTOCOPY OF THE NOTICE UNDER SECTION 12 OF THE
KERALA LAND CONSERVANCY ACT DATED NIL TOGETHER WITH ITS
ENGLISH TRANSLATION.**

RESPONDENT(S)' EXHIBITS

ANNEXURE R2(A): TRUE COPY OF THE ABOVE REPORT DATED 6/11/14

**ANNEXURE R2(B): TRUE COPY OF THE ENGLISH TRANSLATION OF THE REPORT
DATED 6/11/14.**

/ TRUE COPY

P.S. TO JUDGE

PJ

ASHOK BHUSHAN, Ag.C.J.

&

A.M. SHAFFIQUE, J.

W.P.(C) No.34686 OF 2014

Dated this the 30th day of January, 2015

JUDGMENT

Shaffique, J.

The petitioner claims to be in possession of an extent of 85 cents of land in Survey Nos. 434/7-11 and 434-1-7/11 in Kodumon village. He is the power of attorney holder of the person who has title to the property. The title of the property is covered by Sale Deed Nos.1490/1994 and 1491/1994 of Adoor Sub Registry. The petitioner complains that an attempt had been made by certain persons including the Respondents Nos.8 and 9 to erect an idol in the property. This matter was enquired into by the Revenue Divisional Officer, who passed an order dated 01.11.2014 as Ext.P5, directing the Sub Inspector of Police, Kodumon to take custody of the idol and to hand it over to the archaeological department at the earliest. The petitioner submits that subsequently, the encroachers put up a shed in the property. In the mean time, there was an issue regarding the title of the property. Certain persons took up a

contention that the property belongs to the Government. According to the petitioner, he has filed a suit O.S.No.434/2010 before the Munsiff's Court, Adoor, seeking declaration of title, which is pending consideration. The petitioner also narrates that the property absolutely belongs to the owners covered by the sale deeds and there had been some mistake in the revenue records which was directed to be corrected.

2. In order to avoid further encroachment by 8th respondent and their men, the petitioner had approached the police. Since the police did not take any action, the writ petition is filed seeking the following reliefs:

"(i) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction to the 2nd respondent to evict the encroachers under the leadership of the 8th respondent who are unlawfully assembled and occupying in the property of the petitioner's possession and to give protection to the life of the petitioner and afford assistance to restore the encroached land in its original position.

(ii) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction to the 2nd respondent requiring him to execute Exhibit P5 order of the 5th respondent.

(iii) To issue a writ of mandamus or any other writ or order directing the 2nd and 3rd respondents to conduct a fool proof investigation to book the culprits who have committed the criminal conspiracy, brought the idol into the property of the petitioner, who has paid the cost of the idol and what was the motive behind the acts so that justice shall be vindicated and the social equilibrium be maintained without hurting the feelings of any community."

3. A report is filed by the 2nd Respondent *inter alia* stating that in respect of the incident on 31.04.2013, a crime has been registered on 01.11.2014 and the investigation is in progress. The complaint was that a stone idol was seen in the property in Block No.21 in Re-Sy. No.389/5. The matter was enquired into. During the course of investigation, a report was called for from the Village Officer, Kodumon to ascertain whether the property wherein the idol was installed belonged to the actual owners, i.e., Mr. Samuel or his wife. In the report submitted by the Village Officer, which is produced as Ext.R2(b), it is stated that the land comprised in Re-survey No.389/3 having an extent of 23.80 Ares is "Sarkar puramboke". Further, it is stated that the said Samuel and his wife had encroached into the 'puramboke land' in Re-survey

No.389/3 and for evicting the encroachers from the Government land, proceedings were already initiated under the Kerala Land Conservancy Act. It is also stated that the aforesaid property in Re-survey No.389/3 has been included in the Land bank for allotting the same to landless persons under the "Zero Landless programme". It is further stated that there is no law and order situation and the police shall interfere and take appropriate action in case of any law and order issue and will ensure prevention of untoward incidents. The 5th respondent has submitted a report reiterating the above stand and further stating that petitioner has no title in respect of the land in question.

4. The petitioner has filed a reply affidavit controverting the above reports.

5. Heard the learned counsel for the petitioner and the learned State Attorney.

6. Having regard to the nature of issues involved in the matter, there is dispute between the petitioner and the Government regarding the title in respect of the property and steps have already been taken by the Government to evict the encroachment in Re-survey No.389/3. The petitioner had also

filed a suit seeking declaration of title. The civil suit as well as the proceedings pending under the Kerala Land Conservancy Act has to reach its logical conclusion in accordance with the procedure prescribed. As matters stand now, the only complaint raised by the petitioner is that when the petitioner is in possession of the said land, third persons should not be allowed to encroach into the same by placing idol in the property. The learned counsel for the respondents 8 and 9 submits that there was already an idol in the property and according to respondents 8 and 9, they have not involved in any encroachment, whereas certain others in the locality are involved in the matter.

7. Having regard to the aforesaid submissions, we do not think it necessary to enter into any controversy regarding the title or possession of the property. The petitioner as well as the Government is free to take appropriate action in accordance with law. However, since the property belongs to the Government, it is for the Government to take necessary action to protect the same from further encroachment. We take on record the submission made by the 5th respondent that necessary law and order situation shall be maintained in the

area. The learned State Attorney also submits that they have taken appropriate action against the encroachers, if any.

Taking on record the aforesaid submissions, the writ petition is closed.

Sd/-
**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.**

Sd/-
**A.M. SHAFFIQUE,
JUDGE.**

The 3rd sentence in paragraph 7 of the judgment dated 30.01.2015 in W.P.(C) No.34686/2014 is deleted and substituted by "However, since the Government has a contention that the property belongs to the Government, it is for the Government to take necessary action to protect the same from further encroachment", as per order dated 20.02.2015 in R.P. No.175/2015.

Sd/-
Registrar (Judicial)

//true copy//

P.S. To Judge

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