

Cheriyen Vs. the Superintendent of Police

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Court : Kerala

Decided On : Jul-29-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Cheriyen

Respondent : The Superintendent of Police

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 29TH DAY OF JULY 2013 7TH SRAVANA, 1935 WP(C).No. 17694 of 2013 (J) -----
PETITIONER(S): ----- BENNYKUTTY CHERIYAN, S/O CHERIYAN, POIKAYIL SALEM, NADUKUNNU, PATHANAPURAM VILLAGE, KOLLAM, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER M.O.ANIYAN, S/O OOMMEN CHERIYAN, MUJINADU EBENEZER VILLA, KALLAMUTTAM, PATHANAPURAM VILLAGE, KOLLAM. BY ADV. SRI.B.MOHANLAL
RESPONDENT(S): ----- 1.THE SUPERINTENDENT OF POLICE, KOLLAM RURAL, KOTTARAKKARA P.O., KOLLAM - 691506. 2.THE CIRLE INSPECTOR OF POLICE, PUNALUR P.O., KOLLAM DISTRICT - 691305. 3.THE SUB INSPECTOR OR POLICE, PATHANAPURAM POLICE STATION, PATHANAPURAM P.O., PUNALUR, KOLLAM - 689695. 4.SRI.NAJEEM, S/O MAJEED, MARUTHIMOOD THAZHATHIL, MARUTHIMOOD, NADUKUNNU, PATHANAPURAM P.O., KOLLAM DISTRICT - 689695. 5.SRI.PUNNACHAN,

KIZHAKKETHALAKKAL, NEAR ST.MARY'S SCHOOL, NEDUMPARAMBU, PATHANAPURAM, KOLLAM - 689695. R1-R3 BY GOVERNMENT PLEADER SRI.P.MOHAMMED SHAH R5 BY ADV. SMT.S.K.DEVI R5 BY ADV. SRI.SANTHOSH P.ABRAHAM THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 17694 of 2013 (J)
----- APPENDIX PETITIONER'(S) EXHIBITS: EXT.P1 COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER, PATHANAPURAM FOR THE YEAR 2013 2014 DATED 08 04.2013 EXT.P2 COPY OF THE PERMIT NO.37/13-14 DATED 21 05.2013 AND SKETCH FROM PATHANAPURAM GRAMA PANCHAYATH TO THE PETITIONER. EXT.P3 COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT AND ITS RECEIPT NO.150/DPTN/13/E2 DATED 04 06.2013 ISSUED BY THE 3RD RESPONDENT. RESPONDENT'(S) EXHIBITS: NIL //TRUE COPY// PA TO JUDGE BKA S. SIRI JAGAN & K. RAMAKRISHNAN, JJ.

----- W.P.(C) No. 17694 of 2013
----- Dated this the 29th day of July, 2013

JUDGMENT

S. Siri Jagan, J.

The petitioner claims to be the Power of Attorney holder of Sri.Cherian Benny for managing the properties of Sri.Cherian Benny. He is now managing the property of Sri.Cherian Benny. The petitioner, on behalf of Sri.Cherian Benny, constructed a residential building in Pathanapuram in the property belonging to Sri.Cherian Benny. The boundary wall of the property collapsed during rains. The petitioner obtained Ext.P2 permit from the Pathanapuram Grama Panchayath to restore the compound wall. The petitioner took steps to reconstruct the compound wall by leaving 1.2 meters pathway as per Ext.P2 permit. But, respondents 4 and 5, and persons claiming under them allegedly obstructed the W.P.(C) No. 17694 of 2013 ..2.. construction and threatened the life of the petitioner and his workers, insisting to leave four meters of pathway instead of 1.2 meters. It is under the above circumstances, the petitioner has filed this writ petition seeking the following

reliefs: "i) To issue a writ of mandamus or other appropriate writ order of direction commanding the Respondents 1 to 3 to afford adequate and effective Police Protection for life and property of the Petitioner and his workers for restoring the Compound Wall covered in Ext.P2 Permit by leaving 1.2 Meters Pathway in the property comprised in Re-Sy.No:313/1/4/10 of Pathanapuram Village covered as per Ext.P1 without any obstruction or hindrance from Respondents 4 and 5 and their henchmen or anybody. ii) To declare that the Petitioner and his workers are entitled to get Police Protection for life and property for restoring the Compound Wall covered in Ext.P2 Permit by leaving 1.2 Meters Pathway in the property comprised in Re-Sy.No.313/1/4/10 of Pathanapuram Village covered as per Ext.P1 without any obstruction or hindrance from Respondents 4 and 5 and their henchmen or anybody. iii) Issue such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case." 2. The 5th respondent has filed a counter affidavit, which reads as follows: "3. The averment in para 1 about petitioner's employment, title, possession and residential houses are correct. Petitioner is employed in USA for more than last 25 years and he is permanently residing there with his family. Petitioner's aged mother was residing in the house and she died on 28.03.2013. Petitioner came here for the funeral of his mother which was held on 6.4.2013 and returned after few days. The averment in W.P.(C) No. 17694 of 2013 ..3.. para 1 that the petitioner residing in the property along with his family is not correct. I came to know that petitioner after the death of his mother entered into an agreement of sale of the property described in para 1 with one Alex P.Oommen, Poikayil, Pathanapuram, who is employed in America.

4. My property is situated behind (Marked as ELA in Ext.P2/2 that of the petitioner. Some part of the compound wall between our property was collapsed. The balance portion on that side was demolished and a new compound wall measuring about 100 feet was already completed. While completing the said portion a water channel between our property was covered. The construction of the compounding wall is done by a contractor entrusted by the purchaser Alex P.Oommen. After completing the work of in that side the work for the construction of compound wall for which permit (Ext.P2) obtained was started. At that time I requested Alex P.Oommen who was present at the site to give a small extent of property for price so as to get some more width to the pathway and he replied that he will consider

the same. After that conversation neither I talked about the same to him or his contractor/labourers, nor obstructed the construction of the compound wall. My residential house is at about 21/2 kms away from the construction site. I never went to the work site also.

5. The allegations made in para 3 are not correct. As already stated neither I obstructed the restoration of the boundary wall nor threatened the life of the petitioner or workers. Petitioner is living in New York. The allegation that no action was taken by the third respondent on Ext. P3 complaint is not correct. After receiving Ext.P3 complaint the 3rd respondent summoned me on 05-06-2013 and other persons and waited in the Police Station for more than two hours, but the complainant did not turned up. At that time I submitted before the third respondent, I never caused any obstruction to the restoration of the compound wall or threatened the petitioner or worker and I have no objection for the restoration of the compound wall.

6. The allegation in para 4 against me are totally incorrect and false, I have no political clout or influence in Bureaucracy and Police.

7. As already submitted, I have no objection in the restoration of the compound wall as permitted in W.P.(C) No. 17694 of 2013 ..4.. Ext.P2 and I neither obstructed the construction (restoration) of the Compound wall nor threatened the petitioner or workers." 3. The 3rd respondent has filed an affidavit, which reads as follows: "It is submitted that the petitioner filed Exhibit.P3 petition before this respondent, seeking police protection. The petitioner is having the permit from the Panchayat for constructing compound wall. On obtaining petition, this respondent conducted an enquiry in the matter. Notices are issued to both the parties for summoning to the police station. The 4th and 5th respondents not inclined to come to the police station. On enquiry, it is revealed that earlier there occurred obstruction from the 4th and 5th respondents. But as of now there is no law and order situation and the contesting respondents is only having dispute regarding the width of the pathway. It is submitted that if the petitioner is proceeding with the construction on the basis of the permit, there will not be any law and order situation. If at all any such situation happens, the police will take appropriate

action." In view of the affidavits filed by the parties, recording the statements in the above affidavits, this writ petition is closed. Sd/- S. SIRI JAGAN, JUDGE. Sd/- K. RAMAKRISHNAN, JUDGE. bka/-

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