

Ali Vs. Ashiq

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SooperKanoon Citation : sooperkanoon.com/1130487

Court : Kerala

Decided On : Feb-18-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Ali

Respondent : Ashiq

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE THE CHIEF JUSTICE DR. MANJULA CHELLUR & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE TUESDAY, THE 18H DAY OF FEBRUARY 2014 29TH MAGHA, 1935 WP(C).No. 3541 of 2014 (P) ----- PETITIONERS/PETITIONERS : ----- 1. J.

ANANDAN, AGED 50 YEARS S/O.JANARDHANAN, KATTUMADATHIL HOUSE, PALLIKKAL NADUVILE MURI, BHARANIKKAVU VILLAGE, MAVELIKKARA TALUK ALAPPUZHA DISTRICT.

2. O.SUDHA, AGED 45 YEARS W/O J.ANANDAN, KATTUMADATHIL HOUSE, PALLIKKAL NADUVILE MURI, BHARANIKKAVU VILLAGE, MAVELIKKARA TALUK ALAPPUZHA DISTRICT. BY ADVS.SRI.C.S.AJITH PRAKASH SRI.PAUL C THOMAS RESPONDENTS/RESPONDENTS : ----- 1. STATE POLICE CHIEF, POLICE HEAD QUARTERS, TRIVANDRUM-695 001.

2. DISTRICT COLLECTOR, PATHANAMTHITTA DISTRICT, PATHANAMTHITTA-689 645.
3. DISTRICT POLICE CHIEF, OFFICE OF THE DISTRICT POLICE CHIEF, PATHANAMTHITTA-689 645.
4. CIRCLE INSPECTOR OF POLICE, OFFICE OF THE CIRCLE INSPECTOR, KONNI, KONNI PATHANAMTHITTA DISTRICT-689 645.
5. SUB INSPECTOR OF POLICE, KOODALLUR POLICE STATION, KOODALLUR-689 693.
6. GEOLOGIST, OFFICE OF THE MINING AND GEOLOGY DISTRICT OFFICE PATHANAMTHITTA-689 645.
7. S.SUJATHAN, S/O.SUKUMARAN, RESIDING AT KOTTAPURATHU, KOTTARAKAVU MAVELIKKARA, PIN-690 101. WP(C).No. 3541 of 2014 (P) 8. ATLAS MINES AND GRANITES (INDIA) LTD. REGISTERED OFFICE AT MAVELIKKARA, PIN-690 101, REPRESENTED BY ITS MANAGING DIRECTOR, S. SUJATHAN, S/O.SUKUMARAN, RESIDING AT KOTTAPURATHU, KOTTARAKAVU, MAVELIKKARA, PIN-690 101.
9. SAJU, S/O.PEETHAMBARABN, RESIDING AT MEENATHETHIL VEEDU, KATTACHIRA, BHARANIKKAVU-690 541.
10. GOPAKUMAR, S/O.NARAYANA PILLAI, RESIDING AT ATHIRA, PALLICKAL, NADUVILE MURI-690 563. R1 TO R6 BY SPL.GOVERNMENT PLEADER, SRI. SUJITHR MATHEW JOSE. R7-R10 BY ADVS. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL) SRI.A.R.DILEEP SRI.MANU SEBASTIAN SRI.K.J.SHARATH KUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1802-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 3541 of 2014 (P) ----- APPENDIX PETITIONERS' EXHIBITS : ----- EXT.P1 COPY OF THE NOC ISSUED BY THE DISTRICT COLLECTOR,PATHANAMTHITTA DATED2312-2005. EXT.P2 COPY OF THE QUARRYING LEASE DEED DATED1511-2006 EXECUTED BETWEEN THE PETITIONER AND THE GOVERNMENT OF

KERALA. EXT.P3 COPY OF THE AGREEMENT DATED0806.2007 EXECUTED BETWEEN THE PETITIONER AND7H RESPONDENT. EXT.P4 COPY OF THE CERTIFICATE OF INCORPORATION OF THE8H RESPONDENT COMPANY DATED2407-2008. EXT.P5 COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR DATED1311-2008 SEEKING CONSENT WITH ENGLISH TRANSLATION. EXT.P6 COPY OF THE RELEVANT PAGE OF THE ANNUAL RETURNS OF THE8H RESPONDENT COMPANY OBTAINED FROM THE ROC. EXT.P7 COPY OF THE RELEVANT PAGE OF FORM -32 APPLICATION SUBMITTED BEFORE THE ROC,ON BEHALF OF THE8H RESPONDENT COMPANY. EXT.P8 COPY OF THE CERTIFICATE OF ORIGIN ISSUED BY THE INDIAN CHAMBER OF COMMERCE AND INDUSTRY. EXT.P9 COPY OF THE SERIES OF INVOICES SHOWING THE INTERNATIONAL SALE OF GRANITE DIMENSION STONE TO M/S DELLCRO TRADING WII. EXT.P10 COPY OF THE AFFIDAVIT IN ANSWER TO THE INTERROGATORIES IN O.S.243/2009 BEFORE THE PATHANAMTHITTA SUB COURT. EXT.P11 COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED2407-2009 TO THE DISTRICT COLLECTOR WITH ITS ENGLISH TRANSLATION. EXT.P12 COPY OF THE PLAINT IN O.S.243/2009 FILED BY THE PETITIONER BEFORE THE SUB COURT,PATHANAMTHITTA. EXT.P13 COPY OF THE

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IN TR.P(C)NO.360/2013 DATED2709-2013. EXT.P14 COPY OF THE PROCEEDINGS OF THE DISRICT COLLECTOR NO, C-7/49360/2008 DATED1611-2009 WITH ITS ENGLISH TRANSLATION. EXT.P15 COPY OF THE

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DATED2510-2013 IN W.P(C)18419/2013. EXT.P16 COPY OF THE

JUDGMENT

DATED1012-2013 IN RP.953/2013 OF THE HON'BLE HIGH COURT. WP(C).No. 3541 of 2014 (P) EXT.P17 COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR NO.C7-49360/2008 DATED101.2014. EXT.P18 COPY OF THE LETTER DATED294.2009 ISSUED BY THE DIRECTOR MINING GEOLOGY

DEPARTMENT. EXT.P19 COPY OF THE LETTER ISSUED BY THE SENIOR GEOLOGIST TO THE DIRECTOR, MINING AND GEOLOGY DATED 4.11.2009. EXT.P20 COPY OF THE PRODUCTION DESPATCH DETAILS OF THE MINED ITEMS WITH MEASUREMENTS PREPARED BY THE GEOLOGY DEPARTMENT. EXT.P21 COPY OF THE CHALAN NO.163/2014 SHOWING THE REMITTANCE OF ROYALTY OF RS.1,97,700/- (RUPEES ONE LAKSH NINETY SEVEN THOUSAND AND SEVEN HUNDRED ONLY) IN THE ACCOUNT HEAD OF 085300-102-99 DATED 15.11.2014. EXT.P22 COPY OF THE PERMIT DATED 15.11.2014 VALID UPTO 31.11.2014 ISSUED BY THE SENIOR GEOLOGIST. EXT.P23 COPY OF THE CASH MEMORANDUM VALID UPON 31.11.2014. EXT.P24 COPY OF THE SALES TAX REGISTRATION CERTIFICATE OF THE 2D PETITIONER. EXT.P25 COPY OF THE COMPLAINT DATED SUBMITTED TO THE SP OF POLICE, PATHANAMTHITTA. EXT.26 COPY OF THE

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IN W.P(C)13255/2010. DATED 33.11.2011. EXT.P27 COPY OF THE FINAL

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DATED 28.11.2014 IN B.A.610/2014. EXT.P28 COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE SHO, KODAL POLICE STATION DATED 19.01.2014 WITH ITS ENGLISH TRANSLATION. EXT.P29 COPY OF THE RECEIPT ISSUED BY THE SHO, KODAL POLICE STATION WITH ITS ENGLISH TRANSLATION. EXT.P30 COPY OF THE PETITION DATED 19.01.2014 SUBMITTED BY THE C.I. OF POLICE, KONNI, BY THE PETITIONER. EXT.P31 COPY OF THE CERTIFICATE OF COMMENCEMENT OF BUSINESS 28.02.2011. EXT.P32 COPY OF THE APPLICATION IN FORM 20 SUBMITTED TO THE REGISTRAR OF COMPANIES, KERALA DATED 17.02.2011. EXT.P33 COPY OF THE AUDIT CERTIFICATE DATED 07.02.2011. EXT.P34 COPY OF THE LETTER ISSUED BY GEOLOGIST TO THE MINING AND GEOLOGY DIRECTOR, THIRUVANANTHAPURAM DATED 22.11.2010. WP(C).No. 3541 of 2014 (P) EXT.P34(A) ENGLISH TRANSLATION OF EXHIBIT.P34. EXT.P35 COPY OF THE PRODUCTION DISPATCH DETAILS ISSUED TO THE 1ST PETITIONER VERIFIED ON 14.05.2008.

EXT.P36 COPY OF THE C-FORM ISSUED BY THE CENTRAL SALES TAX DEPARTMENT WITH DETAILS OVERLEAF DATED 02.02.2011. EXT.P37 COPY OF THE AFFIDAVIT AND I.A. NO.1047/10 IN O.S. NO.243/09 ON 25.06.2010. RESPONDENTS' EXHIBITS : ----- EXT.R7(A) : TRUE COPY OF LETTER DATED 09.09.2008 SUBMITTED BY THE PETITIONER BEFORE THE DIRECTOR OF MINING AND GEOLOGY. EXT.R7(B) : TRUE COPY OF

ORDER

NO.LRK3-35196/2012 DATED 04.04.2013 OF LAND REVENUE COMMISSIONER. EXTR7(C) : TRUE COPY OF AGREEMENT ENTERED INTO BY THE 1ST PETITIONER WITH ONE NOBLE JOHN ON 11.12.2010. EXT.R7(D) : TRUE COPY OF AGREEMENT DATED 11.04.2012 ENTERED INTO BETWEEN THE 1ST PETITIONER AND FOUR OTHERS IN RESPECT OF EXT.P2 AND OTHER GRANTS. EXT.R7(E) : TRUE COPY OF APPLICATION DATED 31.12.2013 FILED BEFORE THE DISTRICT COLLECTOR. EXT.R7(F) : TRUE COPY OF APPLICATION DATED 12.12.2013 FILED BEFORE THE DIRECTOR OF MINING AND GEOLOGY WITHOUT ANNEXURE. EXT.R7(G) : TRUE COPY OF APPEAL FILED BEFORE THE LAND REVENUE COMMISSIONER WITHOUT ANNEXURES. EXT.R7(H) : TRUE COPY OF

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NO.LR(K)3032123/2013 DATED 11.02.2014 OF THE LAND REVENUE COMMISSIONER. EXT.R7(I) : TRUE COPY OF LETTERS REFERRED TO IN EXT.P18. EXT.R7(J) : TRUE COPY OF RECEIPTS EVIDENCING FILING OF COMPLAINTS BEFORE THE 5TH RESPONDENT. EXT.R7(K) : TRUE COPY OF

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DATED 12.10.2010 OF THIS HON'BLE COURT IN WP(C) 24555/10. EXT.R7(L) : TRUE COPY OF INFORMATION FURNISHED UNDER TI ACT DATED 10.07.2012. EXT.R7(M) : TRUE COPY OF POSSESSION CERTIFICATE ISSUED TO THE 8TH RESPONDENT. WP(C).No. 3541 of 2014 (P) EXT.R7(N) : TRUE COPY OF

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DATED 15.10.2009 IN I.A. 1679/09 IN O.S.262/09 ON THE FILE OF SUB COURT, MAVEIKKARA. /TRUE COPY/ PA TO JUDGE Manjula Chellur, C.J.

& A.M. Shaffique, J.

----- W.P.(C) No. 3541 OF 2014 -----

----- Dated this the 18th day of February, 2014

JUDGMENT

Manjula Chellur, C.J.

The petitioners are husband and wife. They approached this Court under Article 226 of the Constitution seeking the following reliefs against the party respondents with the assistance of police protection. "i. to issue a writ of mandamus or any other appropriate writ order or direction directing the respondents 3 to 5 to provide adequate and effective police protection to the life, property, equipments and vehicles and to workmen engaged in the granite dimension stone movement at the instance of the petitioner in Koodal Village, Pathanamthitta District. ii. to issue a writ of mandamus or any other appropriate writ order or direction directing the respondents 3 to 5 to provide adequate and effective police protection to complete the granite dimension stone movement from the quarry owned by the first petitioner in Koodal Village in Pathanamthitta District. iii. to grant such other reliefs as this Hon'ble Court deem fit and proper in the facts and circumstances of the case." WP(C) No. 3541 of 2014 :- 2. According to first petitioner, he has certain granite dimension blocks kept in his property measuring 5.30 Acres which is contiguous to the quarry which was taken by him from Government. According to him, he quarried these granite dimension blocks from the property leased to him by Government and kept them in his own property since 2008. He further contends, respondents 7 to 10 are not allowing him to lift these granite dimension blocks for the purpose of sale, under the guise of claiming a right over this property by virtue of an undertaking given by the first petitioner before Civil Court in OS No.262/09 on the file of Sub Court Mavelikkara now pending before Sub Court, Pathanamthitta.

3. What we could gather from the submissions across the Bar is, both the first petitioner and 7th respondent seem to have entered into sale agreement to do some joint venture which seems to have ended in civil litigation claiming money against each other. The fact remains, there was an undertaking by first petitioner before Sub Court concerned in WP(C) No. 3541 of 2014 -:3:- 2009 that he would not alienate the suit schedule property in the said suit. The suit schedule property as clarified by learned counsel for the party respondents includes leasehold rights of the petitioner in the Government property contiguous to the property owned by him. The question before us is whether this also forms part of the property for which an undertaking was given by the petitioner not to alienate. Whether such undertaking before the learned Sub Judge amounts to an undertaking not to lift and sell the granite dimension blocks excavated from the leasehold property or not is a matter to be considered by the Court which is seized of the civil litigation. Once civil court declares that this granite blocks do not form part of the subject matter of civil suit, it is for the parties to decide what steps they have to take. In the light of such civil dispute pending before Sub Court, Pathanamthitta, we are of the opinion, we should not adjudicate whether such granite blocks is the subject matter of the plaint schedule in the civil suit or not. WP(C) No. 3541 of 2014 -:4:- In the above circumstances, for the present, we decline to entertain this writ petition. Accordingly, the Writ Petition is closed. Manjula Chellur, Chief Justice. A.M. Shaffique, Judge. ttb/18/02