

issac Vs. State of Kerala

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Court : Kerala

Decided On : Nov-19-2014

Judge : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

Appellant : issac

Respondent : State of Kerala

Judgement :

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 WEDNESDAY, THE19H DAY OF NOVEMBER201428TH KARTHIKA, 1936 WP(C).No. 20659 of 2014 (F) ----- PETITIONER(S): ----- ISSAC S/O.VARKEY, VILAYAKKATTU PUTHENPURAYIL KIZHAKOMBU P.O., KOOTHATTUKULAM, ERNAKULAM DISTRICT. BY ADVS.SRI.BOBBYMATHEW KOOTHATTUKULAM SRI.C.K.SREEJITH SRI.N.SUKUMARAN (SR.) RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT DEPARTMENT OF HOME AFFAIRS, SECRETARIAT THIRUVANANTHAPURAM-695001.

2. CIRCLE INSPECTOR OF POLICE, (STATION HOUSE OFFICER), PIRAVOM POLICE STATION PIRAVOM, ERNAKULAM DISTRICT-686664.

3. THE SUB INSPECTOR OF POLICE (STATION HOUSE OFFICER) KOOHATTUKULAM POLICE STATION, KOOHATTUKULAM ERNAKULAM DISTRICT-686662.

4. VIJAYA NATHAN, S/O.SANKARAN NAIR, PADIPPURATHAZHATHU, KIZHAKOMBU KOOHATTUKULAM, ERNAKULAM DISTRICT-686662.

5. PINMATTAM BHAGAVATHY TEMPLE, REPRESENTED BY ITS MANAGER (THE SUB GROUP OFFICER OF TRAVANCORE DEVASWOM BOARD) KIZHAKOMBU, KOOHATTUKULAM, ERNAKULAM DISTRICT-686662.

6. THE ASSISTANT COMMISSIONER, THRIKKARIYOOR GROUP, TRAVANCORE DEVASWOM BOARD THRIKKARIYOOR P.O., KOTHAMANGALAM, ERNAKULAM DISTRICT.

7. THE TRAVANCORE DEVASWOM BOARD, REPRESENTED BY ITS SECRETARY OFFICE OF TRAVANCORE DEVASWOM BOARD THIRUVANANTHAPURAM-695001. WP(C).No. 20659 of 2014 -2-

8. PINMATTAM BHAGAVATHY TEMPLE ADVISORY COMMITTEE, REPRESENTED BY ITS SECRETARY PINMATTAM BHAGAVATHY TEMPLE, KIZHAKOMBU KOOHATTUKULAM, ERNAKULAM DISTRICT-686662. R1 TO R3. BY STATE ATTORNEY SRI.P.VIJAYARAGHAVAN R5-R7 BY ADV. SRI.M.V.S.NAMBOOTHIRI, SC, TRAVANCORE DEVASWOM BOARD BY SRI.A.N.RAJAN BABU, SC, TRAVANCORE DEVASWOM BOARD THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-11-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 20659 of 2014

(F) ----- APPENDIX PETITIONER(S)' EXHIBITS

----- P1: COPY OF PARTITION DEED NO.1632/1974 OF THE SUB REGISTRAR'S OFFICE AT KOOHATTUKULAM DATED 25.7.1974. P1(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P1. P2: COPY OF THE TAX RECEIPT DATED 14.3.2014 ISSUED TO THE PETITIONER FROM THE KOOHATTUKULAM VILLAGE OFFICE. P2(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P2. P3: COPY OF THE POSSESSION CERTIFICATE DATED 14.3.2014 ISSUED FROM THE KOOHATTUKULAM VILLAGE OFFICE. P3(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P3.

P4: COPY OF THE PLAINT IN OS NO.180/2014 FILED BY THE PETITIONER BEFORE THE MUNSIF'S COURT, MUVATTUPUZHA. P4(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P4 P5: COPY OF THE COMMISSION REPORT DATED 34.2.2014 IN EXHIBIT P-4 SUIT. P5(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P5 P6: COPY OF THE INTERIM

ORDER

DATED 21.3.2014 IN I.A.NO.835/14. P7: COPY OF THE PROCEEDINGS IN I.A.NO.835/2014 IN EXHIBIT P4 SUIT. P8: COPY OF THE COMMISSION APPLICATION AND ACCOMPANYING AFFIDAVIT FILED IN EXHIBIT P4 SUIT BY THE 4th RESPONDENT. P8(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P8 P9: COPY OF THE WRITTEN STATEMENT DATED 23.5.2014 FILED BY 4th RESPONDENT. P9(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P9 P10: COPY OF THE COMPLAINT DATED 16.6.2014. P10(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P10. P11: COPY OF THE COMPLAINT DATED 28.6.2014. P11(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P11. P12: COPY OF THE COMPLAINT DATED 25.7.2014. P12(A): COPY OF ENGLISH TRANSLATION OF EXHIBIT P12 RESPONDENT(S)' EXHIBITS ----- EXHIBIT R7(a): COPY OF APPROVED PLAN ISSUED BY THE TALUK TAHSILDAR IN RESPECT OF PINMATTOM BHAGAVATHY TEMPLE AND ITS ENGLISH TRANSLATION. /TRUE COPY/ PS TO JUDGE ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J ----- W.P(C).No. 20659 of 2014 ----- Dated this the 19th November, 2014

JUDGMENT

Shaffique, J.

This Writ Petition is filed by the petitioner seeking title and possession in respect of 80 cents of wet land in Sy.No.694/9A of Koothattukulam village in Ernakulam Revenue District. According to the petitioner, this property is fit for agricultural operations being wet land and at the instance of the party respondents, the petitioner is unable to make any cultivation. Though the petitioner had approached the Police seeking appropriate protection, no action has been taken by the Police

and hence, he has approached this Court seeking police protection to have peaceful possession and enjoyment of the property and for carrying on agricultural operations.

2. The petitioner submits that he had already obtained an interim injunction restraining the fourth WP(C).20659/14 2 respondent from interfering with the cultivation being carried on in the said property by virtue of order dated 21.3.2014 in I.A.No.835 of 2014 in O.S.No.180 of 2014. But, despite the said order, respondents 5 to 8 and their members are preventing agricultural operations being carried on in the said property.

3. Counter affidavit has been filed by respondents 5, 6 and 7 inter alia contending that the petitioner has no title to the said property. Even though the petitioner had created certain documents, title vests with the Devaswom, and by virtue of Section 27 of the Travancore- Cochin Hindu Religious Institutions Act, it is open for the Devaswom to take over the property. That apart, the Devaswom is intending to proceed under the Land Conservancy Act to take possession of the said property.

4. Learned counsel for the petitioner relied upon a judgment of this Court reported in M/s.Harrisons Malayalam Ltd. v. State of Kerala (2007(4) KLT540 to contend that in so far as the property is in his possession, he is entitled to carry on agricultural WP(C).20659/14 3 operations, which cannot be prevented by any person claiming under respondents 4 to 8. Paragraph 12 of the judgment is relevant, which reads as under: "12. We notice with respect the above views, but we are of the opinion that if a person disobeys a law, whatever be the motivation for the same, the law must take its own course. The police have a duty in the light of the provisions in the Criminal Procedure Code and the Kerala Police Act referred to by the learned senior counsel for the petitioner, to maintain law and order and avert breach of peace. Threat to the lives of the citizens has also to be averted. If a large group of persons having no semblance of right over a property encroach into it and commit mischief, the owner is entitled to get the help of the police to protect his property. In such circumstances, the filing of a civil suit is not an efficacious remedy. So, when the police are under such a duty and it is shown that they have failed to perform its duty in this regard, then, normally, a writ in the

nature of mandamus will be issued by this Court." WP(C).20659/14 4 5. Having regard to the aforesaid submission, we are of the view that as far as the interim injunction granted by the Munsiff's Court in O.S.No.180 of 2014 is concerned, if there is any violation of the said order, the remedy of the petitioner is to approach the said Court seeking orders under Order XXXIX Rule 2A of Civil Procedure Code, but, as far as the obstruction being caused by respondents 5 to 8 or their men are concerned, the contention of the petitioner is that until they take possession of the property by proceedings under the Land Conservancy Act, they have no right to obstruct the agricultural operation being carried on by the petitioner. It is argued that it is a case where respondents 5 to 7 admit that the petitioner is an encroacher, which apparently proves that the petitioner is in possession of the property.

6. Having regard to the aforesaid circumstances, we are of the view that the party respondents or their men cannot obstruct the petitioner from carrying on the agricultural operations, since he is admittedly in possession of the property. If any law and order situation WP(C).20659/14 5 arises, it is the obligation of the Police to ensure that law and order situation is maintained. As far as the dispute between the parties regarding the title is concerned, it is to be adjudicated in appropriate proceedings and this judgment shall not be treated as an order conferring right on any of the parties with reference to the property in question.

7. In the result, the Writ Petition is disposed of in the following manner: If there is any law and order situation with reference to the petitioner carrying on agricultural operations in the property in question, respondents 2 and 3 shall ensure that law and order situation is maintained. This is without prejudice to the parties to get their right adjudicated before the appropriate Civil Court/forum. ASHOK BHUSHAN ACTING CHIEF JUSTICE A.M.SHAFFIQUE JUDGE vgs20/11/14

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