

Ajith vs State of Kerala

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Court : Kerala

Decided On : May-30-2024

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/13178/2024

Appellant : AJITH

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN THURSDAY, THE 30TH DAY OF MAY 2024 / 9TH JYAISHTA, 1946 PETITIONERS: 1 AJITH, AGED 52 YEARS, S/O IBRAHIM, PUZHAKKARAYIL HOUSE, URAVAKKUZHY, MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 686661. 2 SHEHARA, AGED 47 YEARS, W/O AJITH, PUZHAKKARAYIL HOUSE, URAVAKKUZHY, ERNAKULAM DISTRICT, MUVATTUPUZHA, PIN - 686661. BY ADVS. C.DILIP R.PRADEEP JIJO JOSEPH P.N.VIJAYAN NAIR RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001. 2 SUPERINTEND OF POLICE (RURAL) ALUVA, ERNAKULAM DISTRICT, ALUVA.P.O, PIN - 683101. 3 STATION HOUSE OFFICER MUVATTUPUZHA POLICE STATION, MUVATTUPUZHA, PIN - 686661. 4 THE SECRETARY MUVATTUPUZHA MUNICIPALITY, MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 686661. 5 MEERAN, AGED 65 YEARS, S/O MUHAMMED, PUTHENPURAYIL (ORAVAKUZH) HOUSE, KAVUMKARA KARA, VELLOORKUNNAM VILLAGE, MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT., PIN - 686661. 6 SIMIL, AGED 42 YEARS, S/O MUHAMMEDALI, NEDUVELIL HOUSE, KAVUMKARA KARA, -2- VELLOORKUNNAM VILLAGE, MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT., PIN - 686661. 7 P.M. ABDUL SALAM AGE AND FATHER'S NAME KNOWN TO THE PETITIONERS, PLAMOOTTIL HOUSE, THARBIATH NAGAR, MARKET.P.O, MUVATTUPUZHA, ERNAKULAM DISTRICT., PIN - 686673 8 SUBAIR K.K. AGE AND FATHER'S NAME KNOWN TO THE PETITIONERS, KURUTTUKAVIL HOUSE, PULINCHUVADU, MUDAVOOR.P.O, MUVATTUPUZHA, ERNAKULAM., PIN - 686669. 9 JINU ANTONY, AGE AND FATHER'S NAME KNOWN TO THE PETITIONERS, MADEKKAL HOUSE, NEAR MODEL H.S.S, MUVATTUPUZHA.P.O, MUVATTUPUZHA, ERNAKULAM DISTRICT., PIN - 686661. BY ADVS. RAJAN T R R. BINDU (SASTHAMANGALAM) G.RAJAGOPAL (KUMMANAM)(K/3520/1999) SMT REKHA C NAIR-SR GP; SRI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

JUDGMENT

The petitioners say that they are making a construction of a residential building in their own property, with the assistance under the PMAY Scheme, since their son has a cognitive impairment.

2. The petitioners allege that they have now obtained Ext.P10 Building Permit; but that, when they try to cause construction on

the strength of the same, they are being obstructed by respondents 5 to 9, meting out threats and intimidation; and that, they thus fear that if they continue to do so, they and their labourers would even be done away with. They assert that respondents 5 to 9 have no cause to oppose the construction being carried on by them, since it is being done on -4- the strength of Ext.P10 valid Build Permit;

and hence that they approached the protection, but that no action has been taken thereon; thus constraining them to approach this Court through this Writ Petition.

3. Sri.C.Dilip - learned counsel for the petitioners, further explained his clients case, saying that, even though the party respondents have filed a Suit against them, apparently with respect to an alleged public

pathway near their property, no interi

orders from the Ombudsman of the Local Self Government Institution; consequent to which, Ext.P10 Building Permit had been issued. He -5- submitted that, therefore, the actions of respondents 5 to 9 in obstructing the construction, citing a non-existant pathway, are illegal and unlawful; and therefore, that the reliefs sought for in this Writ Petition are deserving to be granted.

4. However, in response, Sri.Bindu Sasthamangalam - learned counsel for respondents 5 and 6, submitted that there is indeed a pathway which is used by the public;

and that this cannot be contested by the petitioners on account of Ext.R5(c). He added that his clients have already filed a Suit before a competent Court and that it is still pending; but that, in the meanwhile, the petitioners approached this Court

and obtained interim orders, on the strength of which, the said pathway has been completely -6- deracinated. He asserted that the actions of the petitioners are not merely illegal, but extremely mischievous; and therefore, that this Writ Petition is liable to be dismissed. He, however, concluded, saying that his clients have not and do not intend to cause any obstruction to the construction, as long as the petitioners do not cause any further destruction to the pathway; and that they had no reason to mete out any threat or intimidation to them, as has been alleged.

5. Smt.Rekha C.Nair - learned Senior

Government Pleader, submitted that the Police have taken cognizance of Ext.P12 complaint, to find that there are certain civil disputes between the parties. She submitted that the question whether there is a pathway, or whether it has been destroyed by the -7- petitioners, is not one into which the Police can intervene, particularly when a competent Civil Court has been approached by one of them. She added that, however, the lives of the petitioners and their labourers, as also that of the party respondents, are being constantly protected against each other; and that every measure has been put in place by the Police to ensure that they do not take law into their own hands.

6. I must say that the afore stand of

the Police is most apposite in the given circumstances because, the question whether there is a pathway, or it has been destroyed by the petitioners - as alleged by the party respondents, is one in the factual realm, into which, this Court cannot enter, while acting under Article 226 of the Constitution -8- of India.

7. Pertinently, the parties virtually admit that there are civil cases between them, though it is unclear whether there have been any orders issued by a competent Court.

8. Be that as it may, the duty of the

Police in such circumstances is solely to ensure that the property of the parties and their lives are adequately protected from each other. Since respondents 5 and 6 say

that they do not intend to obstruct

concerned about them destroying the pathway, I am certain that this Court will be justified in disposing of this Writ Petition in the following manner. This is more so - 9- because, respondents 7 to 9, though having been validly served by this Court, have refused to appear in person, or to be even represented through counsel. In the afore circumstances, I allow this Writ Petition and direct the 3rd respondent - Station House Officer, to ensure that the lives of the petitioners, as well as that of the party respondents, are protected against each other from any threat or intimidation from one another. The said Officer shall also ensure that the internecine disputes between the parties did not degenerate into a law and

order issue and that none of them are allowed

to take law into their own hands. The Police shall, however, not interfere, in any manner, in the civil disputes between the parties; but ensure that law and order is - 10- continuously maintained, without any breach of peace. As a corollary, and since respondents 5 and 6 say that they are not obstructing the construction, the afore protection shall also

be afforded to the petitioners and their labourers for the purpose of acting as per Ext.P10 Building Permit. As far as the party respondents are

concerned, their remedies against thepeti

purpose, all rival contentions in such regard are also left undecided. Sd/- DEVAN RAMACHANDRAN JUDGE akv -11- APPENDIX OF WP(C) 13178/2024 PETITIONER EXHIBITS EXHIBIT P1 TRUE PHOTOCOPY OF SETTLEMENT DEED NO 19.03.2014. EXHIBIT P2 TRUE PHOTOCOPY OF POSSESSION CERTIFICATE DATED 13.07.2020 ISSUED FROM VELLOORKUNNAM VILLAGE OFFICE. EXHIBIT P3 TRUE PHOTO COPY OF LOCATION SKETCH DATED 24.07.2020 ISSUED FROM VELLOORKUNNAM VILLAGE OFFICE. EXHIBIT P4 TRUE PHOTO COPY OF CERTIFICATE FOR THE

PERSONS WITH DISABILITIES DATED 27.07.2010 ISSUED BY THE MEDICAL BOARD CONSTITUTED UNDER DEPARTMENT OF HEALTH SERVICE,

GOVERNMENT OF KERALA.

EXHIBIT P5 TRUE PHOTO COPY OF LETTER DATED 25.08.2020 ISSUED BY THE FOURTH RESPONDENT TO THE SECOND PETITIONER. EXHIBIT P6 TRUE PHOTO COPY OF PLAINT IN O.S NO COURT, MUVATTUPUZHA DATED 20.11.2020. EXHIBIT P7 TRUE PHOTO COPY OF WRITTEN STATEMENT DATED 17.06.2021 FILED BY THE PETITIONERS AS DEFENDANTS IN O.S NO COURT, MUVATTUPUZHA. EXHIBIT P8 TRUE PHOTO COPY OF ORDER DATED

28.03.2022 ISSUED BY THE OMBUDSMAN FOR LOCAL SELF-GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM IN COMPLAINT NO.150/2022 . -12- EXHIBIT P9 TRUE PHOTO COPY OF ORDER DATED 29.09.2022 ISSUED BY THE OMBUDSMAN FOR LOCAL SELF-GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM IN COMPLAINT NO.150/2022.

EXHIBIT P10 TRUE PHOTO COPY OF BUILDING PERMIT DATED 13.10.2022 ISSUED BY THE 4TH RESPONDENT EXHIBIT P11 TRUE PHOTO COPY OF FIR NO 895/2023 DATED 22.05.2023 REGISTERED BY MUVATTUPUZHA POLICE EXHIBIT P12 TRUE PHOTO COPY OF COMPLAINT DATED 16.12.2023 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT RESPONDENTS EXHIBITS EXHIBIT R5(A) TRUE COPY OF THE ORDER PASSED BY THE

OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DATED 19.10.2023 IN COMPLAINT NO. 657/2023

EXHIBIT R5(B) TRUE COPY OF THE ORDER PASSED BY THIS

11.06.2021 SUBMITTED BY THE TAHSILDAR TO THE 4TH RESPONDENT EXHIBIT R5(D) PHOTOGRAPHS SHOWING THE PRESENT STAGE OF THE PATHWAY

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