

**Sherly vs the State of Kerala**

**Sherly vs the State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/1367231](https://sooperkanoon.com/1367231)

**Court :** Kerala

**Decided On :** Aug-25-2023

**Judge :** Honourable Mr. Justice Gopinath P.

**Appeal No. :** WP(C)/19366/2023

**Appellant :** Sherly

**Respondent :** The State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY,  
THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945 WP(C) NO.  
19366 OF 2023 PETITIONER/S: SHERLY AGED 62 YEARS W/O. LATE  
SADANANDAN, SREELAKSHMI, MULLACKAL, ALAPPUZHA, PIN -  
688011 BY ADV A.SHAFAEEK (KAYAMKULAM) RESPONDENT/S:

1 THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO  
GOVERNMENT, DEPARTMENT OF REVENUE, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 2 THE  
DISTRICT COLLECTOR OFFICE OF THE DISTRICT COLLECTOR,  
COLLECTORATE, ALAPPUZHA, PIN - 688001 3 THE TAHSILDAR

LAND RECORDS, AMBALAPUZHA TALUK, ALAPPUZHA DISTRICT,  
PIN - 688561 4 THE VILLAGE OFFICER KALAVOOR VILLAGE  
OFFICE, ALAPPUZHA DISTRICT, PIN - 688522 5 B. SATHIAMMA  
KIZHAKKATHIL, ASRAMAM WARD NO. 5, KOLLAM, PIN - 691002 BY  
ADVS. GOVERNMENT PLEADER MEREENA.J.JOSEPH  
N.PRASANNAN(K/874/1993) SMT. DEEPA V (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 25.08.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## **JUDGMENT**

The petitioner is a legal heir of the claimant in S.M.No.24/1988 of Land Tribunal, Alappuzha. The petitioner claims to be in possession of the property involved in the SM proceedings. The Land Tribunal allowed the claim of the predecessor in interest of the petitioner against which, the fifth respondent and her brother filed an appeal before the Appellate Authority. The Appellate Authority allowed the appeal and set aside the order in favour of the petitioner in S.M.No.24/1988. The petitioner, therefore, challenged the order of the Appellate Authority in CRP(LR) 38/2021 and this Court passed an interim

### **order staying the orders of the Appellate Authority. CRP(LR)**

communication stating that cancelling the mutation effected in favour of the petitioner and also directing the restoration of mutation in favour of the predecessor in interest of the fifth respondent on the basis of the order of the Appellate Authority, which is under challenge in CRP(LR) 38/2021.

2. The learned counsel appearing for the petitioner

would submit that Ext.P5 order is clearly passed without noticing the fact that the order of the Appellate Authority has been stayed by this Court in CRP(LR) 38/2021. It is also submitted that Ext.P5 was issued without notice and without hearing the petitioner.

3. Heard the learned Government Pleader and the learned counsel appearing for the fifth respondent.

4. The learned counsel for the fifth respondent

seeks time to file a detailed counter affidavit producing certain documents. However, noticing the sequence of the events and the facts of this case as recorded above, I am of the opinion that Ext.P5 order is clearly not sustainable and has been passed without noticing the order of this Court in CRP(LR) 38/2021. If the third respondent had noticed the order of this Court in CRP(LR) 38/2021, Ext.P5 order would not have been passed. A reading of Ext.P5 clearly suggests that the order was passed on the basis of the order of the Appellate Authority which was stayed in CRP(LR) 38/2021. Therefore, I do not deem it necessary to adjourn this writ petition to enable the fifth respondent to file a counter affidavit. Further, the parties (the petitioner and the fifth respondent) will have their respective cases adjudicated in CRP(LR) 38/2021 and disposal of this writ petition will not in any manner prejudice the fifth respondent and all contentions can be raised in CRP(LR) 38/2021. Therefore, on the finding that Ext.P5 order is issued without noticing the order of this Court in CRP(LR) 38/2021, and without hearing the petitioner, this writ petition is allowed and Ext.P5 is quashed making it clear that all contentions of the petitioner and the fifth respondent can be considered in CRP(LR) 38/2021. Sd/- GOPINATH P., JUDGE rkj APPENDIX OF WP(C) 19366/2023 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE ORDER DATED 16/11/1992 OF THE LAND TRIBUNAL ALAPPUZHA IN SM NO. Exhibit P2 A TRUE COPY OF THE ORDER DATED 3/2/2021 IN A.A. NO. 93/1997 OF THE APPELLATE AUTHORITY Exhibit P3 A TRUE COPY OF THE ORDER DATED 26/7/2021 IN CRP NO. 38/2021 OF THIS HON'BLE COURT Exhibit P4 A TRUE COPY OF THE ORDER IN IA NO 2/2021 IN CRP (LR) 38/2021 DATED 28/9/2021 OF THIS HON'BLE COURT EXTENDING THE INTERIM

## **ORDER UNTIL FURTHER ORDERS**

Exhibit P5 A TRUE COPY OF THE ORDER DATED 29/4/2023 AND RECEIVED BY THE PETITIONER ON