

Daisy vs State of Kerala

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Court : Kerala

Decided On : Aug-16-2022

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/16216/2011

Appellant : DAISY

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 16TH DAY OF AUGUST 2022 / 25TH SRAVANA, 1944
WP(C) NO. 16216 OF 2011 PETITIONER/S: DAISY RAJ BHAVAN,
KANJIRACODE, KUNDARA P.O., KOLLAM DISTRICT. BY ADV
SRI.JOHNSON GOMEZ RESPONDENT/S:

1 STATE OF KERALA SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF, REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM-695 001. 2 THE DISTRICT COLLECTOR
COLLECTORATE, KOLLAM, PIN-691 013. 3 THE REVENUE
DIVISIONAL OFFICER OFFICE OF THE REVENUE DIVISIONAL

OFFICE,, KOLLAM, PIN-691 013. 4 THE SUPERINTENDENT OF POLICE RURAL OFFICE OF THE SUPERINTENDENT, KOLLAM-691 001. 5 THE SUB INSPECTOR OF POLICE KUNDARA POLICE STATION, KOLLAM DISTRICT,, PIN- 691 501. 6 NELSON SEPHERNOSE SO. LATE SEPHERNOSE EX.PANCHAYATH MEMBER, THADATHUVILA VEEDU,, KANJIRAKODE, KUNDARA P.O., KOLLAM DISTRICT,, PIN-691 501. 7 NELSON PAULAPPAN SO. PAULSON RESIDING AT PUTHUSSERI VILA, KANJIRAKODE,, KUNDARA P.O., KOLLAM DISTRICT, PIN-691 501. 8 RAJU JOY SO. PLACID RESIDING AT MARY VILASOM, PADAPPAKKARA,, MULAVANA P.O., KUNDARA-691 501. -2-

BY ADVS. GOVERNMENT PLEADER SMT.M.K.LEELA SRI.V.V.RAJA SRI.M.L.SURESH KUMAR SRI.C.R.SIVAKUMAR OTHER PRESENT: SMT.DEEPA NARAYANAN, SR. GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

P.V.KUNHIKRISHNAN, J.

===== W.P.(C)
No. 16216 of 2011
=====

Dated this the 16th day of August, 2022

JUDGMENT

The above writ petition is filed with following prayers:

a) Issue a writ of mandamus or any other appropriate writ order or direction, compelling and commanding the respondents one to five to take appropriate actions to prevent illegal sand mining in the Asthamudi Lake, by by the respondents' six to eight and their men, especially adjacent to Ext. P1 property owned by the petitioner.

b) Issue a writ of mandamus or any other appropriate writ order or direction, compelling and commanding the third respondent to consider Ext. P3 representation, in accordance with law, expeditiously and within a time frame that this Hon'ble court may consider reasonable. c) Issue a writ of mandamus or any other appropriate writ order or direction, compelling and commanding the fourth respondent to consider Ext. P5 in accordance with law expeditiously and within a time limit that this Hon'ble court may consider reasonable and proper in the nature and circumstances of the case. d. Issue such other writ order or direction that this Honorable Court may deem fit.(sic) -4-

2. When this writ petition came up for consideration on 22.06.2011 this Court passed an interim order, which is extracted hereunder:

Pursuant to the completion of service of notice by special messenger, the 7th and 8th respondents have turned up, while there is no appearance for the 6th respondent.

2. The learned counsel for the petitioner submits that

illegal sand mining is being pursued by the respondents 6 to 8 from the Ashtamudi lake and that no action is being pursued by the respondents 2 to 5 to intercept the same. The learned counsel for the 8th respondent submits that no such activities are being pursued by the 8th respondent. The learned counsel appearing on behalf of the 7th respondent seeks time to file counter affidavit.

3. Heard the learned Government Pleader as well.

4. Considering the submissions made by the learned

counsel for the petitioner that no permission whatsoever can be granted by any authority to have sand mining from the 'Ashtamudi lake', and in view of the submissions made by the learned counsel for the 7th and 8th respondents (6th respondent having not turned up, despite the completion of service of notice), there will be an interim order as prayed

for. The respondents 2 to 5 shall ensure that no illegal sand mining is being pursued by the respondents 6 to 8 or anybody under them. -5-

Post after filing the counter affidavit.

3. Subsequently on 24.09.2021 this Court directed the

Government Pleader to file a statement showing the action taken pursuant to the interim order and also the present status. Now a statement dated 28.10.2021 is filed by the 5 th respondent. The relevant paragraphs of the statement read thus:

2. The above Writ Petition is filed by A. Daisy, Raj Bhavan, Kundara, Kollam district came up for consideration before the Hon'ble High Court on 24.09.2021. The writ petition was filed seeking direction compelling the respondents to take appropriate actions to prevent illegal sand in Ashtamudi Lake especially adjacent to Exhibit P1 property owned by the petitioner. When the matter came up for consideration on 24.09.2021, this Hon'ble Court directed to file a statement as to whether the illegal sand mining is still continuing or not. As directed by this Hon'ble Court the 5th respondent Manjula. S. Station House Officer, Kundara Police Station is filing the present statement.

3. As directed by this Hon'ble Court on 22.06.2011 this

respondent has taken all efforts to prevent the illegal sand mining. The Interim Order of this Hon'ble Court dated 22.06.2011 has been complied in its spirit and Police had ensured effective measures for preventing -6- the illegal sand mining from the Ashtamudi lake. Police Patrolling has been intensified in the banks of the Ashtamudi lake and boat patrolling has been arranged so as to prevent the illegal sand mining in odd hours also.

4. It is humbly submitted as a part of the preventive

measures and effective patrolling, 3 cases in 2011, 43 cases in 2012, 12 cases in 2012, 2 cases in 2015 and a case in 2017 were registered

under Kerala Protection of River banks and Regulation of Removal of Sand Act. Vehicles, country boats and other equipment involved in illegal sand mining have been seized by Police.

In the light of the same, nothing survives in this case.

Therefore, recording the statement and recording the order

dated 22.06.2011, this writ petition is closed. If there is any fresh cause of action, the petitioner is free to approach the appropriate authority, in accordance to law.
sd/- P.V.KUNHIKRISHNAN JUDGE
das -7- APPENDIX OF WP(C) 16216/2011
PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE SALE DEED NO.3768 OF 1976 OF KUNDARA SUB REGISTRY OFFICE EXHIBIT P2 TRUE COPY OF THE COMPLAINT DATED 17.03.2011 SUBMITTED BY THE PETITIONER BEFORE THE FIFTH RESPONDENT EXHIBIT P3 TRUE COPY OF THE COMPLAINT DATED 10.06.2011 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT EXHIBIT P4 TRUE COPY OF THE COMPLAINT DATED 25.03.2011, ON BEHALF OF THE PEOPLE IN THE LOCALITY BEFORE THE THIRD RESPONDENT EXHIBIT P5 TRUE COPY OF THE COMPLAINT DATED 10.06.2011 SUBMITTED BY THE PETITIONER BEFORE THE FOURTH RESPONDENT.

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