

George and ors. Vs. the Circle Inspector of Police, Mannarghat and ors.

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Court : Kerala

Decided On : Mar-22-1990

Reported in : AIR1990Ker298; (1990)IILLJ502Ker

Judge : K.S. Paripoornan and; D.J. Jagannadha Raju, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.A. No. 163 of 1990

Appellant : George and ors.

Respondent : The Circle Inspector of Police, Mannarghat and ors.

Advocate for Def. : Adv. General and; M.K. Damodaran, Adv.

Advocate for Pet/Ap. : O.V. Radhakrishnan and; K. Raveendran, Adv.

Judgement :

Paripoornan, J.

1. The petitioners, three in number, in O.P. No. 957 of 1990-L, are the appellants in this writ appeal. This case belongs to the class of cases which is now known as 'Police Protection Cases'. Respondents 3 to 5 are Secretaries of three Trade Unions (I.N.T.U.C., S.T.U. and C. I. T. U.). The first respondent is the Circle Inspector of Police, Mannarghat and the second respondent is the Sub-Inspector

of Police, Mannarghat. The petitioners/appellants are the joint owners in possession of 11.311/2 acres of land in Survey No. 130/1A in Arakurussai amsom desom in Mannarghat Taluk. They claim to be in exclusive possession and enjoyment of the above rubber plantation from 1986 onwards. It is stated that the petitioners/appellants sold the right to cut and remove the old rubber trees from the estate to M/s. Bappu and Moidu, by agreement dated 14-1-1990. The agreement was for slaughter tapping of 2250 rubber trees. The trees have to be cut and removed on or before 14-3-1990. As per the agreement between the parties, if any loss is caused to the vendees by obstruction by any other parties, the petitioners should remove the obstruction. The copy of the agreement, entered into between the petitioners and the vendees, is Ex. P-1. The petitioners aver that respondents 3 to 5, leaders of Trade Unions, are interfering with the legitimate activities of the citizens of the area and obstructing the removal of the timber from the petitioners' estate. The vendees, under the agreement, cut and tried to remove a lorry load of trees from the estate on 15-1-1990. The workers belonging to the Trade Unions of respondents 3 to 5 obstructed the removal of timber. Thereupon, the third petitioner preferred a complaint before the second respondent Sub-Inspector of Police praying for affording adequate police protection. Another similar petition was also sent on 24-1-1990, evidenced by Ex. P-2. No action was taken on the above petition. The inaction of respondents 1 and 2 is due to political influence and for extraneous reasons. A *Ereccion* is necessary from this Court to give adequate police protection to the petitioners. Similar direction was issued by this Court in O.P. No. 9763 of 1989-K, evidenced by Ex. P-3. The petitioners have no other effective alternative remedy except to approach this Court under Article 226 of the [Constitution of India](#). In the grounds, the petitioners state that the respondents have ample powers under the Code of Criminal Procedure as well as the Kerala Police Act, 1960 to take measures to prevent commission of offences and to keep law and order. The petitioners pray for the issue of a writ of mandamus compelling respondents 1 and 2 to afford adequate police protection to enable them to cut, remove and safely transport the rubber trees from the petitioners' property by the vendees with workers of their choice, against any obstruction by respondents 3 to 5 or any of their members. The petitioners also pray for further relief which this Hon'ble Court may deem fit to grant.

2. At the admission stage itself, the Government Pleader placed before the Court the order passed by the Regional Joint Labour Commissioner dated 22-12-1989. In the said order, it is stated that the work in the locality, where the petitioners' estate is situate, is to be carried on by workers belonging to respondents 3 to 5 in the ratio of 6:2:2 among STU, CITU and INTUC. The learned single Judge noticed the above aspect. It was represented before the learned single Judge that the petitioners have no permanent workers for attending to the work of loading and unloading of timber logs. In the circumstances, the learned single Judge held that the petitioners can get the work done only by engaging labourers from the locality and if they engage the labour in the ratio of 6:2:2 among the members of the three Unions, STU, CITU and 1NTUC, there will be no obstruction from respondents 3 to 5, their followers or supporters. The learned single Judge further held that even if any obstruction is caused by respondents 3 to 5 or their supporters, respondents 1 and 2 will take effective steps to remove the obstruction. The original petition was disposed of in the above manner. Aggrieved by the judgment of the learned single Judge dated 6-2-1990, the petitioners in the O.P. have come up in writ appeals.

3. We heard counsel for the appellants, Mr. O. V. Radhakrishnan, counsel for respondents 3 to 5 Mr. M. K. Damodaran and Mr. K.P.G. Menon, and the learned Advocate General, who appeared for respondents 1 and 2. Counsel for the appellants submitted that the appellants were, not parties in the proceedings, wherein the Regional Joint Labour Commissioner passed the order dated 22-12-1989, that it was passed in a different situation and context, that the said order was largely based on consent and in such circumstances the learned single Judge was in error in moulding the relief based on the said order of the Regional Joint Labour Commissioner. After verification, counsel for the respondents, the learned Advocate General and Mr. K.P.G. Menon, submitted in Court that the scheme under the Kerala Headload Workers Act, 1978 is not applicable to the area wherein the petitioners' estate is situate and the order passed by the Regional Joint Labour Commissioner dated 22-12-1989 will not apply to the locality. In this view, we have to hold that reliance placed by the learned single Judge on the aforesaid order of the Regional Joint Labour Commissioner dated 22-12-1989 was unjustified. The reasoning and conclusion of the learned single Judge wherein a direction was given based on the said order of the Regional Joint Labour

Commissioner dated 22-12-1989 is unsustainable. We hold so.

4. The question that was elaborately argued before us was confined to the maintainability of the original petition under Article 226 of the Constitution of India and as to whether the petitioners have made out any prima facie case entitling them to any relief in this case. We should bear in mind that the original petition was disposed of quickly and at the admission stage itself. The respondents did not and could not file any counter-affidavit. Appellant's counsel contended that in view of the unlawful obstruction and impediment placed by the workers belonging to the Trade Unions of respondents 3 to 5, the vendees of the appellants are not in a position to cut and remove the timber. Even though respondents 1 and 2 were apprised of the situation, as per Ex. P-2, and were told that respondents 3 to 5 and their henchmen are trespassing into the property and obstructing the cutting and removal of timber by using force, respondents 1 and 2 are simply folding their hands. They have not taken any action to afford relief to the petitioner/appellants to enable the vendees to cut and remove the timber from the properties. Respondents 1 and 2 are bound to take action under the provisions of Chapter XI of the Code of Criminal Procedure, Sections 149, 150, 151, 155 and 156, and also under the Police Act, Sections 29(b) and (g), and remove the obstruction and afford relief to the petitioners to cut and remove the timber from the properties. It was argued that a public duty is cast on respondents 1 and 2 Police. Officials and they have failed to discharge the statutory duty cast on them under Chapter XI of the Code of Criminal Procedure and Section 29(b) and (g) of the Police Act. The inaction of respondents 1 and 2 to remove the impediment has resulted in considerable loss and hardship to the appellants. Respondents 1 and 2 have failed to discharge their statutory duty. They should be compelled by the issue of a writ of mandamus to discharge the duties cast on them by the provisions of Chapter XI, Cr. P.C. and Section 29(b) and (g) of the Police Act and afford sufficient police protection to the appellants and the vendees for cutting and removing the timber from the appellants' estate. During the course of arguments, appellants' counsel brought to our notice the following decisions to highlight certain aspects which came up in a few cases, where police protection was sought. The decisions are:

(1) Mysore Machinery . v. District Collector, 1982 Ker LT, SN page 13 --Case No. 21 : (1982 Lab IC 367);

(5) C. Kannan v. Superintendent of Police, 1974 Ker LT 516;

(6) Shamsuddin v. District Collector, (1988) 2 Ker LT, SN page 71 -- Case No. 106 and

(7) C. V. Jayachandran v. State of Kerala, AIR 1990 Kerala 3.

5. On the other hand, the learned Advocate General, who appeared for respondents 1 and 2, and also Mr. K.P.G. Menon, who appeared for respondents 3 to 5, submitted that the original petition, praying for the issue of a writ of mandamus, is filed without bona fides and the averments contained in the O.P. are vague and are of a very general nature. No details regarding the labourers or persons who obstructed or caused impediment for cutting and removing the timber are given, the averments regarding the political influence is cryptic and is of a sweeping nature. The appellants, apart from filing Ex. P-2, never asked for any specific relief for assistance of the police on any particular day or hour, that in the absence of specific particulars and details, the prayer for the issue of a writ of mandamus is wholly unsustainable, and at any rate, the facts stated in the O.P. do not make out a prima facie case for the grant of any relief. Stress was laid on the lack of proper pleadings and evidence to entertain the original petition under Article 226 of the Constitution of India. The respondents invited our attention to a few decisions of the Supreme Court wherein the circumstances in which a writ of mandamus under Article 226 of the Constitution of India can be issued by the High Court have been considered. The plea was that before issuing the rule, Court should be satisfied about the overall situation and not view things in isolation. The decisions are:

(1) Saraswati Industrial Syndicate Ltd. v. Union of India, AIR 1975 SC 460;

(2) Assistant Collector of Central Excise v. Jainson Hosiery Industries, AIR 1979 SC 1889;

(3) Hindustani Andolan v. State of Punjab, AIR 1984 SC 582;

(4) Chingleput Bottlers v. Majestic Bottling Co., AIR 1984 SC 1030 and

(5) Prabodh Verma v. State of U. P., AIR 1985 SC

167. The petitioners' counsel, in reply, submitted that the power of this Court under Article 226 of the Constitution of India is very wide and in these days when 'public interest litigation' is taken up or encouraged by the Supreme Court and the High Courts, no emphasis or importance to the form of the petition or absence of necessary particulars should be given.

6. On hearing the rival pleas, we are of the view that the averments in the original petition are vague and material facts have not been stated. The absence of proper and necessary particulars and materials in the affidavit, filed in support of the original petition, warrants a dismissal of the petition, in limine. In *Bharat Singh v. State of Haryana*, (1988) 4 SCC 534 : (AIR 1988 SC 2181) paragraph 13, the Supreme Court observed as follows :

'.....when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it....'

In the case, the averments contained in paragraphs 2 and 3 of the O.P. are vague and are of a general, sweeping nature. Even the generalisation and the facts stated are not substantiated, even *prima facie*, by any evidence discernible from the O.P. or annexures thereto. That apart, it is not stated in the affidavit (1) as to who are the persons who caused the obstruction or impediment, (2) what is the

political influence or other extraneous reason that prevented respondents 1 and 2 from affording aid, (3) was police help or protection sought, for cutting and removal of timber on any particular day, (4) was any alternate remedy available and if so, its nature and why it was not invoked or pursued or inadequate, and the grounds on which it is stated that the petitioners' only effective remedy is by filing the original petition under Article 226 of the [Constitution of India](#) etc. In the absence of positive and definite averments in this behalf, we are of opinion that no prima facie case was disclosed to entertain the O.P.

7. It is settled law that the jurisdiction vested in this Court under Article 226 of the Constitution is an extraordinary one and the grant of relief is discretionary. The jurisdiction is one to be exercised with great circumspection and to remedy injustice. Broadly stated, the existence of an alternate remedy is no bar for the exercise of jurisdiction. But one of the important factors, which will deter this Court to entertain a petition under Article 226 of the Constitution to grant the relief is where there exists an alternate remedy, which is equally efficacious and adequate to the petitioner to ventilate his grievances. As to whether an alternate remedy is equally efficacious and adequate is largely a question of fact which depends upon the facts and circumstances of each case. For instance, even in the class of 'police protection cases', cases wherein protection is sought for life, or personal liberty is entirely different and distinct from those cases where protection is sought for property. In the former case, the rules as to alternate remedy, pleading or proof and other requirements may not be as rigid or strict, as in the latter; and perspectives involved are different. This vital aspect may require consideration in appropriate cases. The burden is on the petitioner to show, prima facie, that the alternate remedy is not equally efficacious and adequate in the circumstances. (See K. S. Rashid and Son v. The Income-tax Investigation, AIR 1954 SC 207. It is true that Article 226 of the [Constitution of India](#) is very widely worded and in exercising the discretionary jurisdiction under Article 226 of the [Constitution of India](#), this Court is not bound by technical rules. The extraordinary situations or cases, the Supreme Court and the High Courts have initiated action on the basis of letters written by public spirited citizens or groups and the Courts have entertained action in what is now familiarly known as 'public interest litigation'. (See Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802; Porathissery

Panchayat Tax Payer's Assn. v. Executive Officer, (1989) 1 Ker 849 and Mathew v. Edathua Panchayat, (1989) 2 Ker LT, SN 17 -- Case No. 22). But, that is not to say, that when persons initiate action, in normal circumstances, the rules of pleading shall not be insisted or followed. If any such plea is successfully entertained, it will result in a very disadvantageous position, to the opposite parties, who may not know what is the grievance made out by the petitioner who will not be in a position to appraise itself the meat of the matter for exercising the jurisdiction. The exercise of this 'reserve power' is resorted to only in rare cases to meet extra-ordinary or special or grave situation or emergencies, to remedy palpable injustice or hardship and that cannot be relied on, to completely overlook or ignore the ordinary, normal rules of procedure and practice.

8. In this case, the appellants pray for the issue of a writ of mandamus to compel respondents 1 and 2 to afford police protection for dealing with their property and for their removal. It is not a case where protection is sought for 'life' or exercise of the personal liberty. Mandamus literally means 'com-mand'. It is a peremptory order of the Court commanding some person to do that which he is under a clear legal duty to do. Courts have laid down fulfilment of various conditions which an applicant must satisfy to obtain a writ or order in the nature of mandamus. In this case, the various aspects, which an applicant should satisfy or fulfil entitling him to an order in the nature of mandamus are not germane to the issue involved herein. We are concerned only with the question, as to whether the appellants have laid proper foundation at all in their pleadings, entitling them to maintain an action in this Court under Article 226 of the [Constitution of India](#) or for the issue of a rule nisi. It will be useful to remember the nature of the writ of mandamus and the discretionary nature of the relief which will warrant strict adherence to the law of pleadings and the necessity to be precise in stating material facts by the petitioner who seeks the relief. In Halsbury's Laws of England, Fourth Edition, Volume I pages 111 and 112, the law is stated thus :

'89. Nature of mandamus. The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the

nature of a public duty. Its purpose is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual....

91. Grant is discretionary. The grant of an order of mandamus is, as a general rule, a matter for the discretion of the Court. It is not granted as of right and it is not issued as a matter of course. Accordingly, the Court may refuse the order, not only upon the merits, but also by reason of the special circumstances of the case.'

Again at page 135 (Paragraph 126) it is stated as follows :

'The Court will, as a general rule, and in the exercise of its discretion, refuse an order of mandamus, when there is an alternative specific remedy at law which is not less convenient, beneficial, and effective.

Alternative remedies which may be held to exclude the remedy by order of mandamus are proceedings against the Crown which are substituted by the Crown Proceedings Act, 1947, for the old remedy by way of petition of right, an injunction in lieu of an information in the nature of a quo warranto, certiorari, rights of appeal to courts and other appellate tribunals, election petition, recourse to a visitor and execution, even though it may be fruitless in its results, and the court will not, in general, interfere to enforce the law of the land by the extraordinary remedy of an order of mandamus in cases where an action at law will lie for complete satisfaction.'

In *State of U.P. v. Mohammed Nooh*, AIR 1958 SC 86 at page 93, para 10, the Supreme Court held thus:

'..... it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will be only where there is no other equally effective remedy.'

The decisions of the Supreme Court of India have laid down, that while it is true that the availability of an alternate remedy is no bar for the exercise of jurisdiction

by the High Court under Article 226 of the [Constitution of India](#), in deserving cases, the availability of such an alternate remedy will always be taken into account in exercising the discretionary jurisdiction. In cases where the statute has provided an equally efficacious alternate remedy, the High Court will be very loath and circumspect in entertaining the petition under Article 226 of the Constitution. Even so, it will require 'strong' and good grounds to entertain the petition. The position is the same even in cases where there is alleged breach of fundamental rights -- See *Union of India v. T. R. Varma*, AIR 1957 SC 882; *Champalal Binani v. The Commr. of Income-tax*, AIR 1970 SC 645, *Durga Prasad v. The Chief Controller of Imports and Exports*, AIR 1970 SC 769 and *Asst. Collector of Central Excise v. Jainson Hosiery Industries*, AIR 1979 SC 1889. We would only add that it is for the petitioner who invokes the extraordinary, discretionary jurisdiction to plead the necessary facts and adduce proof to substantiate the entitlement to relief. See also *Constitutional Law of India* H.M. Seervai, Third Edition, Volume II, Pages 1346, 1347 and 1374. Ferris, in his celebrated treatise, 'The Law of Extraordinary Legal Remedies' at page 221, para 190, opines that the writ of mandamus is an extraordinary remedy and states the law thus :

'Mandamus is an extraordinary legal remedy with which equity has nothing to do, and in consideration of which no equitable rights or principles can be taken into consideration except solely for the purpose of determining whether, in the exercise of legal discretion, the writ should issue. Mandamus has been denominated a hard and fast writ, an unreasonable writ, a cast-iron writ, the right arm of the court, the exponent of judicial power; an inflexible peremptory command to do a particular thing therein specified without condition, limitation or terms of any kind; one of the highest writs known to the law. It is an extraordinary writ because it is limited by conditions that are not applicable to an ordinary suit at law. It is reserved for extraordinary emergencies, being a supplementary means of obtaining substantial justice where there is a clear legal right and no other adequate legal remedy.'

Regarding the contents of the petitions, at page 281, the law is stated thus :

'As the petition constitutes the suggestions, the material which is carried forward into the alternative writ, the allegations of the petition should be stated fully and

with reasonable certainty, and contain all the facts upon which petitioner relies. All the essential facts necessary to entitle petitioner to relief should be specifically set out, that the petition may show on its face a prima facie right to relief.'

Again at pages 282 and 283, it is stated as follows:

'It will be observed that the petition is unlike similar pleadings in other proceedings, in that it must anticipate and answer every objection which may be urged against the application; that is, the petition must negative or meet all legally supportable defenses to the application. But this rule as to the allegations is one of pleading, not of proof. This is so because mandamus is an extraordinary writ, subject, among other limitations, to the existence of a clear legal right in petitioner.'

9. In the light of the above legal position, we have to examine, whether the appellants have an equally efficacious alternative remedy and whether that aspect has been properly adverted to or dealt with in the Original Petition as required by law, so as to entitle them to maintain the action.

10. Ordinarily, a civil suit will lie to prevent trespass and to obtain an order of injunction. In an ordinary action in civil court, it is possible to obtain the relief of declaration and also injunction. The civil court can grant relief restraining obstruction or impediment to the enjoyment of property or the goods. So also affirmative relief to load and unload goods can be given. The civil court will be in a better position to evaluate and grant relief, appropriate to the occasion, even if circumstances require the taking of oral and documentary evidence. The court granting the injunction can implement it by giving consequential directions, including direction to the police authorities to effectuate the order. It can also punish persons for disobeying the order of court, under Order 39, Rule 1, C.P.C. read with Rule 2-A. The advantages of declaratory judgment over mandamus need not be over stated. (See I. Zainir Declaratory Judgment (1962 Edn.) pages 180-182). Besides the above, under Chapter XI of the Cr.P.C. Sections 149, 150, 151, 155 and 156 contain provisions which ordain the police authorities to take preventive action. It is not stated as to why the appellants have not resorted to a civil action in the ordinary civil court. The appellants have not stated as to why the said civil action is not an equally efficacious remedy, on the facts and in the

circumstances of the case. It is also not stated as to why the appellants did not pursue for action under Chapter XI, Cr.P.C. in pursuance to Ext. P2 petition. It is true that under Chapter V, Section 29(b) and (g) of the Police Act, a statutory duty is imposed on respondents 1 and 2 to keep law and order and to afford sufficient police protection. The statutory duty so cast on the police authorities can be enforced by civil action in ordinary courts also. Ordinarily, the persons aggrieved should resort to such remedies. But, if the aggrieved persons have a case that such ordinary civil or criminal action is not an efficacious alternative remedy, and the situation demands speedy or effective relief which could be afforded only by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution, it is open to them to do so; but, before invoking such extraordinary jurisdiction, a duty is cast on the petitioners to plead and prove, prima facie, as to why the alternative remedies are not equally efficacious, and adequate in the facts and circumstances of a given case. A perusal of the affidavit, filed in support of the O.P., shows that the appellants have not at all applied their mind to the said vital aspect and have only casually stated, in paragraph 3 of the affidavit, that the petitioners have no other effective alternative remedy except to approach this Hon'ble Court Article 226 of the [Constitution of India](#). The appellants are bound to state in detail the nature of the alternative remedies available to them in civil and criminal law and as to why, in the facts of a given case, they are not equally efficacious alternative and adequate remedies. They have totally failed to do so. The pleadings are insufficient and vague and the appellants have not stated the details as to the persons or leaders who obstructed the cutting and removal of timber or the nature of the political influence which deter respondents 1 and 2 from affording police protection. The appellants have also failed to state that they sought for any specific help on any particular day and intimated the police authorities and even then the police officials declined to discharge the duty cast on them by the relevant statute. These are aspects which should have been stated in the O.P., as could be seen from the decisions of the Supreme Court aforesaid and by the statement of law contained in Berris. In the absence of such averments and details in the O.P. we should hold that the appellants did not make out a prima facie case entitling them to the issue of a rule nisi from this Court.

11. In the circumstances, the Original Petition should have been dismissed in limine. We hereby do so.

12. Appellants' counsel Mr. O. V. Radha krishnan submitted that in case respondents 3 to 5 turn out violent and pursue any violent action the appellants should be at liberty to seek police aid and the dismissal of this O.P. should not act as a bar. We are adjudicating the O.P. and the W.A. only on the basis of the cause of action (discussed) in the O.P. on the day when it was filed. This is made clear.

13. The writ appeal is disposed of as above.

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