

**Devadasan Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jun-27-2005

**Reported in :** 2005(3)KLT739

**Judge :** K. Padmanabhan Nair and; V. Ramkumar, JJ.

**Acts :** Land Acquisition Act; Kerala Police Act - Sections 29 to 38 and 41; [Kerala Survey and Boundaries Act, 1961](#) - Sections 4, 5, 6, 7, 8, 9, 10, 10(1) and 11; [Constitution of India](#) - Article 226; Code of Criminal Procedure (CrPC) ; Code of Civil Procedure (CPC) - Sections 151 - Order 21, Rule 32 - Order 39, Rules 1, 2 and 2A

**Appeal No. :** W.P. No. 14341 of 2005

**Appellant :** Devadasan

**Respondent :** State of Kerala

**Advocate for Def. :** Pirappancode V. Sreedharan Nair,; Pirappancode V.S. Sudhir,;

**Advocate for Pet/Ap. :** Praveen Vyasan, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

## **K. Padmanabhan Nair, J.**

1. The main prayer in this Writ Petition is for a writ of mandamus directing respondents 3 and 4 to afford protection to the life and property of the petitioner as well as for construction of the compound wall of the petitioner's property.

2. The petitioner is the owner of a property comprised in Sy.No. 404/4 of Maranallur Village. As early as in the year 1982, the second respondent--Panchayat passed a resolution to acquire a portion of the property of the petitioner for constructing a road. The Director of Panchayats directed the second respondent-Panchayat to drop the proposed acquisition under Ext. P-1. It is averred that in order to wreck vengeance, the second respondent is attempting to take possession of a portion of the property belonging to the petitioner without resorting to the provisions of the Land Acquisition Act. The petitioner had filed a suit and obtained a decree against the Panchayat. It is averred that at the instance of the Panchayat, the compound wall of the petitioner's property was demolished one week prior to the filing of the Writ Petition. It is also averred that the petitioner filed O.P.No. 6023 of 2003 before this Court and the Original Petition was disposed of. The petitioner filed Review Petition No. 754 of 2004 for review of the judgment and this Court clarified that the parties shall await the decision of the Government in the matter. It is further averred that the petitioner has not received any notice and he was not heard. No decision was communicated to him also. The petitioner had filed representations before the Secretary, Local Administration Department and those petitions are also pending. It is further averred that the petitioner attempted to reconstruct the boundary wall demolished by the Panchayat but he was prevented by the Panchayat. Hence this Writ Petition for police protection for his life and property and also to enable the petitioner to put up the boundary wall.

3. The second respondent has filed a counter-affidavit denying the allegation that the boundary wall was demolished by the Panchayat. It was contended that the Panchayat had neither constructed nor attempted to construct the road connecting Chengalloor--Koovathalackal road with Veliyamcode Junction. A dispute exists between the petitioner and the people residing in that area regarding that road and

at present there is a road having a width of 5 feet. The allegation that the Panchayat encroached the petitioner's property is denied. It is contended that his remedy is to approach the competent civil court for a decree of mandatory injunction against the persons who trespassed into the property and reduced the same into their possession. It is also admitted that the second respondent is willing to comply with any direction passed by the first respondent. It is averred that though the petitioner is fully aware of the fact that there is dispute between himself and the people in the locality, he has not impleaded any of such persons and without them on the party array, no effective relief can be granted.

4. Though the petitioner seeks protection to the life and property also the main relief that the petitioner seeks in this Writ Petition is for police protection to put up a boundary wall of his property. The learned counsel appearing for the petitioner submits that the petitioner has a right to construct or reconstruct the boundary wall of his property and neither the second respondent nor any other persons have a right to interfere with and prevent him from putting up a boundary wall to his property.

5. A writ of mandamus is a command issued by the Court commanding a public authority to perform a public duty belonging to its office. Mandamus can be granted only when a legal duty is imposed on the authority in question and the petitioner has a legal right to compel the performance of that duty. Mandamus may be issued inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. The existence of a legal right in the petitioner and corresponding legal duty on the respondents are conditions precedent for issuing writ of mandamus. In *Jayachandran v. State of Kerala*, 2002 (3) K.L.T. 125, a Division Bench of this Court has held as follows:

'A writ of mandamus is to be issued after circumspection, and only upon the Court being satisfied that the 'State' is either refusing or unduly delaying to act, ignoring its statutory responsibilities and has thus failed to discharge its constitutional duties. That too can be done after a specific notice drawing the attention of the statutory authority demanding redressal has failed to evoke satisfactory response. It appears that the principle underlying Article 226 of the Constitution is not being

paid the attention it really deserves. Orders are often issued under Article 226 as if emanating from a slot machine at the drop of a coin and the pulling of a handle. It is time to change. Petitions under Article 226 need to be considered with greater circumspection and dealt with the seriousness they deserve.'

6. The first question to be considered is whether any statutory duty is cast upon the police to assist a person in putting up a boundary to his property. The petitioner could not point out any provision which casts such a duty on the police under the Code of Criminal Procedure. Normally the duty of a police officer is to investigate the criminal offence and also to maintain law and order situation.

7. Chapter V of the Kerala Police Act containing Sections 29 to 38 deals with the executive powers and duties of the police. Section 29 of the Police Act enumerates the duties of the Police Officers. Section 41 of the Kerala Police Act provides the penalties for neglect of duties etc. The petitioner could not point out any provision in the Kerala Police Act which enjoins that when a person wants to put up a boundary of his property and in case the adjoining property owner disputes the right of that person to construct the boundary through a particular line, a statutory duty is cast upon the police to afford necessary protection to the former for construction of the boundary. The duty of the police is to maintain law and order situation. The petitioner has not produced any document to show that he has made any demand to respondents 3 and 4 who are the Sub Inspector and Circle Inspector concerned that any unauthorised obstruction or interference is caused by the second respondent or any other person and as such he is entitled to get police protection. Even assuming that the police has a duty, the next question arising for consideration is whether it is expedient to direct the police to afford necessary protection in a case of this nature.

8. In *George and Ors. v. C.I. of Police, Mannarghat and Ors.*, 1990 (1) KLT 741 it was held by this Court thus:

'The jurisdiction vested in the Court under Article 226 of the Constitution is an extraordinary one and the grant of relief is discretionary. Existence of an alternative remedy will deter the Court from exercising this reserve power.'

9. In *Lakshmanan and Ors. v. Roy Alexander and Ors.*, 1992 (2) KLT 634 : I.L.R. 1993 (2) Ker. 158 a Division Bench of this Court has held as follows:

'Availability of an equally efficacious remedy as per a statute is a strong circumstance to dissuade the Court to interfere in exercise of its discretionary jurisdiction.'

It is true that the existence of alternate remedy is not an absolute bar to the maintainability of the Writ Petition. But it must be shown that the authority had acted wholly without jurisdiction or in flagrant violation of the principles of natural justice. In the case at hand, the petitioner has got an effective alternative remedy.

10. It is also well-settled position of law that the High Court will not invoke its extraordinary jurisdiction to adjudicate upon disputed questions of fact. In *A.R. Prabhu v. Indira Thrikamdas Sampat and Ors.*, 1994 (2) KLT 75, a Division Bench of this Court has held as follows:

'Where it is apparent that the Civil Court alone can decide the factual controversy between the parties and when there is no prima facie material regarding the truth or falsity of the pleadings, police protection cannot be granted.'

11. In *George Mirante v. State of Kerala*, 1990 (2) KLT 89, a learned Single Judge of this Court had considered the scope of granting police protection when there is dispute regarding title and possession over property. It was held as follows:

'In matters involving civil rights, or disputes regarding title and possession over property, it is not proper for this Court to interfere under Article 226 of the Constitution with an order for police protection. Police cannot be made the adjudicators of such disputes inter se between the parties, either regarding possession of property or regarding boundaries or regarding easements or the like. In all such cases, the proper remedy, for a party feeling aggrieved, is to approach the Civil Court for the establishment of his rights, and seek appropriate injunctive reliefs against the offending party, and if any such orders are attempted to be violated to seek their enforcement by the Civil Court itself. The Civil Court has the power in such cases to enforce its orders under Order XXXIX, Rule 2 A or

Section 151 C.P.C. with police aid, if necessary. When such remedies are available, this Court should be loathe to direct interference by the police or to afford protection, though this court is not powerless to act in appropriate cases to preserve the rights to property. But such interference should be made sparingly, and not in cases where the parties have an effective remedy or relief by resort to the Civil Court itself.'

12. So when there is factual controversy which is to be resolved by a Civil Court, it is not just and proper to invoke the extraordinary jurisdiction conferred on this Court. The contesting respondents have raised a contention that the attempt of the petitioner is to put up a boundary wall according to his whims and fancies blocking an existing pathway. Whether there was a boundary wall and that boundary wall was destroyed by anybody are also matters to be resolved in a properly constituted civil suit before the competent court.

13. In cases where a person wants to put up a boundary wall, the first question to be determined is which exactly is the line through which a boundary wall is to be put up. In many cases, the respondents may not have any objection in the petitioner constructing a boundary wall. The objection will be regarding the dividing line through which the same is to be put up. When there is dispute regarding the boundary line separating the two properties, if protection is granted to one of the parties to put up a boundary with police assistance, that will be nothing but an abuse of process of law. So the proper course open to the petitioner is to approach the Civil Court and get the dividing line fixed first. Even if such a line is fixed at the trial side while putting up of the boundary, it is to be ensured that the boundary is put up through the line which was fixed in the decree. That can be ensured only by deputing a commissioner with the assistance of a competent surveyor. If the person against whom such a decree is passed causes further obstruction, that can be brought to the notice of the Civil Court and the Civil Court has got every power to issue direction to the police to afford protection in executing the decree.

14. There may be cases in which a person obtains a decree for declaration and injunction. In such cases the respondent cannot be allowed to contend that the

petitioner is not in possession of a property. But where exactly the dividing line of that property from the neighbouring property is an issue which can be decided only by a competent Court. So even if a person obtains a decree declaring his title and possession, no police protection can be granted to him to put up the boundary of that decree schedule property without the dividing line fixed by the competent Court first.

15. In *Kochupennu Ambujakshy v. Velutha, Kunju Vasu Channar*, 1992 (2) KLT 606, a learned Single Judge of this Court took a view that when there is dispute regarding the title and possession of the property, and in case of disobedience of a decree for injunction, the aggrieved party can approach the Civil court under Order XXI, Rule 32 of the Code of Civil Procedure for enforcement of the decree.

16. It is well-settled position of law that even if there is an order of injunction restraining a party from entering into the property, this Court shall not invoke the powers under Article 226 by ordering police protection. The party who obtains such a decree can approach the Civil Court for enforcement of that decree. In *Kunhumammed v. Bava Haji*, 1999 (2) KLT 816 a Division Bench of this Court held as follows:

'When there is dispute between parties and when it is only an interim ex parte order passed by the Munsiff which alone is in force, this Court shall not interfere in the matter invoking its jurisdiction under Article 226 of the [Constitution of India](#) with a direction for police aid. This Court shall not interfere in matters involving civil rights with an order of police protection on the basis of an ad interim ex pane order of the Civil Court and that only a final order passed under Rule 1 or Rule 2 of Order 39 of the Code of Civil Procedure can be enforced with the assistance of the police. Courts should be reluctant to grant police protection on the basis of ex parte injunction orders, which would only pave the way for farther litigation between parties, since the parties, on the basis of the police protection order and with the connivance of the police, complete constructions or commit waste or do other acts which they would not be able to do even after final orders are passed by the Civil Court.'

17. It is argued by the learned counsel for the petitioner that in view of the provisions contained in the Survey and Boundaries Act, a person who has title to the immovable property has a right to make an application before the competent authority for fixing the boundary and such a person is entitled to get police protection for putting up the boundary in case of obstruction. The [Kerala Survey and Boundaries Act, 1961](#), (the Act for short) was enacted to consolidate, amend and unify the law relating to the survey of lands and settlement of boundary disputes in the State of Kerala. Section 4 of the Act provides that the Government may direct the survey of any land or any boundary of any land. Section 5 of the Act deals with survey of lands hit by sea erosion or action of river. Section 6 of the Act provides that when any survey is ordered under Section 4 or 5, the Survey Officer shall publish a notification in the Gazette in the prescribed manner. Section 7 of the Act provides that the cost of survey operations may be defrayed in the first instance by Government in certain cases. Section 8 provides that survey is to be carried out in the prescribed manner. Section 9 deals with the power to record boundary as undisputed. It reads as follows:

'(1) The Survey Officer shall have power to determine and record as undisputed any boundary in respect of which no dispute is brought to his notice.

(2) ....'

Section 10 confers power on the Survey Officer to determine and record a disputed boundary with reasons. It reads as follows:

'(1) Where a boundary is disputed, the Survey Officer shall, after making such inquiries as he considers necessary, determine the boundary and record it in accordance with his decision with reasons in writing for arriving at that decision.

(2) Notice of every decision of the Survey Officer under Sub-section (1) shall be given in the prescribed manner to the parties to the dispute and other registered holders of the lands the boundaries of which may be affected by the decision.'

Section 11 of the Act provides that any person aggrieved by a decision under Sections 6, 7, 9 or 10 may appeal to such authority as may be prescribed. It is true

that Sections 9 and 10 confer power on the competent Survey Officer to determine the boundary of a property. But the statutory power given to the Survey Officer is only to fix the boundary. The boundary so fixed is not final, that is subject to the result of the suit. Putting up of boundary is a matter to be resolved only through a competent Civil Court. Merely because the Survey and Boundaries Act confers power on the Survey Officer to fix a boundary, it does not mean that a party is entitled to put up boundary through the line so fixed by the Survey Officer with police help ignoring the dispute raised by the opposite side. So there is no merit in the argument put forward by the learned counsel for the petitioner that in view of the provisions contained in Sections 9 and 10 of the Act, he is entitled to get police protection.

18. As we have already stated, the power under Article 226 of the Constitution is an extraordinary power conferred on this Court. If this Court grants protection to put up a boundary to one person before resolving the dispute by a competent Civil Court, the same will cause hardship and irreparable injury to the other side. In many cases a person who approaches this Court under Article 226 of the Constitution may not have actual physical possession. By allowing such a person to put up a boundary through a disputed line, indirectly this Court is helping him to reduce the property into his possession without resorting to any procedure known to law.

19. In the case at hand, the contesting respondents denied the allegation that they have encroached upon the property of the petitioner and constructed the road. It is also stated that a dispute exists between the petitioner and the people of the locality regarding the formation of the road. None of them have been made parties to the Writ Petition. So the proper remedy available to the petitioner is to approach the civil court for impleading the interested persons and seek appropriate reliefs. In view of the factual controversy, it is not possible to direct the police to afford protection to the petitioner to put up the boundary of his property. Of course, if there is any threat to the life of the petitioner, it is open to him to file necessary petition before the third respondent, who will look into the same and take appropriate action in accordance with law.

The Writ Petition is dismissed subject to the above observations.

**V. Ramkumar, J.**

20. I have had the advantage of reading the Judgment of my learned Brother, Padmanabhan Nair, J. Besides recording my full concurrence to the said Judgment I wish to add the following:

21. Maintenance of law and order through the physical force of the State is an important facet of the administration of justice. The duties of the police primarily include the detection, prevention and investigation of crimes. But instances are not wanting where citizens and even non-citizens complain of police atrocities committed in utter disregard and breach of human decency, universal human rights and the constitutional guarantees. The number of Writ Petitions for protection against police brutalities equals, if not exceeds, the number of petitions seeking police protection. While the former category of cases are directed against erring police officers for their functional excesses and high-handedness, the latter category of cases are in recognition of the primary duties of the police but alleging functional lethargy either due to partisan considerations or due to culpable indifference. Even though the police have no role to play in civil disputes or labour disputes or criminal cases involving non-cognizable offences between private parties except when such disputes give rise to or result in any law and order problem or Magisterial directions, allegations against the police interfering in such disputes, taking sides in such disputes, coercing persons to settle their differences, or to withdraw legitimate prosecutions or civil suits or, to execute documents or negotiable instruments etc. are not unfamiliar to Courts. It will be dangerous to allow a police officer to fix the boundary for the purpose of enabling a person to put up a compound wall. That is definitely the function of a court of justice and the Police are to respect the orders of the Court and assist the implementation of the orders of the Court when called upon to do so.

22. Litigants also are seen to institute cases levelling false allegations against the Police with a view to stifle fair investigation or with a view to over-reach the orders passed by the civil or criminal courts and other adjudicating bodies. While the law

abiding and peace loving citizens are entitled to the protection against threats on their lives or properties, persons masquerading as justice-seekers but whose real intentions are to settle private scores against their adversaries, are certainly not entitled to misuse the police or the process of court to accomplish their sinister designs. It is in this region that the task of the High Court becomes more difficult and more onerous. That explains the need to take every care and caution to see that under the cover of the order for police protection or the order against police harassment, the applicant does not derive an unfair advantage over his opponent and thereby defeat the ends of justice. That is why this Court is loath to delve deep into disputed questions of fact in this rarefied, extraordinary and discretionary jurisdiction so that the disputing parties can resolve their differences before the lower tiers of adjudicating agencies after a full and satisfactory contest. I am, therefore, in agreement with the mode of disposal of this Writ Petition as indicated by my learned Brother.

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