

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 23RD DAY OF FEBRUARY 2022 / 4TH PHALGUNA, 1943

OP(C) NO. 277 OF 2022

AGAINST THE JUDGMENT DATED 22.01.2022 IN CMA 61/2021 OF
ADDITIONAL DISTRICT COURT, IRINJALAKUDA ON APPEAL AGAINST THE
ORDER DATED 11.10.2021 IN IA 3/2021 IN OS 144/2021 OF
ADDITIONAL SUB COURT, IRINJALAKUDA

PETITIONERS/APPELLANTS/PLAINTIFFS:

- 1 MINI
AGED 47 YEARS,
W/O.PUNNELIPARAMBIL SHIBU, CHALAKUDY TALUK,
PERAMBRA VILLAGE AND DESOM, TRISSUR DISTRICT.
- 2 TONY
AGED 52 YEARS
S/O.PUDUSSERY KATTALAN ITTYERA, POTTA VILLAGE AND
DESOM, CHALAKUDY TALUK, TRISSUR DISTRICT.
- 3 SHAJU
AGED 51 YEARS
S/O.CHANKAN JOSE, POTTA VILLAGE AND DESOM,
CHALAKUDY TALUK, TRISSUR DISTRICT.
- 4 TOLSTOY
AGED 43 YEARS
S/O.PYANADATH LONA, POTTA VILLAGE AND DESOM,
CHALAKUDY TALUK, THRISSUR DISTRICT.
- 5 INDU
AGED 37 YEARS
W/O.CHAMAVALAPPIL SEBASTIAN, PERAMBRA DESOM AND
VILLAGE, CHALAKUDY TALUK, TRISSUR DISTRICT.
- 6 BHASI
AGED 61 YEARS
S/O.OLLUKKARAN EKKORUKUTTY, POTTA DESOM AND
VILLAGE, CHALAKUDY TALUK, TRISSUR DISTRICT.
- 7 POULOSE
AGED 56 YEARS
S/O.NEDUMPARAMBIL ETTECHAN, PERAMBRA VILLAGE AND
DESOM, CHALAKUDY TALUK, TRISSUR DISTRICT.
- 8 SHAJU
AGED 41 YEARS
S/O.CHAMAVALAPPIL ETTECHAN, PERAMBRA DESOM,
CHALAKUDY TALUK, TRISSUR DISTRICT.

- 9 RAJIN
AGED 47 YEARS
S/O.KOKKADAN JOSE, POTTA DESOM AND VILLAGE,
CHALAKUDY TALUK, TRISSUR DISTRICT.
- 10 SEENA
AGED 34 YEARS
W/O.CHANKAN SHAJU, POTTA DESOM AND VILLAGE,
CHALAKUDY TALUK, TRISSUR DISTRICT.
- 11 JOY
AGED 50 YEARS
S/O.CHAMAVALAPPIL CHUMMAR, POTTA DESOM AND
VILLAGE, CHALAKUDY TALUK.
- 12 JOICY
AGED 57 YEARS
S/O.MENACHERY JOSHY, PERAMBRA VILLAGE, CHALAKUDY
TALUK, TRISSUR DISTRICT.
- 13 RANI
AGED 51 YEARS
W/O.POOTHEKKADAN PAILY, POTTA DESOM, PERAMBRA
VILLAGE, CHALAKUDY TALUK.
BY ADV T.N.MANOJ

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1 ASSISTANT EXECUTIVE ENGINEER PWD ROADS
IRINJALAKUDA DESOM AND VILLAGE, NEAR KODAL
MANIKYA TEMPLE, IRINJALAKUDA POST - 680 121,
TRISSUR DISTRICT.
- 2 THE DISTRICT COLLECTOR
AYYANTHOLE, TRISSUR DISTRICT, TRISSUR POST - 680
003.
- 3 KERALA STATE REPRESENTED BY THE DISTRICT COLLECTOR
TRISSUR, TRISSUR POST - 680 003.
FOR R1 - R3 SENIOR GOVERNMENT PLEADER SRI DENNY
DEVASSY

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
16.02.2022, THE COURT ON 23.02.2022 DELIVERED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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O.P(C). No.277 of 2022

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Dated this the 23rd day of February, 2022

J U D G M E N T

Plaintiffs in O.S.No.144 of 2021 on the file of Additional Sub Court, Irinjalakuda, are the petitioners herein and they impugn order in C.M.A.No.61/2021 on the file of the Additional District Judge, Irinjalakuda, under Article 227 of the Constitution of India. Respondents herein are the defendants in the above Suit.

2. Heard Advocate T.N.Manoj, the learned counsel appearing for the petitioners and Sri Denny Devassy, the learned Government Pleader appearing for the respondents.

3. Short facts: The plaintiffs herein filed the Original Suit O.S.No.144/2021 and sought for the relief of declaring their title over plaint `B' item properties 1 to 13, formerly part of old National Highway, by adverse possession and limitation. Further there is

prayer in the Suit to separate the boundary between the plaint items 'A' to 'B' properties with 'C' schedule property.

4. The respondents herein are Government and its officials, who are defendants in the Suit.

5. Along with the Suit, the plaintiffs filed I.A.No.3/2021 seeking interim injunction restraining the respondents – the District Collector and State of Kerala, from forcefully evicting the plaintiffs from plaint 'B' schedule items till the disposal of the Suit.

6. The Government filed objection and resisted the interim injunction application. Thereafter, as per order dated 11.10.2021, the learned Sub Judge dismissed the application. The plaintiffs filed CMA.61/2021 before the District Court, Thrissur and later made over to Additional District Court, Irinjalakuda. The learned Additional District Judge, after having re-appraised the evidence, also confirmed the order of the learned Munsiff. Thus the concurrent findings entered into by the trial court as well as the appellate court are under challenge in this Original Petition filed under Article 227 of the Constitution of India. The learned counsel for the petitioners argued that the plaintiffs assert right of adverse

possession over the plaint 'B' schedule items and it was contended before the trial court specifically that the plaintiffs are in possession and enjoyment of the plaint 'B' schedule item for the last 40 years in continuation of their predecessors. Further, it is argued by the learned counsel for the petitioners that when notice was issued under Section 12 of the Kerala Land Conservancy Act, 1957, to evict the petitioners, they have filed an appeal and revision before the Superintendent, Survey and Land Records and the said appeal and revision are pending. The learned counsel urged that when the right of adverse possession is claimed, such a Suit is not barred even under Section 20 of the Land Conservancy Act and in support of this contention, the learned counsel heavily relied on a decision reported in [2018 (2) KLT 369], *Harrisons Malayalam Ltd. & anr. v. State of Kerala & Ors.*, rendered by a Division Bench of this Court. According to the learned counsel for the petitioners, the petitioners made out a prima facie case with elements of irreparable injury and thus balance of convenience in this matter is also in favour of the petitioners. Therefore, the courts below miserably failed to address the grievance of the petitioners and in such

contingency this Court may address their grievance.

7. Per contra, the learned Government Pleader submitted that the defendants initiated proceedings to evict the petitioners, who unauthorisedly occupied portion of the old National Highway road passing through Chalakkudy in obedience to a judgment passed by this Court in W.P(C).No.29070/2019-G dated 09.12.2019 filed by one Babu Joseph Puthenangadi. In the said decision, this Court directed the respondents to continue the survey work in the area within the time stated in the statement and thereafter remove the encroachments, if any, found pursuant to the survey. He also argued that the new National Highway through Chalakkudi came into existence only before 10 years and till then the old National Highway was used. When the new road was formed, the petitioners herein encroached upon the old Highway and extended their business to the encroached portions of the old Highway. Therefore, they could not claim right of adverse possession based on their possession for the last 10 years. Therefore, the contention as such shall not sustain *prima facie*. Further, the part of the Highway road being encroached and annexed as part of their shop

room and the Government has the right or privilege to use the said part of the Highway for widening the road or for other purposes, if it is not necessary to maintain the said portion as part of the National Highway. Thus no *prima facie* case made out by the petitioners with elements of irreparable injury. To the contrary, irreparable injury would be caused to the Government, in turn to the general public, if public way is allowed to be retained by the petitioners, and there is no scope for any irreparable injury to the petitioners in a case where already they are in occupation of their shop buildings and the removal of encroachments will no way affect their business otherwise. Thus the balance of convenience is also in favour of the respondents. Therefore, the trial court as well as the appellate court concurrently found that the interim injunction sought for cannot be allowed. He submitted further that this Court cannot revisit or re-appreciate the evidence to have a contra finding by exercising the limited power of superintendence under Article 227 of the Constitution of India. As such, this petition deserves dismissal with cost of the defendants.

8. In response to the arguments advanced by both sides, I

have referred Section 12 of the Land Conservancy Act, 1957.

Section 12 reads as follows:

12. Prior notice to occupant etc.:-- The Collector shall, before passing an order under this Act, give notice to the occupant or other person likely to be affected by the order, and record any statement which such occupant or person may make and any evidence which he may adduce within a reasonable time, and all orders passed by the Collector under this Act shall be in writing and under his hand:

[Provided that no such notice shall be necessary--

(I) When the Collector takes action under sub-section (3) of Section 11; or

(ii) in the case of any person unauthorisedly occupying any land which is the property of Government, if, within a period of two years prior to the date of such occupation, he had been evicted from such land under Section 11 or had vacated such land voluntarily after the receipt of a notice under this section or Section 11].

[The Collector may require any subordinate officer not below the rank of Deputy Tahsildar or any other officer authorised by the Government in this behalf to hold the enquiry as prescribed in the preceding paragraph and submit the record to him; and on such record the Collector may pass orders].

For the purpose of Section 199 of the Indian Penal Code the proceedings taken by the Collector under this section shall be deemed to be judicial proceedings.”

As per Section 20, no Suit against the Government shall be entertained in any civil court in respect of any order passed under the Land Conservancy Act except upon the ground that the land in respect of which such order has been passed is not a land which is

the property of the Government whether a poramboke or not.

Further Section 20A also provides as under:

"20A: Bar of jurisdiction of Civil Courts:-- [(1) No Civil Court shall have jurisdiction to entertain any suit or other legal proceedings against the Government in respect of any action taken by it for the eviction of any person, who is in unauthorised occupation of any land which is the property of Government, whether poramboke or not, or for the recovery of any fine or any other sum due to the Government under this Act.]

9. It is true that in the decision highlighted by the learned counsel for the petitioners it was held that provisions in the Act permits an occupant of land to file a suit for declaration of title, but bars one against proceeding for eviction under the Act. In the decision reported in [2001 KHC 93], ***Shamsudeen v. Travancore Devaswom Board*** also, this Court held the same view. Therefore, the question to be decided herein is whether the concurrent findings entered into by the trial court as well as the appellate court required to be unsettled by exercising the limited power of superintendence provided under Article 227 of the Constitution. It is the settled law that a court exercising power under Article 227 of the Constitution of India cannot re-appreciate the evidence and undo every illegalities and only the illegalities which make the order perverse

or arbitrary can be interfered. That apart, in the decision reported in [2010 (2) SCC 461], ***Mandal Revenue Officer v. Goundla Venkaiah & anr.*** when the Apex Court dealt with public property, highlighted the duty of courts in such cases. The Apex Court held that the court is duty bound to act with greater seriousness, care and circumspection where the encroacher has perfected title by adverse possession. The relevant paragraph (paragraph 47) of the judgment is extracted hereunder:

"47. In this context, it is necessary to remember that it is well nigh impossible for the State and its instrumentalities including the local authorities to keep every day vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularized. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the Court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give upper hand to the encroachers, unauthorised occupants or land grabbers."

In another decision reported in [2000 (5) SCC 652], ***State of Rajasthan v. Harphool Singh***, the Honourable Supreme Court observed as under:

"12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none. The decision in *P.Lakshmi Reddy v. L.Lakshmi Reddy* (AIR 1957 SC 314) adverted to the ordinary classical requirement – that it should be *nec vi, nec clam, nec precario* – that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus."

In another decision reported in [2007 (7) SCC 482], ***A.A.Gopalakrishnan v. Cochin Devaswom Board***, in para.10 the Supreme Court expressed as under:

"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebait/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

10. In [2000 (5) SCC 652], *State of Rajasthan v. Harphool Singh(dead) through his LRs*, the Apex Court dealt with a case some what similar to this case. That is to say, the suit property therein was a plot of land measuring north-south 6 feet and east-west 40 feet situated on Noha-Badra road at Noha. In the said case, the plaintiff asserted right of adverse possession. Though the trial court as well as the appellate court found adverse possession in favour of the plaintiff, the Apex Court in an appeal filed by the Rajasthan Government set aside the said finding and in the said case the requirements to perfect adverse possession, viz. *nec vi, nec clam, nec precario* [“without force, without secrecy, without permission” or “peaceful, open, continuous] have been explained and thereafter it was found that the possession of the plaintiff therein could not be held as one with a hostile animus.

11. Coming to the facts of this case, portion of National Highway was now encroached by the petitioners taking advantage of the construction of a new road by acquiring properties adjacent to the said road. A vital point to be noted herein is that the

encroached area is nothing but part of earlier existed National Highway, which was constructed by the Government after acquiring property by paying adequate consideration for the use of public in general. Thereafter, the road was widened and thereby the earlier road existed abutting the same. Later the same was encroached upon by the petitioners herein. Such encroachments should be viewed seriously and this Court is duty bound to address the issue with extreme care and caution as observed by the Apex Court in ***Mandal Revenue Officer v. Goundla Venkaiah & anr.***'s case (*supra*).

12. The learned Government Pleader submitted that the new National Highway road came into existence just before 10 years and therefore, the plaintiffs cannot assert use of the same for a period of 45 years since the same was used as the National Highway prior to construction of the new road abutting the same. It is relevant to note that the petitioners have no documents *prima facie* to substantiate their possession for a period of 45 years. The available materials would go to show that by exploiting the inaction of the Government officials (as usual) in resisting

encroachment in a time bound manner, the petitioners herein encroached the public road and made the same as part of their shop rooms. Encroachment into public road and thereafter claiming right of adverse possession cannot be equated at par with the plea of adverse possession in other circumstances. Therefore, I am of the view that the plaintiffs miserably failed to prove a *prima facie* case to substantiate the contention regarding right of adverse possession claimed by them. Further the petitioners are carrying out business excluding the encroached area in their shop rooms and, therefore, if at all the encroachment is removed, there is no likelihood of any irreparable injury to the petitioners and the irreparable injury would be to the Government and the public in general, since public property to be maintained for the use of general public at the whims and fancy of the Government and in such properties nobody could be allowed to retain possession. Thus the balance of convenience is also in favour of the Government. In fact, the trial court as well as the appellate court rightly found the said aspects and dismissed the application.

13. The circumstances and in which matters, this Court can

interfere by its supervisory powers under Article 227 of the constitution of India are dealt with in various decisions of the Apex Court.

14. In [(2010) 8 SCC 329], ***Shalini Shyam Shetty v. Rajendra Shankar Patil*** the Apex Court, while analysing the scope and ambit of the power of superintendence under Article 227 of the Constitution, held that the object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

15. In [(2010) 9 SCC 385], ***Jai Singh v. Municipal Corporation of Delhi***, while considering the nature and scope of the powers under Article 227 of the Constitution of India, the Apex Court held that, undoubtedly the High Court, under Article 227 of

the Constitution, has the jurisdiction to ensure that all subordinate courts, as well as statutory or quasi-judicial tribunals exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognised constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of the judgment of a court or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of

law or justice.

16. In [(2015) 12 SCC 39], ***K.V.S. Ram v. Bangalore Metropolitan Transport Corporation***, the Apex Court held that, in exercise of the power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the court or tribunal only when there has been a patent perversity in the orders of the tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted. On the facts of the said case, the Apex Court held that, when the Labour Court has exercised its discretion keeping in view the facts of the case and the cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court.

17. In [2016 (1) KHC1], ***Sobhana Nair K.N. v. Shaji S.G. Nair***, a Division Bench of this Court held that, the law is well settled by a catena of decisions of the Apex Court that in proceedings under Article 227 of the Constitution of India, this Court cannot sit in appeal over the findings recorded by the lower court or tribunal and the jurisdiction of this Court is only

supervisory in nature and not that of an appellate court. Therefore, no interference under Article 227 of the Constitution is called for, unless this Court finds that the lower court or tribunal has committed manifest error, or the reasoning is palpably perverse or patently unreasonable, or the decision of the lower court or tribunal is in direct conflict with settled principles of law.

18. Thus, it is a settled law that this Court cannot sit in appeal over the findings recorded by the trial court as well as the first appellate court and the supervisory jurisdiction cannot be exercised to correct errors of the order or judgment of the lower courts or tribunals and the said exercise shall be to find out grave dereliction of duty or flagrant abuse of fundamental principles of law or justice or to meet an absolute illegality. Therefore, I am of the view that no interference is called for in the orders impugned and consequently the same are confirmed.

In the above circumstances, the Original Petition is devoid of any merits and is accordingly dismissed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF OP(C) 277/2022

PETITIONERS' EXHIBITS

- Exhibit P1 TRUE COPY OF THE SKETCH OBTAINED FROM THE OFFICE OF THE 1ST RESPONDENT.
- Exhibit P2 TRUE COPY OF THE LAWYER NOTICE DATED 16/7/2021 ISSUED ON BEHALF OF THE PETITIONERS.
- Exhibit P3 TRUE COPY OF THE PLAINT DATED 14/9/2021 IN OS NUMBER 144 OF 2021 FILED BEFORE THE COURT OF THE ADDITIONAL SUB COURT AT IRINJALAKUDA.
- Exhibit P4 TRUE COPY OF THE PETITION IA 3/2021 FILED IN THE SUIT OS.144 OF 2021 BEFORE THE COURT OF THE ADDITIONAL SUB JUDGE AT IRINJALAKUDA.
- Exhibit P5 TRUE COPY OF THE COMMISSION REPORT DATED 24/9/2021 IN OS 144/2021 BEFORE THE COURT OF THE ADDITIONAL SUB JUDGE AT IRINJALAKUDA.
- Exhibit P6 TRUE COPY OF THE OBJECTION DATED 4/10/2021 FILED ON BEHALF OF RESPONDENTS 1 TO 3, TO THE PETITION FOR INJUNCTION.
- Exhibit P7 TRUE COPY OF THE ORDER DATED 11/10/2021 IN IA 3/2021 IN OS 144 OF 2021 BY THE COURT OF THE ADDITIONAL SUB JUDGE AT IRINJALAKUDA.
- Exhibit P8 TRUE COPY OF THE MEMORANDUM OF APPEAL CMA 61 OF 2021, FILED BEFORE THE COURT OF THE DISTRICT JUDGE AT TRISSUR.
- Exhibit P9 CERTIFIED COPY OF THE JUDGMENT DATED 22/1/2022 IN CMA 61/2021 OF THE ADDITIONAL DISTRICT COURT AT IRINJALAKUDA.
- Exhibit P10 TRUE COPY OF THE JUDGMENT DATED 9.12.2019 IN WP(C).NO.29070/2019 OF THIS COURT.