

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 31<sup>ST</sup> DAY OF MARCH 2022 / 10TH CHAITHRA, 1944

WP(C) NO. 5708 OF 2022

**PETITIONER:**

MUHAMMAD IQBAL  
AGED 60 YEARS  
S/O. MUHAMMAD, ALIYAM HOUSE, EDAVANAKKADU VILLAGE,  
EDAVANAKKADU P. O., PIN - 682502, ERNAKULAM DISTRICT.

BY ADVS.  
T.N.SURESH  
DHANUJA VETTATHU  
MONSY K.V  
KORAH JOY  
S.SREEKUMAR (SR.)

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY SECRETARY, HOME DEPARTMENT,  
MAIN BLOCK SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695 001.
- 2 SUPERINTENDENT OF POLICE  
ALUVA RURAL, ERNAKULAM DISTRICT, PIN - 683101.
- 3 THE CIRCLE INSPECTOR OF POLICE  
NJARAKKAL POLICE STATION, NJARAKKAL P. O.,  
ERNAKULAM DISTRICT, PIN - 682505.
- 4 THANNICHAL KRISHI SAMAJAM  
REGISTRATION NO.EKM/TC/370/2021, NEDUNGADU,  
NAYARAMBALAM P. O., PIN - 682509, ERNAKULAM DISTRICT,  
REPRESENTED BY ITS SECRETARY, MR. GRACIOUS,  
AGED 66 YEARS, S/O. AMBROSE, VADASSERY HOUSE,  
NJARAKKAL P. O., PIN - 682505, ERNAKULAM DISTRICT.
- 5 THANNEERCHAL PADASEKHARA SAMITHY  
NAYARAMBALAM, REG. NO.EKMTC/368/2021, ESTABLISHED AT  
BUILDING NO.135/4, NAYARAMBALAM P. O. AND VILLAGE,  
KOCHI TALUK, PIN - 682 509, REPRESENTED BY ITS  
PRESIDENT MR. N. J. PIOUS, AGED 58 YEARS, S/O. LATE  
JOSEPH, NJARAKKADAN HOUSE, NAYARAMBALAM P. O.
- 6 FRANCIS  
AGED 56 YEARS  
S/O. SAVI, KANAPPILLY HOUSE, NAYARAMBALAM P. O.,  
PIN - 682 509, ERNAKULAM DISTRICT.

- 7        SHERLY  
         AGED 50 YEARS  
         W/O. FRANCIS, KANAPPILLY HOUSE, NAYARAMBALAM P. O.,  
         PIN - 682 509, ERNAKULAM DISTRICT.
- 8        N. J. PIOUS  
         AGED 59 YEARS  
         S/O. JOSEPH, NJAREKKATTU HOUSE, NEDUNGADU,  
         NAYARAMBALAM P. O., PIN - 682 509, ERNAKULAM DISTRICT.
- 9        M. S. PUSHKARAN  
         AGED 70 YEARS  
         S/O. SUBRAHMANYAN, MALIYEKKAL HOUSE, NEDUNGADU,  
         NAYARAMBALAM P. O., PIN - 682 509, ERNAKULAM DISTRICT.
- 10       N. V. ANIL  
         AGED 50 YEARS  
         S/O. KARTHU, NIKATHITHARA HOUSE, NEDUNGADU,  
         NAYARAMBALAM P. O., PIN - 682 509, ERNAKULAM DISTRICT.
- 11       ANITHA @ SUNITHA  
         AGED 46 YEARS  
         W/O. ANIL, NIKATHITHARA HOUSE, NEDUNGADU, NAYARAMBALAM  
         P. O., PIN - 682 509, ERNAKULAM DISTRICT.
- 12       P. K. VASU  
         AGED 65 YEARS  
         S/O. KODIYAN, PAREKKAPPILLYTHARA HOUSE, NEDUNGADU,  
         NAYARAMBALAM P. O., PIN - 682 509, ERNAKULAM DISTRICT.
- 13       JAMES KURIAN  
         AGED 48 YEARS  
         S/O. ANTONY, KANAPPILLY HOUSE, NAYARAMBALAM P. O.,  
         PIN - 682 509, ERNAKULAM DISTRICT.
- 14       K. O. DEVASY  
         AGED 67 YEARS  
         S/O. OUSEPH, KADEPPARAMBIL HOUSE, EDAVANAKKADU VILLAGE,  
         KOCHI TALUK, ERNAKULAM DISTRICT, PIN - 682502.
- 15       ADDL R15: AMRUTH THOMAS,  
         AGED 50 YEARS  
         S/O. THOMAS K.G., KADAVILPARAMBIL HOUSE,  
         MUNDAMVELI P.O., COCHIN-682507.
- 16       ADDL R16: SILVY P.V.,  
         AGED 82 YEARS  
         W/O. THOMAS K.G., KADAVILPARAMBIL HOUSE,  
         MUNDAMVELI P.O., COCHIN-682507.

- 17 ADDL R17: JOSEPH ARUN K.M.,  
AGED 44 YEARS, S/O. MICHAEL, KALARICKAL HOUSE,  
MUNDAMVELI P.O., KOCHI TALUK-682507.
- 18 ADDL R18: SASI,  
AGED 61 YEARS  
S/O. THAMPI, VATHIYEZHATH HOUSE, NAYARAMBALAM P.O.,  
KOCHI TALUK-682509.
- 19 ADDL R19: M.P. PREMLAL,  
AGED 38 YEARS  
S/O. PUSHKARAN, MALIYAKKATT HOUSE, NAYARAMBALAM P.O.,  
KOCHI TALUK-682509.
- 20 ADDL R20: GEO FRANCIS,  
AGED 18 YEARS  
S/O. FRANCIS, KANAPILLY HOUSE, NAYARAMBALAM P.O.,  
ERNAKULAM DISTRICT-682509.
- 21 ADDL R21: SAVITHRI VASU,  
AGED 60 YEARS  
W/O. P.K. VASY, PAREKKAPILLITHARA HOUSE,  
NAYARAMBALAM P.O., ERNAKULAM DISTRICT-682509.
- 22 ADDL R22: K.K.PRADEEP,  
AGED 48 YEARS  
S/O. KUNJAPPAN, KOCHUTHARA HOUSE, NAYARAMBALAM P.O.,  
ERNAKULAM DISTRICT-682509.
- 23 ADDL R23: VIMALA SIVADASAN,  
AGED 61 YEARS  
W/O. LATE SIVADASAN, MALIYAKKATT HOUSE,  
NAYARAMBALAM P.O., ERNAKULAM DISTRICT-682509.
- 24 ADDL. R24: K.K.ASHOKAN,  
AGED 79 YEARS  
S/O. K.K. KUMARAN, KALLUMADATHIL HOUSE,  
NAYARAMBALAM P.O., ERNAKULAM DISTRICT-682509.
- 25 ADDL. R25: MATHEW JOSEPH,  
AGED 81 YEARS  
S/O. MATHEW, VADASSERY HOUSE, NAYARAMBALAM P.O.,  
ERNAKULAM DISTRICT-682509.
- 26 ADDL R26: LAL DIL P.N.,  
AGED 54 YEARS  
S/O. NARAYANAN, PUNNAKKATTUTHARA HOUSE, PANAMPUKAD,  
VALLARPADAM P.O., ERNAKULAM-682504.

- 27      ADDL R27: A.A.THOMAS,  
          AGED 84 YEARS, S/O. AUGUSTIN, ARAKKAL HOUSE, VENNALA,  
          KANAYANNUR TALUK, ERNAKULAM DISTRICT-682028.
- 28      ADDL. R28: VARGHESE ANTONY,  
          AGED 62 YEARS  
          S/O. ANTONY, PUTHUSSERY HOUSE, NAYARAMBALAM P.O.,  
          ERNAKULAM DISTRICT-682509.
- 29      ADDL. R29: SHEENA RAJAN,  
          AGED 56 YEARS  
          W/O. RAJAN, THATTAPARAMBIL HOUSE, NAYARAMBALAM P.O.,  
          ERNAKULAM DISTRICT-682509.
- 30      ADDL. R30: PUKAYILAKAT GOPALAKRISHNAN,  
          AGED 63 YEARS  
          S/O. RAGHAVAN PILLAI, PUKAYILAKKAT HOUSE,  
          ETTUVETIL, PALARIVATTOM-682025.
- 31      ADDL. R31: PURUSHOTHAMAN,  
          AGED 62 YEARS  
          S/O. VELUKUTTY, NAYARUSSERRY HOUSE, EDAVANAKKADU P.O.,  
          ERNAKULAM-682502.

(ADDITIONAL R15 TO R31 ARE IMPEADED AS PER ORDER DATED  
23/03/2022 IN IA 1/2022)

BY ADVS.  
K.N.CHANDRABABU  
BABU CHERUKARA  
K.S.GIREESAN  
S.RUSSEL  
P.A.SALIM  
T.K.SHAJAHAN-SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
31.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

**Dated this the 31<sup>st</sup> day of March, 2022**

This writ petition is filed seeking the following prayers:

*“(i) Call for the records connected to **Exhibit P5** and **Exhibit P8** from the Respondents No.2 and 3.*

*(ii) To issue a writ of mandamus directing the Respondents No.2 and 3 to afford sufficient police protection to the petitioner to protect his person and to conduct fishing operation in the Padasekharam under the strength of Exhibit P1 lease agreement from the illegal acts of the respondents no: 5 to 14.”*

2. Heard the learned counsel for the petitioner, the learned Government Pleader, the learned counsel appearing for respondents 5 to 8 and 10 to 13, the learned counsel appearing for the 14<sup>th</sup> respondent as well as the learned counsel appearing for respondents 15 to 31, impleaded as per order dated 23.03.2022.

3. The petitioner in the writ petition contends that he is the auction purchaser of the right to conduct prawn filtration in the Padasekharam which was auctioned by the 4<sup>th</sup> respondent-Thannichal Krishi Samajam. It is also submitted that the right is governed by a lease agreement dated 25.10.2021 entered into between the petitioner and the 4<sup>th</sup>

respondent and that the period of the agreement is from 15.11.2021 to 15.04.2022. It is submitted that there are 35 owners of lands in the Padasekharam. It is stated that the Padasekharam is used for paddy cultivation from April 15 to November 14 and for prawn filtration for the rest of the year.

4. It is submitted that respondents 6 to 13 have created a splinter group in the Padasekharam and had taken steps to lease out the fish farming rights to the 14<sup>th</sup> respondent. It is submitted that suits had been preferred by the petitioner, the 14<sup>th</sup> respondent as well as by the 5<sup>th</sup> respondent before the competent civil courts and Exts.P3, P4 and P7 are the orders issued in the applications filed by the petitioners in the suits filed by the parties. It is submitted that by Ext.P3 order dated 18.12.2021, the application for interim injunction filed by the petitioner was allowed and respondents 1 to 8 in the suit were restrained from trespassing into the plaint schedule property and from conducting any parallel fishing operations or making any obstructions to conduct any repair or periodical maintenance in the Padasekharam. It is submitted

that it was on a finding that the petitioner had been put in possession of the Padasekharam by the 4<sup>th</sup> respondent for conducting the prawn filtration activities that Ext.P3 order was rendered. By Ext.P4, the application for injunction filed by the 5<sup>th</sup> respondent herein had been duly considered and rejected by the Munsiff Court. It was found that since the petitioner in the writ petition had been given possession of the plaint schedule property on 28.10.2021 and since the plaintiff could not establish that their rights had been infringed upon or that an injunction was liable to be granted to them, the application was rejected. Thereafter, by Ext.P7, I.A. No.2/2021 in O.S. No.59/2021 filed by the 14<sup>th</sup> respondent had also been considered by the Sub Court, Kochi and the application for injunction had been rejected relying on Ext.P3 order of injunction passed by the Munsiff Court. It is therefore contended by the learned counsel for the petitioner that, at present, there is a finding by the competent civil court that the petitioner is in possession of the Padasekharam as contractor and that he is entitled to conduct the prawn filtration activities.

5. Detailed counter affidavits have been placed on record by the 4<sup>th</sup> respondent, respondents 5 to 8 and 10 to 13, the 14<sup>th</sup> respondent as well as respondents 15 to 31.

6. The learned counsel appearing for the 4<sup>th</sup> respondent would contend that the 4<sup>th</sup> respondent-Samajam had been conducting the activities of the Padasekharam and that they had invited tender on 11.10.2021 for the conduct of the prawn filtration activities in the Padasekharam. It is stated that the auction was confirmed on 17.10.2021 and that the petitioner entered into an agreement with the 4<sup>th</sup> respondent on 25.10.2021 and possession was given to the petitioner on 28.10.2021. It is contended that the 5<sup>th</sup> respondent was formed only on 10.10.2021 and that their contention with regard to the conduct of the auction and handing over possession to the 14<sup>th</sup> respondent stands found against in Exts.P3, P4 and P7. It is therefore contended that the petitioner is entitled to carry out the activities covered by the agreement between the 4<sup>th</sup> respondent and the petitioner.

7. Respondents 5 to 8 and 10 to 13 have also placed a detailed



counter affidavit on record. It is contended that there are 36 land owners who have properties in the Padasekharam and that majority of such members are members of the 5<sup>th</sup> respondent -Padasekhara Samithi. It is contended that the issue with regard to the possession of the Padasekharam and the right of the petitioner to conduct prawn filtration is a civil dispute which is pending before the competent civil court and that CMA No.1/2022 and CMA No.4/2022 have been preferred by the 5<sup>th</sup> respondent as against Exts.P3 and P4 orders. It is further submitted that the 14<sup>th</sup> respondent has also filed CMA No.13/2022 as against Ext.P7 order and that the issues are therefore pending before the competent civil courts and orders of police protection as sought for cannot be granted. The learned counsel would also place reliance on the decisions of the Apex Court in **Murlidharan v. Swami Dharmananda Theertha Padar 2006 (2) KLT 119 SC** and in **Moran Mar Baselios Marthoma Mathews II v. State of Kerala 2007 (3) KLT 349 (SC)** in support of the contention that disputed questions of fact cannot be decided before this Court exercising jurisdiction under Article 226 of the Constitution of India and considering a writ petition for grant of

police protection. It is therefore contended that since the question whether the petitioner or the 14<sup>th</sup> respondent is in possession of the property is pending before the civil court in the CMAs, the issue has to be left to the decision of the competent civil court and orders as sought for shall not be granted. The learned counsel appearing for respondents 5 to 8 and 10 to 13 would also contend that documents have been produced to show that amounts had been duly paid by the 14<sup>th</sup> respondent to the 5<sup>th</sup> respondent and share thereof had been paid to the members of the Padasekharam as also to the Panchayat.

8. Similar contentions are raised by the 14<sup>th</sup> respondent and respondents 15 to 31 as well.

9. I have considered the contentions advanced. It is not in dispute before me that there are civil suits pending between the parties with regard to the right to conduct the prawn filtration as well as disputes in existence with regard to the right for conduct of the activities of the Padasekharam as well. It is also not in dispute that in the civil suits filed by the parties, Ext.P3 order of injunction has been passed in

favour of the petitioner in the writ petition upholding this contention that he was put in possession of the Padasekharam by the 4<sup>th</sup> respondent herein on 28.10.2021. Such a finding is specifically found in Ext.P3 order. The applications for injunction filed by the 5<sup>th</sup> respondent as well as the 14<sup>th</sup> respondent have been rejected by Exts.P4 and P7 orders. Therefore, subject to the orders if any to be passed in the civil suits pending between the parties and subject, ofcourse, to orders if any to be passed in the CMAs filed by the parties before the competent appellate court, I am of the opinion that, at present, the petitioner in the writ petition is entitled to the logical benefits of Ext.P3 order of injunction which has been obtained by him.

10. Without expressing any view on the merits of the matter or the contentions raised in the suits, there will be a direction that the party respondents shall not cause any threat or obstruction to the life or the activities of the petitioner and his rights under Ext.P3 order, without obtaining appropriate orders from the civil court or the appellate court in accordance with law. There will be a further direction to respondents

2 and 3 to take appropriate steps to see that law and order is maintained and that the petitioner is granted appropriate protection for his life.

This writ petition is ordered accordingly.

Sd/ -

**ANU SIVARAMAN**

**JUDGE**

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APPENDIX OF WP(C) 5708/2022

**PETITIONER'S EXHIBITS:**

- |                   |   |
|-------------------|---|
| <b>Exhibit P1</b> | <b>THE TRUE COPY OF THE LEASE AGREEMENT DATED 25.10.2021 HAS BEEN EXECUTED BETWEEN THE 4TH AND THE PETITIONER.</b>                          |
| <b>Exhibit P2</b> | <b>THE TRUE COPY OF THE FIR NO.1285/2021 DATED 05.11.2021 REGISTERED BY NJARAKKAL POLICE.</b>   |
| <b>Exhibit P3</b> | <b>THE TRUE COPY OF THE ORDER DATED 18.12.2021 IN IA NO.2/2021 IN OS NO.245/2021 OF THE ADDITIONAL MUNSIFF COURT, KOCHI.</b>                |
| <b>Exhibit P4</b> | <b>THE TRUE COPY OF THE ORDER DATED 18.12.2021 IN IA NO.3/2021 IN OS NO.241/2021 OF THE ADDITIONAL MUNSIFF COURT, KOCHI.</b>                |
| <b>Exhibit P5</b> | <b>THE TRUE COPY OF THE COMPLAINT DATED 08.01.2022 FILED BY THE PETITIONER TO THE 2ND RESPONDENT WITH A COPY TO THE 3RD RESPONDENT.</b>     |
| <b>Exhibit P6</b> | <b>THE TRUE COPY OF THE RECEIPT DATED 08.01.2022 ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.</b>  |
| <b>Exhibit P7</b> | <b>THE TRUE COPY OF THE ORDER DATED 05.02.2022 IN IA NO.2/2021 IN OS NO.59/2021 OF SUB COURT, KOCHI.</b>                                    |
| <b>Exhibit P8</b> | <b>THE TRUE COPY OF THE COMPLAINT DATED 15.02.2022 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT WITH A COPY TO THE 3RD RESPONDENT.</b> |
| <b>Exhibit P9</b> | <b>THE TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT.</b>   |

**RESPONDENTS' EXHIBITS:**

- |                      |   |
|----------------------|---|
| <b>Exhibit R14 A</b> | <b>TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN K.O DEVASSY AND THANEERACHAL PADASEKHARA SAMITHI DATED 8.11.2021</b>   |
| <b>Exhibit R14 B</b> | <b>TRUE COPY OF THE APPEAL MEMORANDUM FILED BY THE 14TH RESPONDENT BEFORE THE DISTRICT COURT ERNAKULAM AGAINST THE ORDER IN IA NO 2/2021 IN O.S NO 59/2021 OF MUNSIFF'S COURT KOCHI</b> |
| <b>Exhibit R5(a)</b> | <b>TRUE PHOTOSTAT COPY OF THE JUDGMENT IN WP(C)</b>   |

NO.13708/2021, DATED 28-07-2021 OF THIS HON'BLE COURT.

- Exhibit R5(b) TRUE PHOTOSTAT COPY OF THE ORDER PASSED BY THE DISTRICT COLLECTOR, ERNAKULAM BEARING NO. P.L.D.A01/2013 DATED 22-03-2013 WHICH IS MENTIONED AS EXHIBIT P16 IN EXHIBIT-R5(A).
- Exhibit R5(c) TRUE PHOTOSTAT COPY OF THE REGISTRATION CERTIFICATE NO.EKM/TC/368/2021 DATED 20-10-2021 OF THE 5TH RESPONDENT THANNEERCHAL PADASEKHARA SAMITHI.
- Exhibit R5(d) TRUE PHOTOSTAT COPY OF THE RELEVANT PAGE OF THE PASS BOOK MAINTAINED BY THE 5TH RESPONDENT THANNEERCHAL PADASEKHARA SAMITHI BEFORE NAYARAMBALAM SERVICE CO-OPERATIVE BANK LTD. SHOWING THE REMITTANCE OF THE ENTIRE AUCTION AMOUNT OF RS.13,58,500/-
- Exhibit R5(e) TRUE PHOTOSTAT COPY OF THE RECEIPT ISSUED BY NAYARAMBALAM GRAMA PANCHAYAT FOR A SUM OF RS.40,625/- ON 2.11.2021
- Exhibit R5(f) TRUE COPY OF THE COMMISSION REPORT IN I.A.NO.3 OF 2021 IN O.S.NO.59 OF 2021 OF THE HON'BLE SUB COURT KOCHI DATED 07.01.2022
- Exhibit R5(g) TRUE COPY OF THE CMA NO.1/2022 PENDING BEFORE THE HONOURABLE SUB COURT KOCHI, DATED 05.01.2022
- Exhibit R5(h) TRUE COPY OF THE CMA NO.4/2022 PENDING BEFORE THE HONOURABLE SUB COURT KOCHI DATED 02.02.2022