

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA, 1944

WP(C) NO. 23659 OF 2022

PETITIONER:

VELAMMAL
AGED 52 YEARS
WIFE OF ALAGAR SWAMY, BUILDING NO. 106, WARD NO.
13, MUNNAR GRAMA PANCHAYATH, PULIKKARAVAYAL,
MARAYUR. P.O., PALLANADU, MARAYUR, -685620,
DEVIKULAM TALUK, DIST. IDUKKI. (ADHAR CARD NO.
652195335362).

BY ADVS.
K.REGHU KOTTAPPURAM
R.MAHESH (KOTTAPPURAM)
MURUKESH REGHU

RESPONDENTS:

- 1 THE STATION HOUSE OFFICER
MARAYUR POLICE STATION, MARAYUR P.O., DEVIKULAM
TALUK, DIST. IDUKKI-685620.
- 2 THE DEPUTY SUPERINTENDENT OF POLICE,
MUNNAR, DIST. IDUKKI-685612.
- 3 THE DISTRICT POLICE CHIEF,
PULIYANMALA ROAD, DIST. IDUKKI -685612, IDUKKI.
- 4 THE DIRECTOR GENERAL OF POLICE,
GOVT. OF KERALA, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM-695004.

5 THE SECRETARY TO GOVT.,
HOME DEPARTMENT, GOVT. OF KERALA,
THIRUVANANTHAPURAM-695001.

BY ADV ADVOCATE GENERAL OFFICE KERALA

OTHER PRESENT:

T.K.SHAJAHAN-SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 16.08.2022, THE COURT ON 31.08.2022 DELIVERED
THE FOLLOWING:

ANU SIVARAMAN, J.

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W.P.(C).No.23659 of 2022

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Dated this the 31st day of August, 2022

JUDGMENT

1. This writ petition is filed seeking the following reliefs:-

“ii) Issue a writ of mandamus of any other appropriate writ commanding respondents 1 to 3 to return possession of the house of the petitioner forthwith.

ii) issue a writ of mandamus or any other appropriate writ directing the 3rd and 4th respondents to initiate disciplinary action against the incumbent officiated in the office of the 1st respondent at the time of taking possession of the house as well as at the time of refusal to return possession of the house of the petitioner even after the passing of Exhibit P8 judgment of the civil court in accordance with law.”

2. Heard the learned counsel for the petitioner and learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner is a poor lady, who is staying in her own house in the land purchased by her under Exhibit P1 sale deed. It is submitted that Exhibit P2 is a possession certificate issued to

the petitioner by the Marayur village. The petitioner has produced Exhibit P4 ration card, Exhibit P5 Aadhar Card, Exhibit P6 encumbrance certificate and Exhibit P9 receipt issued by the Kerala State Electricity Board to contend that she is in possession of the property. It is contented that a lady by name, Philomina had filed O.S.No.52/2014 in the Munsiff Court, Devikulam against the petitioner and her husband Alagarsamy. It is contented that the suit has been dismissed. It is contented that the 1st respondent had forcefully ousted the petitioner and her men from her own house in 2021 and the keys were taken away by the police. It is submitted that though the judgment of the civil court was produced before the police, the keys of the petitioner's house were not returned to her. On these grounds the petitioner seeks directions to respondents 1 to 3 to return possession of the house to the petitioner forthwith.

4. A memo has been filed by the Senior Government Pleader producing the statement of the Station House Officer, Marayur Police Station along with the statement of the

petitioner as well as one Mrs.Mary Chinnathai recorded in the police station. It is stated by the Station House Officer that there was a civil case filed by Mrs.Mary Chinnathai, wife of Jose Pulikkaravayal, Marayur and a suit was filed as O.S.No.53 of 1996 regarding ownership of 8.650 cents in Survey No.96/12 of Marayur village, Idukki district, where building No.MGP XIII/106 is situated. When the decree passed in that suit was sought to be executed, the petitioner had preferred a claim petition, which was dismissed by the Munsiff Court, Devikulam by order in E.A.No.44/2008 in E.P.No.60/2006 in O.S.No.53/1996. There after, the petitioner preferred A.S.No.42 of 2016 before the District Court Thodupuzha, which was also dismissed. The petitioner filed Execution Second Appeal No.17 of 2017 and the case is pending before this Court. In the meanwhile, one Philomina, wife of Mani, Pallanadu, Marayur filed O.S.No.52 of 2014 before the Munsiff Court, Devikulam, which was dismissed on 22.12.2021. The petitioner thereupon tried to enter the property, which was resisted by Mrs.Mary Chinnathai and the petitioner approached the police for assistance to enter the

disputed property. On verification it was found that there is no finding with regard to the title to the property and that the matter is pending before this Court in Execution Second Appeal. It is sated that the statements of both the petitioner and Mrs.Mary Chinnathai were taken and it was found that the issue was a civil dispute. It is submitted that the petitioner had given a statement before the police that the issue between the petitioner and Mrs.Mary Chinnathai is a civil dispute and that appropriate steps will be taken by the petitioner in accordance with law.

5.A reply affidavit has been placed on record stating that the dispute between the petitioner and Mrs.Mary Chinnathai was not in respect of 8.650 cents of land in Survey No.96/12 of Marayur village and a building situated therein, but it was in respect of a total extent of 2.48 acres including the above mentioned property. It is submitted that execution proceedings are still pending and the final claim with regard to the residential house in the property is still at large and pending before this Court. It is submitted that O.S.No.52 of

2014 filed by Philomina seeking prohibitory injunction against the petitioner was dismissed with costs. It is contended that the petitioner is the owner in possession of the property and that the refusal on the part of the police to grant necessary protection to the petitioner to obtain possession of the house in the property is vitiated and is unjustifiable.

6.I have considered the contentions advanced on either side.

The specific case of the petitioner is that she is entitled to ownership of the property on the strength of Exhibit P1 document. The property referred to in Exhibit P1 has an extent of 2 acres and 55 cents and the right to a pathway to the said property. Exhibit P2 Possession Certificate is for an extent of 0.0350 hectares in Survey No.96/12 and 1.0040 hectares in Survey No.96/4 of Marayur village, Devikulam Taluk. The ownership certificate is in respect of building bearing No.106 in Ward No.13 of Marayur Grama Panchayat. The petitioner admits that there is an Execution Second Appeal pending before this Court with regard to the

execution of the decree in O.S.No.53 of 1996 of the Munsiff Court, Devikulam.

7. I notice that the judgment and decree in O.S.No.52 of 2014 is only with regard to three cents of land in Survey No30/1 of Marayur Village. The suit was filed by Philomina against the writ petitioner and her husband. After considering the oral and documentary evidence, the Munsiff Court came to the conclusion that the planitiff Smt. Philomina was not in possession of the plaint schedule property on the date of the suit and that the injunction, as sought for, cannot be granted. The question whether the petitioner, who was one of the defendants, was in possession or not therefore was found to be irrelevant. I do not see how Exhibit P8 judgment would entitle the petitioner to claim that she has been put in possession of the property covered by Exhibit P1 document. The question with regard to title and possession of the property are matters which have to be decided in appropriate civil proceedings and the police cannot be directed to consider or decide any such question with regard to title or possession to the property. The documents produced by the

petitioner are woefully inadequate to support the prayers, as sought for in the writ petition. The petitioner admits that a civil litigation is pending between the petitioner and Mrs.Mary Chinnathai with regard to the entire extent of the properties concerned and that she is not made a party to the writ petition. In the above factual situation, I am of the opinion that the prayers as sought for cannot be granted. The writ petition fails and the same is accordingly dismissed. The contentions of the parties are left open to be agitated in appropriate proceedings.

sd/-

Anu Sivaraman, Judge

sj

APPENDIX OF WP(C) 23659/2022

PETITIONER EXHIBITS

- Exhibit P1 A PHOTO COPY OF SALE DEED NO.1698/2002
DATED 4-7-2002 OF S.R.O. DEVIKULAM.
- Exhibit P2 A PHOTOCOPY OF POSSESSION CERTIFICATE
DATED 5-9-2019 ISSUED BY VILLAGE
OFFICER, MARAYUR.
- Exhibit P3 A PHOTOCOPY OF OWNERSHIP CERTIFICATE
DATED 29-1-2022 ISSUED BY MARAYUR GRAMA
PANCHAYATH.
- Exhibit P4 A PHOTO COPY OF RATION CARD DATED 6-6-
2017 ISSUED IN THE NAME OF PETITIONER.
- Exhibit P5 A PHOTOCOPY OF ADHAR CARD NO.
652195335362 HELD BY THE PETITIONER.
- Exhibit P6 A PHOTOCOPY OF ENCUMBRANCE CERTIFICATE
DATED 28-6-2017 ISSUED BY THE SUB
REGISTRAR DEVIKULAM.
- Exhibit P7 A PHOTOCOPY OF ORDER OF STAY OF
EXECUTION VIDE 1.A.1/2007 IN EX.S.A.
17/2017.
- Exhibit P8 A PHOTOCOPY OF JUDGEMENT DATED 22-12-
2021 IN O.S.52/2014.
- Exhibit P9 A PHOTOCOPY OF RECEIPT DATED 7-2-2022
VIDE CONSUMER NO.56160220207101014
ISSUED BY THE ELECTRICITY SECTION
OFFICE.

True Copy

PS to Judge