

(1960) 01 KL CK 0041
In the High Court Of Kerala
Case No : O.P. No. 609 of 1959

Karthiayini Amma

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-01-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 31

Citation : (1960) KLJ 346

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : A. Achuthan Nambiar, for the Appellant;

Final Decision : Dismissed

Judgement

Velu Pillai, J.—This petition is for a writ of prohibition against the respondents, four in number, to restrain them from constructing a dam across a water channel, the possession of which is claimed to be with the petitioner. The two grounds pressed before me were, that the respondents are not entitled to construct the dam except under authority of law, and that the act of the respondents amounts to an infringement of the fundamental right of the petitioner under Article 31 of the Constitution. On the first point, the respondents relied on Ext. P, statement given by the husband of the petitioner who is also her power of attorney-holder, consenting to the construction of the dam and to the compulsory acquisition of the site in due course of law. His authority to give consent on behalf of his wife on the basis of the power of attorney was not disputed in the reply affidavit of the petitioner. This is sufficient authority for the respondents to construct the dam. The second ground depends on whether the petitioner had possession of the portion of the property in question. This is a disputed question of fact, in this case, the respondents alleging, that one Thomas and Augustine are in possession as tenants of the petitioner and denying the petitioner's possession; the petitioner, on the other hand, contending that Thomas is not the tenant of the petitioner, and that Augustine's rights had been

sold in court auction and purchased by another. It is not known whether he has been in possession or not. It does not fall within the province of a proceeding under Article 226 to enter into a consideration of these disputed questions of fact and come to a conclusion as to which of the parties was in possession. The case here is distinguishable from *Tejraj Chhogalal Gandhi and Another Vs. State of Madhya Bharat and Others*, where, as stated in the judgment, a rule had been framed by the High Court of Madhya Pradesh permitting evidence to be taken in proceedings under Article 226 with regard to questions of fact arising for determination. Again the position here is not, as in the case cited, where" there was only a mere statement of the opposing party in the petition under Article 226 "challenging the correctness of the facts averred by the applicant and saying that he is in possession of documents and materials to contradict the statements mad by the petitioner". Here there are distinct averments on either side as to the actual possession of the property. I consider, that the case referred to is distinguishable. It therefore follows, that the petitioner is not entitled to a writ of prohibition against the respondents. If they are trespassers, the remedy is open to the petitioner to proceed against them according to law. The petition is therefore dismissed, but I make no order as to costs.