
(2024) 04 KL CK 0131
In the High Court Of Kerala
Case No : Review Petition No.1198 Of 2023

Santhosh Mathew

APPELLANT

Vs

K.John @Ashok

RESPONDENT

Date of Decision : 12-04-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 340

Citation : (2024) 04 KL CK 0131

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : Arun Thomas, B.G.Harindranath, Karthika Maria, Kurian Antony Mathew, K.John

Final Decision : Allowed

Judgement

Murali Purushothaman, J

1. The review petition is filed seeking review of the judgment dated 11.10.2023 passed by this Court in W.P.(C) No.33354 of 2023. The review petitioner was not a party to the writ petition. This Court, by order dated 13.11.2023, granted leave to file this review petition.

2. W.P.(C) No. 33354 of 2023 is filed by the 1st respondent in the review petition (hereinafter referred to as the 'writ petitioner') who claims to own agricultural land in Aruvappullam Village of Konni Taluk, Pathanamthitta District, and permanently resides in Thiruvananthapuram, leading a retired life. In the writ petition, it is stated that the writ petitioner's property is located near the Achankovil river and the banks of the said river are unassigned and maintained as river puramboke to ensure the free flow of water during the monsoon season or when excess water is released from the reservoirs of the Sabarigiri Electricity Project by the KSEB. It is contended that, taking advantage of the vast puramboke land along the river banks, certain persons encroached upon the puramboke land and started plantation activities and obtained illegal

assignments of the property by influencing corrupt officials. Even a slight increase in water levels in the river is causing crop damage and flooding in the area, as the free flow of water in the river has been affected by the encroachment on the river puramboke. It is also contended that certain other properties vested in the Government have also been converted by these persons as their property. The writ petitioner submitted Ext. P1 representation before the respondent, the District Collector, Pathanamthitta requesting to take action against the illegal occupation of the river puramboke, as well as the conversion of river puramboke into private properties and against the creation of forged deeds, including the Thandaper Account in the concerned village office. He also submitted Ext. P3 reminder to Ext. P1. However, no reply was received from the respondent, nor has any action been taken thereon. It is stated that it is due to the influence of the persons holding the river puramboke that the respondent has not taken any action. It is contended that the illegal occupation of public property, especially river puramboke, is a serious matter as it adversely affects the interests of innocent persons engaged in agricultural activities. Accordingly, the following reliefs were sought in the writ petition:

- "i) Call for the entire records relating to Ext. P1 and P3 from the respondent;
- ii) Issue a writ of mandamus or any other writ or direction or order to the respondent to dispose Ext. P1 representation after affording an opportunity of hearing to the petitioner and affected parties as expeditiously as possible within the time frame as fixed by this Hon'ble Court."

3. The writ petition came up for admission on 11.10.2023 and this Court disposed of it on the same day directing the respondent District Collector to take up Ext. P1 representation for consideration and pass appropriate orders in accordance with law, after affording an opportunity of hearing to the petitioner and the persons named in Ext. P1 as expeditiously as possible, at any rate within a period of four months from the date of receipt of a copy of the judgment.

4. The review petitioner states that, pursuant to the said judgment, the Deputy Collector (LR), Pathanamthitta, issued Annexure-4 notice to the petitioner, his wife, her mother and other members of her family for a hearing on 16.11.2023. Further that, there are civil litigations between the members of the families of the review petitioner and the writ petitioner and the writ petitioner is not having title over the properties mentioned in Ext. P1 representation based on judgments of civil Court, and Regular Second Appeals are pending before this Court. It is contended that the writ petition was filed disguising as a simple writ petition seeking direction for consideration of a representation. However, in fact, it was to circumvent R.S.A. Nos. 451 and 452 of 2023 pending before this Court and to harass the review petitioner and his family that the writ petition was filed without making him and others named in Ext. P1 representation in the party array. It is stated that the writ petitioner has approached this Court suppressing material facts and misleading the Court, obtained the judgment. Accordingly, it is prayed that the judgment dated 11.10.2023 be reviewed and recalled and the writ

petition be dismissed with exemplary costs.

5. A counter affidavit has been filed by the writ petitioner in the review petition contending, inter alia, that the review petition is not maintainable as there is no averment of error apparent on the face of records. It is stated that the prayers in R.S.A. Nos. 451 and 452 of 2023 filed by him are different from the reliefs sought for in Ext. P1 representation and the plaint schedule property in the suit which led to R.S.A. No. 452 of 2023 has no relation to the properties referred to in Ext. P1. In the counter affidavit, the writ petitioner has narrated the details of civil cases and has produced copies of deeds, information obtained under the Right to Information Act, 2005, complaints, written statements, orders of Civil Courts, certificates, etc., to negate the averments in the review petition. It is stated that the intention behind filing the review petition is to escape from the criminal activities committed by him and that there is no error apparent on the face of the judgment under review as this Court only directed the respondent in the writ petition to pass orders on Ext. P1 representation after hearing the parties concerned. The review petitioner, who is the 12th respondent in Ext. P1 representation, can raise his objections before the District Collector and the pendency of the second appeal has nothing to do with the disposal of Ext. P1 by the District Collector.

6. The review petitioner has filed a reply to the counter affidavit of the writ petitioner contending that averments and allegations therein are baseless, malicious and defamatory. He has also produced Annexure-7 copy of the common judgment dated 15.12.2023 dismissing R.S.A. Nos. 451 and 452 of 2023 for non prosecution.

7. An additional counter affidavit is also placed on record by the writ petitioner refuting the averments in the reply affidavit and reiterating his contentions in the counter affidavit.

8. The writ petitioner has filed I.A No.4/2024 in the review petition under Section 340 of the Code of Criminal Procedure, 1973 for initiating action against the review petitioner for filing false affidavit in support of stay petition in the review petition.

9. Heard Sri. B.G. Harindranath, the learned counsel for the petitioner and Sr. John @ Ashok, the writ petitioner, who appeared in person. Apart from advancing lengthy arguments relying on the documents in the counter affidavit, Sri. John has also submitted an argument note.

10. Sri. Harindranath contends that the impugned judgment was passed without compliance with the principle of audi alteram partem. It is further contended that although the writ petition appears to be innocuous, it cannot be so perceived, as there is hidden intention behind the seemingly harmless prayer of the writ petitioner. The contents of Ext. P1 representation are not reflected in the writ petition and there are suppression of material facts and he has approached this Court with unclean hands and that the writ petitioner's attempt is

to circumvent the orders of the Civil Court. Referring to various averments in the counter affidavit and the documents produced, it is contended by the learned counsel for the review petitioner that the intention of the writ petitioner is to malign and defame the review petitioner. It is submitted that there are errors apparant on the face of records and the judgment is to be reviewed and recalled and the writ petition is liable to be dismissed with exemplary costs.

11. Sri. John would contend that there are no errors apparent on the face of records to review the judgment. It is submitted that the review petitioner who is the 12th respondent in Ext. P1 representation is not a party to the suits or the Regular Second Appeals and would get opportunity of hearing before the District Collector while considering Ext. P1 representation as per the direction in the judgment. It is contended that the relief claimed in Ext. P1 representation is entirely different from the prayers in the suits and it is the review petitioner who has suppressed material facts. Sri. John also prays for initiating proceedings against the review petitioner for filing false affidavit before this Court. Arguments were also advanced as to the merits of the civil disputes. Sri. John, accordingly, prays for dismissal of the review petition with costs.

12. The prayer in the writ petition is for direction to the sole respondent, the District Collector to dispose of Ext. P1 representation after affording an opportunity of hearing to the petitioner and affected parties within a time frame. In Ext. P1 representation, the review petitioner, his wife and her relatives have been arrayed as respondents and various allegations are raised against them and various reliefs including cancellation of assignment, mutation, thandaper accounts and initiation of criminal proceedings are sought. It is contended by the review petitioner that some of the properties mentioned in Ext. P1 representation are the subject matter of civil suits which culminated in R.S.A. Nos. 451 and 452 of 2023 and these facts could not be brought to the notice of this Court as the review petitioner and the persons arrayed as respondents in Ext. P1 representation were not made parties to the writ petition.

13. The writ petition has been filed and presented as a routine one for an expeditious disposal of a representation before a statutory authority. Admittedly, there are civil disputes between the writ petitioner and those arrayed as respondents in Ext. P1 representation and some of the properties mentioned in Ext. P1 representation are stated to be the subject matter of R.S.A. Nos. 451 and 452 of 2023. Therefore, the contention of the review petitioner that the statements in the writ petition require to be subjected to a greater scrutiny has to be accepted. There is an error apparent on the face of record which necessitates a review of the judgment. Accordingly, the review petition is allowed. The judgment dated 11.10.2023 in W.P.(C) No.33354 of 2023 is recalled. Post the writ petition as per roster, for fresh consideration.

As regards I.A. No. 4 of 2024, I find that there are no convincing materials and no grounds are made out for initiating prosecution against the review petitioner under Section 340 Cr.P.C. The said interlocutory application is, accordingly,

closed.