

A.J.Kuriachan vs The Circle Inspector Of Police on 9 February, 2021

Author: Anil K.Narendran

Bench: Anil K.Narendran

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 09TH DAY OF FEBRUARY 2021 / 20TH MAGHA, 1942

WP(C).No.62 OF 2021(G)

PETITIONER:

A.J.KURIACHAN, AGED 50 YEARS
S/O.JOSEPH, AAKKANTHIRIYIL HOUSE,
MANNARKKAD-I VILLAGE, MANNARKKAD TALUK,
PALAKKAD DISTRICT.

BY ADVS.
SRI.K.MOHANAKANNAN
SMT.T.V.NEEMA
SRI.H.PRAVEEN (KOTTARAKARA)

RESPONDENTS:

- 1 THE CIRCLE INSPECTOR OF POLICE
MANNARKKAD, PALAKKAD-678582.
- 2 THE SUB INSPECTOR OF POLICE,
MANNARKKAD, PALAKKAD-678582.
- 3 THE AGRICULTURAL OFFICER,
KRISHI BHAVAN, KARAKURRUSSI, MANNARKKAD TALUK,
PALAKKAD DISTRICT-678595.
- 4 SIDHIQUE,
KILAYIL HOUSE, KUNDUKANDAM, PALLIKURUP PO,
MANNARKKAD, PALAKKAD DISTRICT-678593.

R1-R3 BY SRI SUNIL NATH N.B, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

09.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
WP(C) .No.62 OF 2021(G)

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JUDGMENT

The petitioner, who is a lessee of 5 acres 53 cents of land in Sy.No.153 of Karakurussi Village in Mannarkkad Taluk in Palakkad District covered by Ext.P1 lease agreement dated 26.12.2020, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding respondents 1 and 2 to provide adequate and effective police protection for conducting pineapple cultivation in the property covered by Ext.P1 lease agreement and to avert the threat caused by the 4 th respondent and their men. The grievance of the petitioner is against the obstruction alleged to have been caused by the 4 th respondent, in the petitioner conducting pineapple cultivation in the property in question, alleging that the petitioner will use pesticides for pineapple cultivation. According to the petitioner, he will use only permitted pesticides and fertilizers for cultivation of pineapple. The petitioner approached the 3rd respondent Agricultural Officer, to give necessary instructions in the matter. The 3 rd respondent vide Ext.P2 communication dated 01.12.2020 informed the petitioner that he can use only the pesticides approved by the Kerala Agricultural University and that, by using such pesticides no health WP(C).No.62 OF 2021(G) problems will be caused to the neighbours. The petitioner submitted Ext.P3 complaint dated 27.12.2020 before the 1 st respondent seeking police protection for pineapple cultivation, from any obstruction from the side of the 4th respondent and others.

2. On 05.01.2021, when this writ petition came up for admission, the learned Government Pleader took notice on admission for respondents 1 to 3. Urgent notice on admission by special messenger was ordered to the 4 th respondent, returnable by 11.01.2021. The learned Government Pleader was directed to get instructions from respondents 2 and 3.

3. On 11.01.2021, when this writ petition came up for consideration, the learned Government Pleader pointed out the guidelines issued by the State Government in the matter of pineapple cultivation, which is one dated 17.08.2020. A copy of the guidelines is placed on record along with a memo filed by the learned Government Pleader dated 12.01.2021.

4. The petitioner has filed reply affidavit dated 20.01.2021.

Paragraphs 2 and 3 of the reply affidavit read thus:

"2. The above writ petition is filed seeking police protection for pineapple cultivation. Along with the memo, the Government Pleader dated 17.08.2020 prescribing the WP(C).No.62 OF 2021(G) guidelines in respect of the pineapple cultivation is produced. Appendix II of the Government order enlisted the list of Agro Chemicals recommended by the Government for pineapple cultivation. I am intending to use the following:

a. Herbicides Diuron:-(As per the dosage suggested in Appendix II) b. Fungicides:

Bordeauxmixture (As per the dosage suggested in Appendix II) c. Insecticides:

Quinalphos or Chlorpyriphos or dimthoate (As per the dosage suggested in Appendix II) d. Hormone:

Ethephone (As per the dosage suggested in Appendix II)

3. I further undertake that I will not use, any chemicals which is not recommended in the Government order and Appendix II for cultivating pineapple."

5. Along with the memo filed by the learned Government Pleader dated 23.01.2021, the report of the 2nd respondent Sub Inspector of Police, Mannarkkad Police Station is placed on record.

Paragraphs 2 and 3 of that report read thus:

"2. It is submitted that some residents near the said plot on the leadership of 4th respondent prevented the petitioner from effecting agricultural operations alleging that pesticides will be used for effecting pineapple cultivation which is hazard to the nearby residents. On enquiry it is revealed that the residents of Kundukandam, Pallikkuruppu is not WP(C).No.62 OF 2021(G) allowing the petitioner to cultivate pineapple in the said area. If the petitioner start his pineapple cultivation, these will be a law and order issue in the area between the petitioner and the residents of Kundukandam.

3. It is submitted that at present there is neither any law and order situation prevailing at the place nor any threat to the life of the petitioner. Police is keeping strict vigil in this matter. It is humbly submitted that police is duty bound to obey the timely directions issued by this Hon'ble Court in this matter."

6. Heard the learned counsel for the petitioner and also the learned Government Pleader appearing for respondents 1 to 3.

Despite service of notice, none appears for the 4th respondent.

7. The Kerala Police Act, 2011 is enacted to consolidate and amend the law relating to the establishment, regulation, powers and duties of the Police Force in the State of Kerala and for matters connected therewith and incidental thereto. Chapter II of the Act deals with duties and functions of Police. Section 3 of the Act deals with general duties of Police. As per Section 3, the Police, as a service functioning category among the people as part of the administrative system shall, subject to the Constitution of India and the laws enacted thereunder, strive in accordance with the law, to ensure that all persons enjoy the freedoms and rights available WP(C).No.62 OF 2021(G) under the law by ensuring peace and order, integrity of the nation, security of the State and

protection of human rights. Section 4 of the Act deals with functions of Police. As per Section 4, the Police Officers shall, subject to the provisions of the Act, perform the functions enumerated in clauses (a) to (s) of Section 4. As per clause (a), the Police Officers shall enforce the law impartially; and as per clause (b), the Police Officers shall protect the life, liberty, property, human rights and dignity of all persons in accordance with the law.

8. Lord Denning in 'The Due Process of law' [First Indian Reprint 1993, Page 102] has described the role of the Police thus;

"In safeguarding our freedoms, the police play vital role. Society for its defence needs a well-led, well-trained and well-disciplined force or police whom it can trust, and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

9. In *Manohar Lal Sharma v. Principal Secretary WP(C).No.62 OF 2021(G)* [(2014) 2 SCC 532] the Apex Court held that, one of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to the book.

The Apex Court reiterated the said principle in *Ankush Maruti Shinde v. State of Maharashtra* [(2019) 15 SCC 470].

10. Along with the memo dated 12.01.2021, the learned Government Pleader has produced a copy of the Government Order No.G.O(Ms).No.64/2020/Agri dated 17.08.2020 issued by the State, pursuant to the directions contained in the common judgment of this Court dated 06.03.2019 in *W.P.(C).No. 34602/2017* and connected cases, in order to minimise the use of hazardous chemical pesticides in agriculture. Sub paragraphs (I) to (V) of para 3 of the Government Order dated 17.08.2020 read thus:

'(I). Adoption of Good Agricultural Practices (GAP) All the farmers who are following commercial pineapple cultivation either in owned or leased land should register themselves in their respective Krishi Bhavans so as to form a cluster-having a minimum area of 25 ha. The cluster should adopt the Good Agricultural Practices procedures and standards fixed for GAP WP(C).No.62 OF 2021(G) certification of pineapple (Appendix I) and each farmer should maintain "Farm Dairy" as a document for evaluation, for a minimum period of one year. There should be a lead farmer in each cluster to co-ordinate the group activities (II). Scientific use of Plant Protection Chemicals.

Application of Pesticides as per label claims approved by the Registration Committee (CIB&RC) is critical to the health and wellbeing of human beings and Environment. Pesticides are registered for specific usage under terms and conditions approved by the Registration Committee. Therefore, it is the responsibility of all dealers that only registered pesticides are stocked, distributed and sold. The licenced dealers of pesticides shall play a critical role in creating awareness to farmers in making right choices of pesticides, the dosages, timing and mode of application in accordance with the approved labels and leaflets or recommendation of the Kerala Agricultural University (KAU) and prescription of the Agricultural Officers. The recommendations of plant protection chemicals (insecticides, fungicides, weedicides etc.) given by the Kerala Agricultural University (KAU) should be strictly adopted by the cluster (Appendix II) (III). Dosage and manner in which the Plant Protection Chemicals have to be procured and used by the farmer.

A peer group will be constituted with leaders of cluster registered in a Krishi Bhavan. This group will take care of the various group activities like training, awareness campaigning and procurement of various inputs including plant protection chemicals with the help of Agricultural Officers. The group shall also conduct visit to individual plots of each cluster in periodical intervals (fortnightly). The peer group shall report in incidence of pest, disease and weed infestation to the concerned Krishi Bhavan. The Agricultural Officer of the concerned Krishi Bhavan will give prescription for the WP(C).No.62 OF 2021(G) procurement of PP Chemicals as per the recommendation of the Kerala Agricultural University. In order to ensure that the products to be certified are "Safe to eat" the sample of the products should be subjected to pesticide residue analysis at accredited labs. (IV). Field level Monitoring and GAP Certification. For the effective implementation of the GAP, there must be a strict supervision and evaluation through field level functionaries.

(a) At Krishi Bhavan level the Agricultural Officer will be the Inspectors, who with the support of Agricultural Assistants will carry out the inspection during the critical growth period of the crop atleast thrice in a cropping period to confirm the requirement of GAP certification by evaluating the Farm Diaries maintained by each farmer. The Agricultural Officer should give cluster wise field inspection report to concerned Block level Assistant Director of Agriculture (ADA). File No.AGRI-NCA3/264/2019-AGRI

(b) At Block level the ADA will conduct random field inspection of atleast 25% of the clusters and recommend to the higher authority at the District level to issue 'Safe to Eat Certificate'. (c) At District level the Principal Agricultural Officer will have the overall control of the programme. The Deputy Director of Agriculture (H) will be the District Nodal Officer. The Assistant Director of Agriculture (Marketing) will assist the Principal Agricultural Officer and the District Nodal Officer in issuing the 'Safe to Eat Certificate' as per the GAP standards (V). Penalties to be imposed to farmers/persons who are violating the Guidelines. The GAP certificate is issued only to those farmers who are following the 11 GAP standards and achieving a minimum of 80% of the total 60 criteria, including the 17 mandatory ones. Those who are violating the guidelines shall be imposed the following penalties. (a) The penalties prescribed in Section 29 of the Insecticides Act 1968 to be imposed on the persons who WP(C).No.62 OF 2021(G) contravene any provisions of the Act and mutatis - mutandis the indiscriminate use of insecticides, pesticides weedicides etc. in the case of pineapple farming for commercial purposes, subject to the provision of the sub section (2) of section

24 of the Environmental (Protection) Act 1986, the penalties for contravention of the Provisions of the above Act under Section 15 shall also be imposed. (b) Even though the present issue pertains to farming/ cultivation of pineapple, since the guidelines envisage the issuance of "safe to eat certificate" as per GAP standards, the provisions under the Food Safety and Standards Act 2006 Section 21 of the Act which restricts the presence of pesticide residues of veterinary drugs, antibiotic residues and microbial counts in food which make it unsafe to eat, shall be invoked. Hence the punishment in respect of food under Section 59 of the File No.AGRI-NCA3/264/2019-AGRI Food Safety and Standards Act, 2006 shall be imposed by invoking the relevant provisions and the implementing authorities under the above Act."

11. In Centre for Public Interest Litigation v. Union of India & Ors. [(2013) 16 SCC 279] the Apex Court emphasised that, any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India and that a paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India. Paragraph 27 of WP(C).No.62 OF 2021(G) the judgment reads thus;

"27. Enjoyment of life and its attainment, including right to life and human dignity encompasses, within its ambit availability of articles of food, without insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, etc. But the fact remains, many of the food articles like rice, vegetables, meat, fish, milk, fruits available in the market contain insecticides or pesticides residues, beyond the tolerable limits, causing serious health hazards. We notice, fruit based soft drinks available in various fruit stalls, contain such pesticides residues in alarming proportion, but no attention is made to examine its contents. Children and infants are uniquely susceptible to the effects of pesticides because of their physiological immaturity and greater exposure to soft drinks, fruit based or otherwise."

12. As already noticed hereinbefore, the specific stand taken in the reply affidavit filed by the petitioner is that he will not use any chemicals which are not recommended in the aforesaid Government Order dated 17.08.2020, included in the list of agro-

chemicals recommended in Appendix II for cultivating pineapple in the property covered by Ext.P1 agreement dated 26.12.2020.

13. During the course of arguments, the learned Government Pleader would point out that the 3 rd respondent Agricultural Officer has already granted permission to the petitioner WP(C).No.62 OF 2021(G) for pineapple cultivation, in the property covered by Ext.P1 lease deed, by issuing an order dated 03.02.2021.

14. In such circumstances, this writ petition is disposed of with the following directions:

(i) The 1st respondent Station House Officer of Mannarkkad Police Station shall take necessary steps to ensure that there is no threat to law and order in the locality, at the instance of the 4 th respondent or his supporters, in connection with the pineapple cultivation undertaken by the petitioner, in the property covered by Ext.P1 lease deed, in strict compliance with the guidelines issued in the Government order dated 17.08.2020, on the strength of a valid permission granted by the 3rd respondent Agricultural Officer.

(ii) In case there is any threat to the life and property of the petitioner or that of the workers engaged by him, in connection with pineapple cultivation in the property covered by Ext.P1 lease deed, from the side of the 4 th respondent or his supporters, the petitioner shall make proper request before the 1st respondent Station House Officer seeking police protection, in which event, the said respondent shall consider the same and take appropriate action, without any delay, taking note of the statutory provisions referred to hereinbefore and also the law laid down in the decisions referred to supra.

(iii) The 3rd respondent Agricultural Officer shall ensure that WP(C).No.62 OF 2021(G) the pineapple cultivation in the property covered by Ext.P1 lease deed is undertaken by the petitioner strictly in conformity with the guidelines contained in the Government order dated 17.08.2020 and also the permission granted on 03.02.2021. In case of any violation of the guidelines, the 3 rd respondent shall take stringent action against the petitioner, as provided in that guidelines and the said fact shall also be informed to the 1st respondent Circle Inspector of Police.

(iv) The 3rd respondent Agricultural Officer shall also ensure that the petitioner is spreading pesticides and fertilizers in the property covered by Ext.P1 agreement, only during day time. In case any complaint is received from the 5th respondent or other residents in the locality alleging violation of the guidelines in the Government order dated 17.08.2020 or spreading of pesticides or fertilizers during night time, the 3rd respondent shall take action against the petitioner, in accordance with the law, and he shall also withdraw the permission already granted to the petitioner, with notice to the petitioner and after affording him an opportunity of being heard.

Sd/-

JV
WP(C) .No.62 OF 2021(G)

ANIL K.NARENDRA
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1

TRUE COPY OF THE AGREEMENT DATED

26.12.2020 BETWEEN THE PETITIONER AND
V.BALARKISHNAN.

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| EXHIBIT P2 | TRUE COPY OF THE COMMUNICATION DATED
1.12.2020 SENT BY THE 3RD RESPONDENT TO
THE PETITIONER. |
| EXHIBIT P3 | TRUE COPY OF THE COMPLAINT DATED
27.12.2020 FILED BY THE PETITIONER BEFORE
THE 1ST RESPONDENT WITH ACKNOWLEDGMENT
RECEIPT. |
| EXHIBIT P4 | TRUE COPY OF THE REPRESENTATION SUBMITTED
BY THE PETITIONER BEFORE THE 1ST
RESPONDENT WITH ENDORSEMENT OF THE 3RD
RESPONDENT DATED 28.12.2020. |
| EXHIBIT P5 | TRUE COPY OF THE JUDGMENT WRIT PETITION
NO.18457/2014 DATED 14.8.2014. |
| EXHIBIT P6 | TRUE COPY OF THE COMMUNICATION DATED
03.02.2021 ISSUED BY THE 3RD RESPONDENT
TO THE PETITIONER |