



2025:KER:65018

WP(C) NO. 2862 OF 2025

1

“C.R”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 25TH DAY OF AUGUST 2025 / 3RD BHADRA, 1947

WP(C) NO. 2862 OF 2025

PETITIONER:

BY ADVS.
SRI.C.M.MOHAMMED IQUABAL
SRI.P.ABDUL NISHAD
SHRI.ISTINAF ABDULLAH
SMT.THASNEEM A.P.
SMT.DHILNA DILEEP
SMT.SURYA S.R.
SHRI.ARSHID.M.S.

RESPONDENTS:

- 1 THE SUB COLLECTOR, TIRUR,
REVENUE DIVISIONAL OFFICE, TIRUR,MINI CIVIL
STATION, TIRUR P.O.,MALAPPURAM DISTRICT, PIN -
676101
- 2 THE AGRICULTURAL OFFICER, TANUR,
TANUR KRISHI BHAVAN, TANUR P.O., MALAPPURAM
DISTRICT, PIN - 676302



2025:KER:65018

WP(C) NO. 2862 OF 2025

2

- 3 THE TAHSILDAR, TIRUR,
TIRUR TALUK OFFICE, TIRUR P.O.,MALAPPURAM
DISTRICT, PIN - 676101
- 4 THE VILLAGE OFFICER, KALADY,
KALADY VILLAGE OFFICE, KALADY P.O., MALAPPURAM
DISTRICT, PIN - 679582
- 5 THE LOCAL LEVEL MONITORING COMMITTEE,
REPRESENTED BY ITS CONVENER, TANUR KRISHI
BHAVAN,TANUR P.O., MALAPPURAM DISTRICT, PIN -
676302
- 6 KERALA STATE REMOTE SENSING AND ENVIRONMENT CENTRE
(KSREC) ,
REPRESENTED BY ITS DIRECTOR, C BLOCK, VIKAS
BHAVAN, THIRUVANANTHAPURAM, PIN - 695033

BY ADV
SMT.DEEPA V., GP
SRI.VISHNU S. CHEMPAZHANTHIYIL, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL
HEARING ON 25.08.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**“C.R”****C.S.DIAS, J.****-----
W.P.(C) No. 2862 of 2025
-----****Dated this the 25th day of August, 2025****JUDGMENT**

The writ petitioner's husband is the co-owner of 12.48 Ares of land comprised in Survey No.309 in Tanur Village, Tirur Taluk. The petitioner is managing the property as her husband is employed abroad. The property is 'dry land'. However, the respondents have erroneously classified the land as 'wet land' and included it in the data bank prepared under the Kerala Conservation of Paddy Land and Wetland Act, 2008, and the Rules framed thereunder ('Act' and 'Rules', for brevity). To rectify the misclassification of the land, the petitioner's husband and the other co-owners had submitted Ext.P3 application in Form 5 under Rule 4



(4d) of the Rules before the 1st respondent. As there was an inordinate delay in considering the application, the petitioner's husband filed W.P.(C) No.24574/2024 before this Court. By Ext.P4 judgment, the 1st respondent was directed to consider the application within one month. Nevertheless, the 1st respondent rejected the application by Ext.P7 order, which has led to the filing of the present writ petition.

2. When the writ petition was taken up for hearing, this Court questioned the petitioner's *locus-standi* to file the writ petition, since she is neither the owner of the property nor the power of attorney holder.

3. I have heard Sri. C.M. Mohammed Iquabal, the learned Counsel for the petitioner and Smt. Deepa V., the learned Government Pleader.

4. The learned counsel for the petitioner argued that, by virtue of Section 120 of the Evidence Act, 1872,



the petitioner, being the wife of a co-owner of the property, is competent to represent her husband's estate and file the writ petition even without a power of attorney. The learned Counsel placed reliance on Order III Rule 1 of the Code of Civil Procedure ('CPC', in short) and the decisions of this Court in **Narayanan Nair v. John Kurien** [1998(1) KLT 673] and **Ashadevi N.P. and Others v. State of Kerala and Others** [2020 (4) KHC 280] to fortify his submissions.

5. The learned Government Pleader opposed the above contention and submitted that the petitioner cannot file the writ petition without a power of attorney executed in her favour, for the action is in personam and the right to sue rests solely with the landowners.

6. The facts that the petitioner is not the owner of the property in question, her husband has not executed a power of attorney in her favour, and it was



her husband who filed the earlier writ petition are not disputed.

7. The reliance placed on Section 120 of the Evidence Act, 1872, is wholly misconceived, and it reads as follows:

“120. Parties to civil suit and their wives or husbands—Husband or wife of person under criminal trial.

In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness”.

8. The above provision merely enables a spouse to be a competent witness in a proceeding involving the other spouse. It does not clothe a non-party spouse with the right to institute proceedings in substitution of the party spouse.

9. Chapter XI of the Rules of the High Court of Kerala, 1971, lays down the procedure for presentation



of writ petitions before this Court. Rule 145 unequivocally mandates that the writ petitions filed under Articles 226, 227 and 228 of the Constitution have to be filed by the petitioner or his duly authorised Advocate. Rule 19 prescribes the form and manner in which a vakalath has to be attested to appoint an Advocate. In addition to the above, writ petitions have to be accompanied by an affidavit sworn to by the party. There is no provision under the Rules enabling a non-party spouse to file a writ petition on behalf of a party spouse, without a duly executed power of attorney, in the status of an agent.

10. Order III of the CPC permits recognised agents and pleaders to appear on behalf of a litigant. Rule 1 of Order III enables any appearance, application or act, in or to any Court, required or authorised by law to be made or done by a party in such Court, may,



except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf. Under Rule 2 of Order III, recognised agents of parties by whom such appearances, applications and acts may be done or made, include persons holding powers of attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties.

11. Thus, it is evident from the provisions of Order III of the CPC that an appearance, application or act in or to any Court which is required to be made or done by a party in the Court, can be effectively made or done by the party in person or by a recognised agent. A recognised agent, for that purpose, includes a person who holds the power of attorney. The provisions



contained in the Powers of Attorney Act 1882 indicate that there is no prohibition for a litigant seeking a writ under Article 226 or Article 227 of the Constitution through a power of attorney holder. The donee of a power of attorney is no more than an agent of the donor and does not pursue the proceeding in his own independent capacity. Instead, he acts for and on behalf of the donor and is subject to the limitations which are contained in the instrument.

12. The present writ petition is filed as though the petitioner is the owner of the estate. Apart from a bald assertion that the petitioner is managing the property on account of her husband's absence, there is no material conferring authority on her.

13. The reliance placed on the decisions in **Narayanan Nair's** and **Ashadevi N.P.'s** cases are misplaced. In **Narayanan Nair's** case, this Court



recognised the right of a duly authorised agent to institute a suit on behalf of the plaintiff in light of the written authorisation produced along with the plaint. Whereas, in **Ashadevi N.P.'s** case, this Court held that the broader principles of the C.P.C. apply to writ petitions. Neither the provisions in the Evidence Act, CPC, the Rules, nor the precedents referred to above aid the petitioner in filing the writ petition on behalf of her husband without a power of attorney.

14. In **Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., Charanjit Lal Chowdhary v. Union of India** (AIR 1962 SC 1044), an identical question arose, wherein the Constitution Bench of the Hon'ble Supreme Court held as follows:

"5. The first question that falls to be considered is whether the appellant has locus standi to file the petition under Article 226 of the Constitution. The argument of learned counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right



therein and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder. The article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *State of Orissa v. Madan Gopal Rungta* [1951 SCC 1024 : (1952) SCR 28] this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the court under Article 226 of the Constitution. **In *Chiranjit Lal Chowdhuri v. Union of India* [1950 SCC 833 : (1950) SCR 869] it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified”.**

(emphasis supplied)



Tested against the aforesaid principles, I hold that the petitioner has no *locus-standi* to institute and prosecute the writ petition on behalf of her husband. Consequently, I dismiss the writ petition, which shall not prejudice the landowners' right to filing a fresh writ petition or executing a power of attorney in favour of the petitioner authorising her to file a fresh writ petition on the same cause of action. The Registry shall forward a copy of this judgment to the Registrar (Judicial) for reference.

Sd/-

C.S.DIAS, JUDGE

aj/dkr



2025:KER:65018

WP(C) NO. 2862 OF 2025

13

APPENDIX OF WP(C) 2862/2025

PETITIONER EXHIBITS

EXHIBIT P1	THE TRUE COPY OF POSSESSION CERTIFICATE ISSUED BY TANUR VILLAGE OFFICE DATED 22.03.2022
EXHIBIT P2	THE TRUE COPY OF THE RELEVANT PAGE OF THE DATA BANK PREPARED BY THE 5TH RESPONDENT DATED NIL
EXHIBIT P3	THE TRUE COPY OF THE FORM 5 APPLICATION SUBMITTED BY THE HUSBAND OF THE PETITIONER THROUGH ONLINE DATED 03.02.2023 ALONG WITH TYPED COPY
EXHIBIT P4	THE TRUE COPY OF THE JUDGMENT IN W.P. (C).NO.24574/2024 OF THIS HON'BLE COURT DATED 02.08.2024
EXHIBIT P5	THE TRUE COPY OF THE NOTICE ISSUED BY THE OFFICE OF THE 1ST RESPONDENT DATED 18.07.2024
EXHIBIT P6	THE TRUE COPY OF THE RECEIPT ISSUED BY THE TANUR VILLAGE OFFICER DATED 08.11.2024
EXHIBIT P7	THE TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 01.01.2025