
(2004) 08 KL CK 0060
In the High Court Of Kerala
Case No : L.A.A. No. 557 of 2004

Ammutty Amma

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 72
Land Acquisition Act, 1894 — Section 23

Citation : (2004) 3 KLT 716

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : V. Ramkumar Nambiar, for the Appellant; K.J. George, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—These appeals pertain to the common judgment of the Additional Subordinate Judge's Court of Thalasserry in L.A.R. Nos. 313 and 315 of 2001. Both these cases were references under S. 30 of the Land Acquisition Act. L.A.R. No. 313/01 pertains to the acquisition of a total extent of 25.638 cents in R.S. No. 27/5 of Pallikunnu Village in Kannur District while L.A.R. No. 315/01 pertains to acquisition of a total extent of 11.390 cents of the same village for the doubling of railway track from Mahe to Payyannur. Under the award pertaining to L.A.R. No. 313/01 the total compensation was determined by the awarding officer as Rs. 2,99,075/- while under the award pertaining to L.A.R. No. 315/01 the total compensation was determined as Rs. 1,37,130/-. On the ground that the appellant from whom possession of the acquired property was taken had failed to establish the appellant's title to the acquired property, the Land Acquisition Officer deposited the compensation under S. 31(2) before the Court and; send reference under S. 30 arraying the appellant and the State as co-owners.

2. Upon getting notice from the Court below the appellant filed statement

contending that the entire property belonged in jenmam to Pallikkunnu Devaswom under the Chirakkal Kovilakam and was outstanding in the possession of the tenants and that by virtue of an assignment from one Neelakandakurup the properties came to the hands of one Sankaran Nair and thereafter as per a registered renewal Marupat No. 2232 of 1945 the aforesaid Sankaran Nair attorned to the landlord directly. It was contended further that while Sankaran Nair was so in possession of the property he gifted the properties in favour of his sister, the appellant as per registered gift deed No. 543 of 1948; the appellant accepted the gift deed and has been in possession of the properties ever since then; the gift deed mentioned the survey number of the properties as R.S. No. 26/8, 27/ 8 and 26/1; the correct survey numbers was 26/8, 27/5 and 26/13; these properties lie contiguously and together and hence the discrepancies in the survey numbers were not noticed at the time when gift deed was executed; but the appellant claimed that she was paying tax in respect of Sy. Nos. 26/1, 26/8, 27/4, 27/5,26/6 and 27/13 which is having an extent of 47 cents, 7 cents, 7 cents, 26 cents, 24 cents and 2 cents respectively; there were small houses in the property which were being let out to the tenants by the appellant in R.S. Nos. 27/5 and 27/6; one house was occupied by one Mandothan Lakshmanan in the year 1953; the appellant had assigned the said house and 7 1/2 cents since upon which the house was situated i.e., 1 1/2 cents in R.S. No. 27/5 and 6 cents in R.S. No. 27/6 in favour of the above Lakshmanan by virtue of Assignment Deed No. 923 of 1984; the said document will show that the appellant was in possession of the property in R.S. No. 27/5 and 27/6; so also the lie of the remaining properties and the payment of tax will clearly show that it was the claimant who is having exclusive title and possession " over the entire properties, it was contended. Of these contentions the appellant prayed that in both the cases the entire compensation may be paid to the appellant.

3. The State, the other claimant did not file any statement at all. Before the Court below the evidence consisted of Exts. A1 to A4 on the side of the appellant. Ext. A1 was the certified, copy of the gift deed in favour of the appellant. Ext.A2 was the basic tax receipt. Ext. A3 was a certificate of purchase issued by the Land Tribunal, Kannur on 26.2.1977 while Ext.A4 was another certificate of purchase issued by the Land Tribunal, Kannur in respect of a portion of the acquired property.

4. The Court below on an appreciation of the facts and the evidence concluded that the appellant had not obtained certificate of purchase in respect of the entire property at the time of acquisition and Ext. A4 obtained only in 2003 is subsequent to the initiation of acquisition proceedings and cannot be relied on. Ext.A4 covers an extent of 7 cents in R.S. No. 27/4,26 cents in R.S. No. 27/5 and 2 cents in R.S. No. 27/13 pertained to the property covered by the award in L.A.R. No. 313/01. Ext,A4 also covers less than two cents in R.S. No. 27/13 covered by the award in R.S. No. 315/01. What the Court below did was to ignore Ext.A4 totally and to exclude the properties covered by Ext.A4 as properties to which the appellant was having title. On that basis the Court below

in L.A.R. No. 313/01 directed payment of a sum of Rs. 62,825/- from out of the compensation to the State. On the same reason that Court directed payment of a sum of Rs. 15,360/- to the State in L.A.R. No. 315/01. Hence these two appeals.

5. Sri. V. Ramkumar Nambiar, learned counsel for the appellant assailed the judgments and decrees of the reference Court impugned in these appeals on the various grounds raised by him in the memorandum of appeal. The learned counsel submitted that Ext. A4 purchase certificate in as much as the same had been issued in confirmation and reiteration of the cultivating tenancy which the appellant was having over the property even prior to the commencement of the acquisition proceedings ought not have been ignored by the Court below. Counsel further submitted that the State had raised no claim whatsoever over the property in question. If the State had such a claim nothing prevented the State from enforcing its claim through the land acquisition officer's award itself. The State could not be have been described as a rival claimant and the order for disbursement of a portion of the compensation to the State is a perverse order, learned counsel submits.

6. I find force in the submissions of the learned counsel. Admittedly the property was taken from the absolute physical possession of the appellant only.. That the appellant was in possession as a cultivating tenant under the jenmam to Pallikkunnu Devaswom was not in dispute. Ext.A3 purchase certificate pertained to a substantial portion of the acquired property. Ext.A4 pertained to the remainder portion. True Ext. A4 was actually issued to the appellant only after the commencement of the land acquisition proceedings. But then Ext.A4 should not have been looked upon by the learned Subordinate Judge as though it is a post litigation document or a document which is send tis pendens. Ext.A4 is issued by virtue "of S.72 of the Kerala Land Reforms Act under which the appellant became entitled of fixity of tenure on the day the Land Reforms Act came into force and Ext. A4 is obviously issued in confirmation of cultivating tenancy rights which the appellant was already having decades prior to the commencement of the land acquisition proceedings. The submissions of Mr. Ramkumar Nambiar regarding the cultivating tenancy rights which the appellant was having over the property were not disputed before me by the learned Government Pleader. The learned Government Pleader also fairly conceded before me that the Government had no claim to any portion of the compensation. Even otherwise the maximum right which the Government could have claimed was the nominal jenmam compensation which also is no longer payable by the cultivating tenant upon assignment.

7. The result is that both the appeals will succeed, the judgment and decree of the Court below in both the cases will be set aside and there, will be a direction to disburse the entire compensation deposited in L.A.R. No. 313/01 and L.A.R. No. 315/01 to the appellant. The appeal is allowed as above. No costs.