
(2015) 03 KL CK 0155

In the High Court Of Kerala

Case No : Writ Petition (C). No. 14812 of 2014 (B)

Aneesh P.

APPELLANT

Vs

The Sub Registrar Officer and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Kerala Restriction on Transfer by and Restoration of Lands to the Scheduled Tribes Act, 1999 — Section 4

Citation : (2015) 2 KLT 755

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : U. Balagangadharan, for the Appellant; M. Muhammed Shafi, Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.

1. Refusal on the part of the 2nd respondent to cause registration of the conveyance sought to be effected by the 1st petitioner, on the strength of Ext.P2 agreement for sale in favour of the 2nd petitioner, by issuing Ext.P6 communication dated 22.5.2014, made the petitioners approach this Court by filing this Writ Petition.

2. The sequence of events narrated by the petitioner shows that the 1st petitioner is the owner of the land having an extent of 17 cents with an incomplete building therein comprised in Survey No. 1440/1 of Sholayar Village, covered by Ext.P1 sale deed bearing No. 410/2011 dated 22.3.2011 of SRO, Agali. The said property was purchased by the 1st petitioner for valuable sale consideration and in the course of time the first petitioner sought to sell the said property for raising funds because of the pressing circumstance. The 2nd petitioner has come forward to purchase that property for the agreed sale consideration, which has been reduced into writing as borne by Ext.P2 agreement. The petitioner was enjoying the property with absolute ownership,

exclusive possession and clear and markable title, as borne by Ext.P3 tax receipt and Ext.P4 possession certificate issued by the concerned Village Officer. Ext.P5 is a photograph of the incomplete building situated therein. The first petitioner was finding it extremely difficult even to complete the building and because of the pressing need, the said petitioner sought to sell the said property as mentioned herein before. When the petitioners approached the 1st respondent for registering the conveyance, it was refused to be acceded to stating that such a conveyance is barred by the provisions of the Kerala Restriction on Transfer by and Restoration of Lands to Schedule Tribes Act, 1999 (Act 12 of 1999). This, according to the petitioners, has been issued absolutely without any regard to the mandate to the relevant provisions of law and that the petitioner's property does not come within the purview of the restriction imposed by the aforesaid Act.

3. The learned counsel for the petitioners submits that the 1st petitioner is of course, a member of the Scheduled Tribe community. The restriction imposed by the Kerala Restriction on Transfer by and Restoration of Lands to Schedule Tribes Act as given under section 4 is in the following terms:

"Restriction on transfer: - Notwithstanding anything to the contrary contained in any other law, or in any contract, custom or usage, or in any judgment, decree, or order of any Court, any transfer effected by a member of the Scheduled Tribe, of land possessed, enjoyed or owned by him on or after the commencement of this Act, to a person other than a member of a Scheduled Tribe, without the previous consent in writing of the competent authority, shall be invalid."

4. It is also pointed out that the term "land" has been defined under the Statute, particularly under section 2B, which says that "land" means any "agricultural land". The property concerned in, say "dry land" wherein a residential building is being constructed and no agriculture is being done in the property, submits the learned counsel.

5. The learned Special Government Pleader appearing for the respondents submits that the interpretation sought to be made by the petitioners to the term "land" is not correct and that a wider meaning has to be given to the term "agriculture" as sought to be interpreted by the Division Bench of this Court as per the decision reported in *Prakashan v. Damodaran and others* - ILR 2013 (2) Kerala 679.

6. After hearing both the sides, this Court finds that the decision cited on behalf of the respondents does not come to the rescue of the respondents in any manner to arrive at a finding detrimental to the rights and interest of the petitioner herein. In so far as the concerned Statute clearly says, while imposing the restriction of transfer, defining the term "land", it has to be read and understood to be given effect to as plainly as under the Statute. It is settled law, that when the Statute is quite unambiguous, it has to be read as it is, and nothing else can be read into the provision. When Section 2B says that "land" means any "agricultural land" no other meaning can be attributed to the said term. This

Court also finds support from the decision rendered by the Division Bench of this Court reported in 2013 (3) KHC 714 - Fathima Shirin v. Joint Regional Transport Officer, Kayamkulam and others.

7. In the above circumstance, this court does find that the petitioner is entitled to succeed. Ext.P6 is set aside and there will be a direction to the 1st respondent to register the original of Ext.P1 document with regard to the conveyance sought to be effected by the 1st petitioner in the name of the 2nd petitioner pursuant to Ext.P2 agreement as and when the same is presented, subject to satisfaction of other requirements in accordance with the provisions of the Registration Act/ Rules.

Writ Petition stands allowed. No costs.