(2023) 01 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34135 Of 2014

Blue Star Realtors Pvt. Ltd	APPELLANT
Vs	
State Of Kerala	RESPONDENT

Date of Decision : 04-01-2023

Acts Referred:

Citation : (2023) 01 KL CK 0022

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : Santheep Ankarath, K.P.Sudheer, P.K.Suresh Kumar, M. H. Hanil Kumar

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. Heard Sri P.K.Suresh Kumar, Senior Advocate, instructed by Sri V.V.Nandagopal Nambiar on behalf of the petitioner and Sri M.H.Hanil Kumar, Special Government Pleader on behalf of the respondents.

2. The petitioner is a Private Limited Company incorporated under the provisions of the Companies Act. The petitioner participated in a tender floated in the year 2006 for the sale of 70 acres of land situated in Kalamassery, that belonged to M/s HMT Ltd, a public sector undertaking that was facing a financial crisis. Pursuant to the tender, the petitioner purchased 70 acres of land in Resurvey No.717/5 in Block No.5 of Thrikkakara North Village as per Sale Deed No.5927/2006 dated 16.11.2006, registered in Edappally Sub Registry Office. Ext.P1 is the copy of the sale deed.

3. A Public Interest Litigation was initiated against the above sale of the land as W.P.(C)No.3258 of 2008. The writ petition was heard along with W.P.(C) Nos. 4271, 8172, and 9927 of 2008. By Ext.P2 judgment dated 11.8.2009, this Court disposed of the writ petitions finding that the transfer is not vitiated in any manner and that M/s HMT Ltd was legally entitled to transfer 100 acres of land

that were notified. This Court, however, held that the transferee would have to use the land only for industrial purposes. There is no necessity to go into the details of the challenge raised in the public interest litigation to decide this writ petition; hence, the same are not reiterated again. A challenge to Ext.P2 judgment before the Apex Court was rejected as per Ext.P3 judgment dated 8.1.2010. The Hon'ble Supreme Court held that there is no reason to interfere as the High Court has secured and safeguarded the public interest by imposing the condition that the land shall be used by the petitioner only for industrial purposes and holding that the judgment will have no bearing on the ceiling proceedings initiated against M/s HMT Ltd, pending in CRP No.1026 of 2022.

4. Pending the litigation, the petitioner obtained all necessary licences from the statutory authorities for setting up HDIL Cyber City. The land covered by Ext.P1 has been notified as Special Economic Zone as per Ext.P4 notification dated 23.3.2010. While so, on 3.10.2008 the 2nd respondent issued Ext.P5 prohibitory order, effecting an attachment over 28.96.40 hectares of land belonging to the petitioner in Sy.No. 717/5 of Thrikkakara North Village. Ext.P5 order specifically says that the order will be in force till the disposal of CRP No.1026 of 2002. By Ext.P6 judgment dated 3.12.2014, this Court allowed the revision petition filed by M/s HMT Ltd. and set aside the order issued by the Taluk Land Board, directing M/s HMT Ltd to surrender 251.40.00 acres as lands held, in excess of the ceiling area. This Court held that the provisions of the Kerala Land Reforms Act will not apply to the area covered by the assignments in favour of M/s HMT Ltd and that the proceedings being continued on the file of the Taluk Land Board, Kanayannur in M2724/89 against M/s HMT Ltd does not have the sanction of law and are to be aborted.

5. When the attachment effected was not being lifted, despite the declaration of the law by the Court, the petitioner filed WPC No.16056 of 2014 before this Court. By Ext.P8 judgment dated 10.7.2014, this Court directed the 3rd respondent to consider the request made by the petitioner to remove the prohibitory order, in the light of Ext.P2 judgment and Ext.P5 directions issued by the 2nd respondent. However, by Ext.P9 order dated 30.9.2014, the 3rd respondent rejected the request to lift the attachment orders issued on 3.10.2008. Ext.P9 appears to have been issued by the 3rd respondent in the capacity of Chairman, Taluk Land Board and one of the reasonings is that the project of the petitioner is a real estate business. The petitioner has in the above circumstances filed this writ petition.

6. A counter affidavit has been filed by the 3rd respondent, reiterating the stand taken in Ext.P9 that the project of the petitioner is a real estate business and it is interdicted by the judgment of the Supreme Court. Ext.R3(a) letter dated 30.11.2021 issued by the petitioner to the 3rd respondent has been produced to show that the petitioner intends to use the project land for providing industrial infrastructure facility by setting up logistic and warehouse activity.

7. I have considered the arguments advanced by the Senior Counsel and the

Special Government Pleader and the pleadings and documents produced before the Court. In Ext.P2 judgment, the Division Bench of this Court has considered the entire aspects relating to the assignment of the land in favour of M/s HMT Ltd and the legality of the sale effected in favour of the petitioner and held that the sale is valid. This Court held that the transferee would have to utilise the land for industrial purposes since it is a covenant running with the land. After holding that the sale is valid, this Court also held that the judgment would not affect the ceiling proceedings initiated against the transferor, pending in a revision petition, at the instance of the transferor. By Ext.P6 judgment, the ceiling proceedings were found by this Court to be without the sanction of law and are to be aborted. This Court categorically held that the Kerala Land Reforms Act would not apply to the assignment in favour of M/s HMT Ltd. The direction issued to the transferor to surrender 251.40 acres as excess land was also set aside. As such the second part of Ext.P2 judgment became no longer relevant. The only other aspect that remained was the condition that the land should be used for industrial purposes.

8. Ext.P9 order cannot be legally sustained in the above circumstances. The order proceeds as if the 3rd respondent was having authority to issue prohibitory order in the nature of Ext.P5. Ext.P5 clearly says that it is an order issued for the purpose of preserving the property pending the consideration of the revision petition. Once the revision petition ended in favour of the transferor, Ext.P5 order lived out its purpose. By Ext.P9, the 3rd respondent has virtually revived Ext.P4 order. This Court has specifically held that the proceedings under the Land Reforms Act are not legally warranted. As such, Ext.P9 order cannot be legally justified in any manner. The order is against the law declared by this Court and is liable to be set aside. The finding in Ext.P9 that the petitioner is violating the condition issued by the Hon'ble Supreme Court is also without any legal basis. As the matters stand now, the petitioner has not even been permitted to put the land purchased by them to any use.

9. In the above circumstances, the writ petition is allowed. Exts.P5 and P9 orders are quashed. The respondents are directed to lift the attachment over the property covered by Ext.P1 sale deed forthwith. The above directions are without any prejudice to any action that may be initiated by the respondents against the petitioner, which may be warranted under Ext.P2 judgment if a situation arises.