

(1950) 11 KL CK 0019
In the High Court Of Kerala
Case No : Original Petition No. 48 of 1950

Chacko Kuncheria

APPELLANT

Vs

Govt.of Travancore Cochin State and Others

RESPONDENT

Date of Decision : 22-11-1950

Acts Referred:

Constitution of India, 1950 — Article 226, 31, 338
Transfer of Property Act, 1882 — Section 108, 19, 4

Citation : (1950) 11 KL CK 0019

Hon'ble Judges : Gangadhra Pillai, J;Gangadhara Menon, J

Bench : Division Bench

Advocate : Mathew Muricken and M.K. Patameswara Kurup, for the Appellant; A. Sanhara Pillai, Government Pleader for Counter Petitioner Nos. 1 and 2, T.K. Narayana Pillai and M.U. Isaac, for the Respondent

Judgement

Govinda Piliyai, J.—The petn is filed by one Chacko Kuncheria. u/s 18(2), High Court Act & Articles 226 & 338, Constitution of India. His complaint relates to 129 acres of paddy lands in the north west of D block in Puthanarayiram in Pulinkunnu Pakuthy. He stated that he was in exclusive possession of the said plot as lessee & cultivated the area, in 1124 & 1125. He had also improved the property at great cost during this period. After the harvest in 1125 he was stated to have started preliminary agricultural operations for the cultivation of the property in 1126 as he was entitled to continue in possession under Act VIII [8] of 1950. The 1st counter petnr. in this case is the State. The 2nd counter-petnr. is the Punjab Special Officer appointed to arrange for the cultivation of Kayal paddy lands in Ambalapuzha Taluk. The 3rd counter-petnr. is the person who had been now entrusted with the cultivation of the said 129 acres. It was the petard case that the 2nd counter-petnr. had attempted a new lease arrangement by auction for the cultivation of this property during the year 1126. The petnr. had protested against the attempt of the 2nd counter-petnr. but ignoring the same he proceeded to auction the right to cultivate this land & confirmed the bid in favour of one Thomman Mathan, This procedure adopted by the 2nd counter-petnr. was

against the statutory right vested in the petnr. under the provisions of Act VIII [8] of 1950. & so without surrendering possession of the property he had proceeded with the agricultural operations for the cultivation in 112P. Thom man attempted to obstruct the same & so the petnr. was forced to file O. S. 325 of 1950 before the Principal Munsiff's Ct., Alleppay on 5-4-1950 against Mathan for restraining him by an in Junction from entering upon the property. An (SIC) order of injunction had been passed on 23-5-1950. The second counter. petnr. had been informed of these proceedings & in order to circumvent the same he induced the State to requisition the land u/s 4 Travancore-Cochin Public Safety Measures Act v [5] of 1950. The State thereupon passed an order on 20-9-1950, copy of which was EX. H. Pursuant to the authority conferred on the 2nd counter petnr. by the order of requisition, the latter issued Ex. G. permit to the 3rd counter petnr. to cultivate the land. The order of requisition as well as the permit issued by the 2nd counter petnr. were illegal & ultra vires. for the grounds stated in the order of requisition did not exist to the knowledge of the counter-petnrs. & as such the 1st counter-petnr. had no jurisdiction to requisition the property.

2. The order of requisition in so far as it infringed the right of the petnr. under Act VIII[8] of 1950 to continue in undisturbed possession of his lease-hold right to the property was illegal & ultra vires. When the right in respect of the property was the subject-matter of dispute in O. S. 325 of 1950 of the Alleppey Munsiff's Ct. & when the temporary orders of injunction had been issued by the said Ct., the order of requisition was stated to be an abuse of the privilege conferred on the 1st counter petnr. under Act v [6] of 1950. The petnr. also contended that the requisition order was an infringement of the fundamental rights of the citizens guaranteed by Article 31, Constitution of India, as well as u/s 5 of Act v. [5] of 1950, as there was no provision in the order to enquire into the question of compensation to which the petnr. would become entitled. Even the order of requisition had directed the 2nd counter-petnr. to enquire into the willing, ness or ability of persons legally entitled to be in possession to continue the cultivation operations. But ignoring this the 2nd counter-petnr. arranged for the cultivation through private negotiations. This amounted to a wrong assumption of the power conferred on him by the requisition order. The order of requisition by Govt. & the permit issued by the 2nd counter petnr to the 3rd counter-petnr. were therefore liable to be quashed & the petn. was for this purpose.

3. The 2nd counter-petnr. on his behalf & on behalf of the 1st counter-petnr. had filed an affidavit denying mainly the contentions of the petnr. It was admitted that for the cultivation of this property in 1124 the pstnr. purchased the leasehold right from the Punja Special Officer in open auction held on 18-8-1128. As par the terms of this auction the petnr. surrendered his possession as soon as the Kunbhom crop of 1124 was harvested by him. Thereupon on 15-8-1124, the 2nd counter-petnr. auctioned the right to cultivate the plaint property for 1125, & it was bid by one chacko Jo who was none other than the patnr's. brother. The petnr. had not been allowed to participate in this auction since he had defaulted the payment of the dues to the owners in 1124. The allegation that he cultivated

the area in 1125 & that he effected improvements in the property were absolutely false. The petnr. had no right to enter upon the property or to start preliminary operations for the cultivation of 1126. The lease for all the Oodukur Punja lands would be auctioned from year to year on the appln. of the owners. After the harvest of 1125 was over the lessee Jo as per the terms of the lease surrendered possession of the property. As usual, the 2nd counter-petnr. conducted the auction of the lease hold right to cultivate the area for the year 1126 on 25-3-1950 & Thomm in Mathan mentioned in the ptn. was the highest bidder. In the auction conducted then the petnr, & his brother Jo participated, but they were not successful in bidding it. Both of them had signed the auction diary. It was wrong to say that the petnr. had the right to possess the property under the provisions of Act VIII [8] of 1950. Thomm in started agricultural operations, but the petnr. for ably trespassed into the property & caused obstruction There upon Thomman Mathan presented two ptns. before the 2nd counter.petnr. & they were forwarded to the Palinkunnu Police for necessary action. The police had warned the petnr. not to disturb the peaceful possession of the lessee Thomman Mathan. There upon, the petnr as a last report, filed O. S. 325 of 1950 in the Munsiff's Ct. of Alleppey & obtained an ex parte order of interim injunction. This order would not bind the property & the State. The allegation that the petnr." protested against the auction in 1125 was not correct. There was a joint petn. signed by some of the cultivators in the year 1125 praying that the auction should not be held for 1126 cultivation & that the cultivators of 1125 should be allowed to cultivate at the old rate of pattom. The owners of the property were not agreeable to this & so the and counter-petnr. had to conduct the auction. It was the duty of the Punja Special Officer to see that the entire area of paddy fields was cultivated at the proper time & in the proper manner to the best interest of the State & Public He had, therefore, moved the Govt. for requisitioning the property & leasing it out a fresh as the preliminary agricultural operations had to be commenced immediately. Owing to the dispute between the petnr. & the lessee Thomman Mathan nobody was able to start cultivation, & so he apprehended that an extensive area of 2400 acres of paddy fields in the C & D blocks would lie fallow unless prompt action was taken in time. The owners of the land as well as the cultivators of the block became anxious, & representations were made to him for speedy arrangements for the cultivation of the disputed property. This block of 2400 acres lay within a common ring bund. Intermediate bunding operations & de-watering works had to be done jointly by all the Cultivators as common work. The matter was therefore reported to Govt. & as they were satisfied of the urgent necessity, they requisitioned the land & entrusted the 2nd counter petnr. to arrange for the due cultivation thereof either by auction or by private negotiation. The seed for this land had been given to Thomman Mathan, & as his brother the 3rd counter-petnr. had agreed to make use of that seed, the property was allowed to be cultivated by him. Otherwise there would have been delay in getting back the seed from Mathan so as to conduct the cultivation. The 2nd counter-petnr. & the State had acted only in the best interest of the owners, cultivators, & the general public, so as to avoid the

contingency of leaving out 2400 acres of paddy land fallow which may cause a loss of two. & a half lakhs of paras of paddy to the State & the Public. The ptn. was not supported by any bona fides it had to be dismissed with costs. The 3rd counter-petnr. had filed a counter-affidavit in support of the 2nd counter. petnr's affidavit.

4. The petnr. filed an answer to both the affidavits filed by Counter.petnrs. 1 to 3 He had admitted that in 1124 he was the lessee for the western 300 acres of Puthanarayairam which consisted of two sub-blocks. He had cultivated 219 acres out of the same as 27 acres had already been sold in revenue auction. After the harvest of 1124. he admitted, that he surrendered possession of the southern 140 acres & retained possession of the northern 133 acres, of which the disputed 129 area farmed the major portion. He was in continued possession of the property ever since he became the lessee in 1123: Neither Job, the alleged lessee for 1125, nor Thomman Mathan the auction-purchaser for 1126, had ever obtained possession of the property. There could therefore be no occasion for Job to surrender the property after the cultivation of 1125. The auction conducted by the 2nd counter-petnr. in 1125 could not bind him or his right in the property, he had even hypothecated the standing crop in the property in 1125 to the Director of Agriculture to get the manure for this & other properties. He had therefore the right to continue in possession & the auction of the State in dispossessing him was wrong & illegal.

5. Both sides had produced some documents & those that were admissible had been marked in the case. It was admitted that in the auction held in 1123 the petnr. had taken 300 acres for cultivation. The cultivation in that area was on a co operative basis. Kayal paddy lands were divided into several blocks. There would be several persons owning the definite portions in each block. The cultivation of each block could be conducted only if all the owners co-operated & made preparations for the cultivation. The ring bunds had to be renewed & in most cases the intermediate bunds had to be put up. The water from the entire area had to be drained, for which contract had to be given for pumping out water. If any one of the owners was not in a position to cultivate his portion of the land it would be causing undue hardship to the other owners, so that the necessary provision had been introduced in the Irrigation Act to enable the State to step in & remedy the evil. They had appointed a Special officer for this purpose, & on the consent of the owners he would lease out each block by auction for the definite purpose of paddy cultivation. The auction would be to cultivate paddy one year, so that the bidders were to surrender the property after cultivation. This is the custom in that locality & this is admitted by the patnr. in one of his petns. to the 2nd counter-patnr. Ex. B is the copy of that petn. It was admitted there, that as per the rules under which the auction was held, & according to the custom the success or lessee would be entitled to enter upon the land only after the 15th Medom of each year. As mentioned already, the petnr. was the lessee for 273 acres for the cultivation for the year 1124. This is borne out by Ex I the auction diary. The petnr. would say that after he collected

the crops in the year 1124, he surrendered 140 acres out of this & retained possession of 133 acres. But he did not say to whom he surrendered 140 acres. But it could be seen from Ex. II (a) the auction diary that the person who purchased the right to cultivate the said land in 1124 had cultivated the same. Under Clause (q) of Section 108, Transfer of Property Act, the lessee is to surrender the entire lease-hold to the lesser. He did not give any explanation as to how under law he was entitled to surrender a portion of the property he cultivated, retaining another portion with him, though both the portions were obtained by him under the same transaction. The right to cultivate these paddy lands would not come strictly under the category of "leases" as defined in the Transfer of Property Act. These lands were leased out for the specific purpose of cultivating paddy. He could not use the land for any other purpose, so that he could not get exclusive right to enjoy the so-called lease-hold. Though this arrangement was called a lease-hold right, the mere use of such loose terms would not by itself confer on him all the rights of a lessee as is ordinarily understood. Apart from this, it had to be seen whether he had cultivated the said 129 acres in the year 1123. Admittedly, he had not purchased that right in auction. It had been purchased in auction by his brother Job. The petitioner would say that Job did not cultivate the land. Ex. II (c) of Meenom 1125 a petition filed by some of the owners & cultivators before the Pundia Special Officer not to auction the land but to allow them to hold the land on the terms of the previous year, would clearly indicate or that Job was one of the cultivators. The auction diary Ex. II (a) would show that Job had purchased in auction only this property. He could therefore come in as a cultivator in Ex. II (c) only if he had cultivated the plot he had purchased in auction. In Ex. II (c) this Job was the 9th signatory. No doubt, the petitioner also had signed the petition. He was the 10th signatory. He had not purchased any property in auction. But he had stated that out of 133 acres retained by him, four acres had been purchased by one Joseph Thomas in revenue auction & that he had attorned to him. He might have cultivated the said four acres, or he might, have helped his brother Job in the cultivation of 129 acres. At any rate, Ex. II (a) & II (c) would show that he could not have cultivated the said 129 acres in the exercise of any legal right. In 1125 he had applied for manure from the agricultural dept. The agricultural dept. referred the matter to the Tahsildar, Ambilapuzha. The latter sent Ex. D certificate stating that the petitioner was the owner of 22 acres & 40 1/2 cents of paddy land & one acre & 5 cents of garden land, & that the manure could be advanced on the security of these properties & also on the standing crops in the paddy lands cultivated by him. Pursuant to this he had executed an Udampady Ex. A to the Director of Agriculture where all the properties mentioned in Ex. D were included. He had also included there the standing crops on 133 acres in D-block. There was no certificate issued by the Tahsildar as to whether the petitioner had cultivated the said 133 acres mentioned in Ex. A. At any rate, it would be seen that his brother Job was an attester to Ex. A. Though Job was the actual person who cultivated the land his attestation to Ex. A was sufficient to indicate that he would not advance any claims to the crop in case the Director of Agriculture was

forced to proceed against the standing crops. Apart from this, Ex. A has no probative value to hold that the petnr. was the person who actually cultivated the land under any legal right. The evidence afforded by Exs. A & D are not sufficient to hold against the action diary EX II (a) supported by the affidavit of a responsible officer, like the 2nd counter petnr.

6. Reliance was also placed on the petnr. filing a suit in the Alleppay Munsiff's Ct. with Mathan as the sole deft. & obtaining an injunction restraining him from entering upon the property. It can only be stated at this stage that it was rather unfortunate that the Ct. issued ex parte orders of injunction when the dispute was one relating to possession of property. In such cases of disputed possession it would be highly improper for any Ct. to issue an order of injunction against any party unless a very strong case for the same was made out. Cts. issuing such injunctions as a matter of course never seem to realise the hardship that would be caused or the mischief that would be done as the result of such hasty acts. It may even be, that in certain cases, the injury may be irreparable, as in the present instance, for if Mathan was really in possession the injunction issued would certainly cause hardship. Again, if the pltf. suit was eventually dismissed, the resulting injury would be beyond measure. Therefore, in cases of disputed possession, the Cts will be well advised if they bestowed proper attention & exercised due care & caution before orders of injunction were issued restraining a party from entering upon a property. In view of what we have stated already as to the petnr.'s right in the property in 1125, the ex parte order obtained by him would not be of any help. On the materials before us, it is difficult for us to hold that the petnr. had obtained the right to cultivate these paddy lands in 1125 or that he really cultivated the lands. Being so, he would have no further right over the property for the cultivation of the land in 1126. On this short ground his petn. is to be dismissed.

7. On account of injunction issued by the learned Munsiff in O. S. 325 of 1950, Mathan could not enter upon the property to cultivate the land. Mathan was the recognised person entitled to cultivate. To him alone the paddy required for the seed & cultivation expenses would be paid by the authorities. The petnr. would not be given any allowance for this as he was not the recognised cultivator. There WAS therefore a reasonable apprehension that the said 129 acres would lie fallow. This would certainly affect the cultivation of the remaining area in that block. The 2nd counter-petnr. admitted that these facts were brought to the notice of the Govt. & they in exercise of their powers u/s 4, Act v. [5] of 1950 requisitioned the land & directed him to arrange for the cultivation. Exhibit H is that order. It had also been published in the Gazette. The petnr. would say that this order was ultra vires because it did not give any reasons for adopting such a course. Section 4 of the above Act gave the Govt. wide powers.

It stated that if in the opinion of the Govt, it was necessary or expedient so to do for maintaining, increasing or securing supplies of any essential articles or for arranging for its equitable distribution & availability at fair prices or for directing,

maintaining, storing or increasing the production of any essential articles, or for maintaining services essential to the life of the community or for providing accommodation for officers or servants of the Govt. or for specified persons or classes of persons or for the holding of public offices, the Govt, may by order in writing requisition any property, movable or immovable, & may make such further orders as appear to them to be necessary or expedient in connection with such requisitioning.

8. The powers given there are very wide & a similar provision had come up for consideration before a F. B. of this Ct, in *Aiyamperumal v. Chief Secretary* 1950 K. L. T. 675 F. B. In that case certain land was requisitioned for purposes specified in Section 19 of that Act. That section also provided that if in the opinion of Govt, it was necessary or expedient to do for securing the maintenance of public order etc., the Govt, may requisition. The discretion was absolute & no further question could arise upon it, unless it was shown that the requisitioning was actuated by mala fides or manifest fraud upon the statute or that the power conferred by the statute was utilised for some indirect purpose not connected with the object of the Act. AIR 1949 60 (Nagpur) is also an authority in support of this position. The circumstances already indicated would show that the Govt, apprehending that the land in question might remain fallow & cause loss to the owners, cultivators & the general public, requisitioned it. This Ct. in exercise of its power³ is not to interfere in such matters in the absence of any invalidating circumstances.

9. Another objection raised was, that while requisitioning the land, no compensation had been offered to the petnr. as provided for in Section 5 read with Article 31, Const. Ind. The petnr. had no right over the land, & therefore no question of offering any compensation to him would arise in this case. The action of the Govt. is therefore perfectly justified.

10. In view of what we found above, the question whether the petnr. is entitled to a writ in the nature of mandamus does not at all arise for consideration. We therefore decline to interfere in this matter. We dismiss the petns. with costs. Counter-petnrs. 1 & 2 will get Advocate's fee of Rs. 100 (RS. one hundred) & the 3rd counter petnr. will get Advocate's fee of Rs. 50 (Rs. fifty).