
(2007) 03 KL CK 0062

In the High Court Of Kerala

Case No : WP (C) No. 6889 of 2000 (T)

Chandran Kannikkaran

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Kerala Restriction on Transfer by and Restoration of Lands to the Scheduled Tribes Act, 1999 — Section 2, 4

Citation : (2007) 2 ILR (Ker) 236 : (2008) 1 KLJ 862 : (2007) 1 KLJ 862

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : Biju Balakrishnan, for the Appellant; I.V. Parmod, GP, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Can the superiors in the executive hierarchy in Government dictate to an officer in the matter of exercise of statutory power conferred on him?

2. Petitioner is a member of a Scheduled Tribe. The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999, hereinafter referred to as the "Act", for short, is an Act to provide for restricting the transfer of lands by members of Scheduled Tribes in the State of Kerala and for the restoration of possession of lands alienated by such members and for matters connected therewith. Section 4 of the Act provides that 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 the 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. The "competent authority", going by Section 2(a) of the Act, with reference to any land, means the District Collector of the district in which the land is situate or any other officer appointed by the Government to be the

competent authority for the purpose of the Act, for the areas in which the land is situate. So much so, any land possessed or enjoyed by the petitioner, who is a member of the Scheduled Tribe, can be transferred only with the previous consent of the District Collector of the District in which the land is situate, unless there is an officer appointed by the Government to be the competent authority for the purpose of the Act, for the area in which the petitioner's land is situate. As regards the area in question, there is no other officer appointed by the Government, to be the competent authority. Therefore, the District Collector, Thiruvananthapuram, is the competent authority in relation to the petitioner's land.

3. Adverting to the facts of the case in hand, instead of applying to the District Collector - the competent authority for prior permission in terms of Section 4 of the Act, the petitioner moved the Minister for Scheduled Castes and Scheduled Tribes Development, in the Government, seeking that appropriate orders may be issued so that the Tribal Department would ensure issuance of the order of permission by the appropriate department. The Principal Secretary in the Scheduled Castes and Scheduled Tribes Development Department thereupon addressed the Director for Scheduled Tribe Welfare, who, in turn, issued Ext. P2 reply, however calling the attention of the Government to the fact that any such consent has to be given only by the District Collector. In fact, that is so, in terms of the Act. The Principal Secretary to Government in the Revenue (R) Department thereupon issued Ext. P3 to the District Collector requesting the District Collector to take necessary action to issue "NOC" to the petitioner to sell his property. The petitioner's grievance is that the District Collector has not issued NOC in terms of Ext. P3 in spite of Ext. P9 representation dated 14-2-2007 stated to have been made by him to the District Collector. This writ petition is filed on 28-2-2007 with such allegation. The aforesaid facts would show that the request of the petitioner to the District Collector could have been only on or after 14-2-2007. Petitioner seeks a direction to the District Collector to issue permission.

4. Section 4 invalidates a transaction by which a member of the Scheduled Tribe effects a transfer without such previous consent. Such invalidation is 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. When law prescribes that a particular thing shall be done in a particular manner, it shall be done only in that manner and not otherwise. There can be no controversy that the Act is a piece of law. Therefore, the granting of previous consent in terms of Section 4 of that Act can be only by the competent authority.

5. The authority or power to grant consent for the purpose of Section 4 is a statutory power. That statutory power is conferred on the competent authority as defined in the Act. One of the finest shades of guarantee of Rule of Law is that when a particular power or authority is vested in a particular officer or institution or office in terms of the law, it has to be exercised only by that authority. That is

a salutary principle. Any intervention of any external agency with the exercise of such power by the authority in whom it is vested, takes away the purity of the process relating to the exercise of such power. It also would lead to a situation where the authority vested with the power would be acting under extraneous influence because the statute does not enjoin that such authority be exercised on the basis of any such influence.

6. The law, as noticed above, is categorical that the power u/s 4 of the Act could be exercised only by the competent authority - District Collector - and such power, being statutory, cannot depend upon the dictates of any superior administrative authority in the hierarchy of the executive Government. If the competent authority under the Act is not insulated from such extraneous influence of the higher-ups from the administrative hierarchy, it needs no effort to demonstrate that the exercise of the statutory power u/s 4 of the Act would not be in terms of such provision because the competent authority would not be taking a decision by himself, but such decision would be apparently and evidently influenced by the views of the superior executive authorities. This is plainly impermissible in the flow of Rule of Law.

7. The Act also does not provide any appellate power with the Government. Therefore, even if the District Collector takes a decision contrary to Section 4 and against the interest of the petitioner, it is not open to the executive Government, in its hierarchy, to correct it. The applicant will have to seek appropriate remedy for judicial review of that decision.

8. In the aforesaid circumstances, while declining the reliefs sought for by the petitioner to implement the recommendations of the Government and the Director of Scheduled Tribes Development Department in Exts. P2 and P3, the District Collector, the third respondent is directed to take up Ext. P9 and independently decide on the said request in terms of the law contained in Section 4 of the Act. Since the Directorate of Scheduled Tribes Development is already shown to have made certain enquiries in relation to the petitioner's affairs, it is appropriate that the District Collector also considers the contents of Ext. P2. However, he shall take an independent decision on Ext. P9 by treating it as an application before him and without reference to the Government letter, Ext. P3. The needful, following this judgment, shall be done by the third respondent and a decision shall be issued on the request of the petitioner, within a period of one month from the date of receipt of a copy of this judgment. Writ petition is disposed of in the above terms.