
(2015) 03 KL CK 0063

In the High Court Of Kerala

Case No : W.A. No. 1275 of 2009 in W.P.(C). 36647/2007

District Collector and Others

APPELLANT

Vs

N.C. Thomas

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0063

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J.

Bench : Division Bench

Advocate : P.I. Davis, Government Pleader, for the Appellant; Anil Sivaraman, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ashok Bhushan, Actg. C.J—This writ appeal has been filed against the judgment dated 26.3.2009 passed by the learned Single Judge in W.P.(C) No. 36647 of 2007. The writ petition filed by the respondent herein was disposed of by the learned Single Judge directing the respondents 1 and 2 to take steps for re-conveyance of the property to the petitioner within eight weeks of production of copy of that judgment.

2. The brief facts giving rise to the writ petition are as under:--

"There was recovery proceedings against the petitioner under the Revenue Recovery Act for recovery of an amount of Rs. 39,832.28 with interest. The recovery certificate was issued on 8.7.1986. The property was put for auction on 2.12.1987. But, there were no bidders and the sale was adjourned to 21.1.1988 and thereafter to 14.3.1988 and 30.5.1988 for want of bidders. Finally, on 30.5.1988 the land was bid for a nominal amount of 10 paise in favour of the Government. The auction was confirmed by the Sub Collector vide proceedings dated 20.8.1988 and the land was thereafter handed over to the Village Officer on 18.1.1989. The petitioner filed an application to the Collector on 22.10.1994. In the mean time, the Government has issued a Government Order dated

22.3.1996, by which, the Government had reviewed its policy for re-conveyance of bought-in-land. The Collector considered the application of the petitioner and ultimately on 4.7.1996, the Collector disposed of the application directing the petitioner to remit the entire amount of dues under the demand notice along with interest and thereafter the land shall be restored to the petitioner in accordance with the decision taken by the Government as per reference cited above, ie; Government Order dated 22.3.1996. It appears that the petitioner had deposited an amount of Rs. 91,410/- before the Tahsildar vide receipt dated 3.8.1996, Ext. P3. The petitioner, thereafter made several representations praying for restoration of the property and dropping the proceedings. Since those representations were not considered by the authorities, he filed a writ petition in the year 2007 seeking for the following reliefs:--

"(i) Issue a writ in the nature of mandamus commanding the 1st respondent to re-convey the property in Sy. No. 5/2 and 5/14 of Manamangalam Village to the petitioner forthwith.

(ii) Issue any other such writ, order or direction as this Hon"ble Court may deem fit and necessary in order to meet the ends of justice on the facts and in the circumstances of the instant case; and

(iii) Award the costs of this case to the petitioner."

3. A counter affidavit has been filed by the first respondent, the District Collector in the writ petition, wherein, it was stated that re-conveyance was permitted by the Collector by letter dated 4.7.1996 as per the Government Order dated 22.3.1996. It was stated that petitioner's application was on 22.10.1994, which was not within time, as per the provisions of the Government Orders dated 30.6.1965 and 9.2.1968 issued for re-conveyance of bought-in-land. The learned Single Judge disposed of the writ petition holding that the Government Order dated 22.3.1996 was not applicable to the petitioner since he had filed his application on 22.10.1994.

4. Learned Senior Government Pleader in support of the appeal contended that the letter of the District Collector dated 4.7.1996 permitting re-conveyance of bought-in-land could be made only on account of the revised policy of the Government dated 22.3.1996. It is submitted that under the revised policy, the bought-in-land can be re-conveyed only on clearing the arrears and when the payment of current market value of the land is remitted. It is submitted that the learned Single Judge committed error in holding that the Government Order dated 22.3.1996 shall not be applicable to the petitioner.

5. Learned counsel appearing for the writ petitioner/respondent herein refuting the submissions, contended that as per the letter of the Collector, the petitioner deposited the entire dues plus interest, but still, the land was not re-conveyed to him. It is submitted that the District Collector's letter permitting the petitioner to have re-conveyance of the land was only on payment of the entire amount due under the demand notice along with interest.

6. We have considered the submissions made by the learned counsel appearing for both sides and perused the records.

7. The provisions for re-conveyance of bought-in-land was already in existence as per Government Orders dated 30.6.1965 and 9.2.1968. The earlier provision requires making the application within two years from the date of confirmation of sale. The Government felt that the said provision is causing hardship to a large number of persons. Hence, the policy was revised on 22.3.1996. In this context, it is relevant to quote paragraph 3 of the Government Order dated 22.3.1996, which is to the following effect:--

"3. Govt. are therefore pleased to order as follows:--

(i) The existing order allowing reconveyance of bought-in-land to the original owner or his undisputed heirs if applied within a period of two years from the date of confirmation of sale and after clearing the dues as provided in 4(iii) of G.O. Read as paper (1) above, will continue.

(ii) In cases wherein the date of sale confirmation of bought-in-land is on or after 1.11.1983, the requests for re-conveyance from the original owner or his undisputed heirs, will be allowed provided the current market value of the land is also remitted. Six months time from the date of issue of this order will be allowed for submitting applications for the purpose and after that time no such applications will be entertained under any circumstances.

(iii) Requests of re-conveyance of bought-in-land, the date of confirmation of sale of which is prior to 1.11.1983 will not be considered under any circumstances. The lands should remain as poromboke free from any unauthorised occupation.

(iv) District Collectors will forward applications received under (ii) above, through Board of Revenue with a detailed report indicating the current market value of the land to Govt. for final orders."

8. In the present case, the sale was confirmed in the year 1988 and the petitioner made an application for re-conveyance on 22.10.1994. The application, which was made by the petitioner was clearly beyond time. In the mean time, the Government Order dated 22.3.1996 was issued, which was relied upon by the Collector in permitting re-conveyance in favour of the petitioner by his letter dated 4.7.1996. The Collector could have permitted re-conveyance only on the basis of the revised policy since the petitioner made the application within six months from the issue of the Government Order and confirmation of the sale was subsequent to 1.11.1983. The learned Single Judge in the impugned judgment has taken the view that since the petitioner has submitted the application on 22.10.1994, at that time, the Government Order with the revised policy was not in existence, which requires remittance of current market value of the property. Hence, the said Government Order need not be applied by the petitioner. We are of the view that the view taken by the learned Single Judge is clearly erroneous.

The right for reconveyance in the present case of the petitioner would arise only after the revised policy of the Government by Government Order dated 22.3.1996. Had the policy been not revised on 22.3.1996, the petitioner had no right for re-conveyance and he has not made any application within two years from the date of confirmation of sale. The letter of the District Collector dated 4.7.1996 has also mentioned that the petitioner shall be permitted to restore the property in accordance with the decision taken by the Government. Thus, the petitioner was entitled to pay the current market value of the property as per the Government Order dated 22.3.1996 for restoration of bought-in-land. We, thus, are of the view that the view taken by the learned Single Judge that the Government Order dated 22.3.1996 was not applicable to the petitioner is incorrect and we consequently, modify the judgment of the learned Single Judge by holding that the petitioner is entitled for restoration of the property as per the letter of the Collector dated 4.7.1996 in accordance with the conditions as laid down in the Government Order dated 22.3.1996, that is; on remitting the current market value of the land. The learned Single Judge has directed the Collector to proceed further on production of a copy of the judgment. In view of the pendency of the appeal, it appears that no further steps have been taken.

Hence, we dispose of the writ appeal in the following manner in modifying the judgment of the learned Single Judge:--

"(i) The consideration of petitioner's case for reconveyance of bought-in-land as per the letter of the Collector dated 4.7.1996 shall be in accordance with the Government Order dated 22.3.1996 that is; on remittance of the current market value of the property as contemplated in the Government Order.

(ii) It shall be open for the petitioner to submit an application to the Collector along with a copy of this judgment, who may process the petitioner's claim in accordance with the procedure, if there is no other legal impediment."