
(2023) 05 KL CK 0169
In the High Court Of Kerala
Case No : Writ Petition (C) No. 9007 Of 2022

Loganathan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 24-05-2023

Acts Referred:

Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act,
1999 — Section 4, 5(1), 22

Citation : (2023) 05 KL CK 0169

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

Bench : Single Bench

Advocate : T.M.Abdul Latiff, Unni Namboodiri P.M, Jafar Khan

Final Decision : Allowed

Judgement

T.R. Ravi, J.

1. The prayer in the writ petition is for a direction to the 2nd respondent to conduct an enquiry regarding the illegal action and claim of the respondents over the property of the petitioners and for a declaration that the property of the petitioners is not hit by the provisions of the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 (hereinafter referred to as the 1999 Act). There is also a prayer for directing the 3rd respondent to provide adequate and sufficient police protection to the petitioners and their family members to enjoy their property covered by Ext.P1 document and to protect their freedom of movement through their aforesaid property.

2. The petitioners are residing in Kanarpalayam in Tamil Nadu. They have purchased properties by virtue of document No.440/1997, a copy of which is produced as Ext.P4. The predecessor-in-interest of the petitioners had obtained the properties as per sale deed No.2373/1975, a copy of which is produced as Ext.P5. Ext.P5 is a document executed by a member of Scheduled Tribes. Respondents 5 and 6 are persons claiming under the transferor in Ext.P5

document.

3. As per the provisions of the 1999 Act, transfers of Agricultural properties effected by a member of the Scheduled Tribe has an invalidity attached to it and proceedings can be initiated for restoration of possession and enjoyment of property to the member of the scheduled Tribe. However, the Act does not apply to transfers effected between 01.01.1960 and 24.01.1986, of areas less than 2 hectares.

4. The grievance of the petitioners is that respondents 5 and 6 are forcibly occupying the property, taking advantage of the fact that the petitioners are residing at Tamil Nadu on a claim that the transaction is invalid, and they are entitled to restoration of possession.

5. A counter affidavit has been filed on behalf of the respondents 5 and 6 refuting the claim and pointing out that documents have been obtained by influencing the Tribals, which is the reason why the enactment itself was brought into force. It is submitted that respondents 5 and 6 are members of a Scheduled Tribe Community, which had not been in the mainstream of the population and have been seriously affected by their ignorance of the law which resulted in properties being transferred without any consideration and without their understanding the impact of the documents.

6. The Kerala Scheduled Tribes (Restriction of Transfer and Restoration of Alienated Lands) Act, 1975, though enacted in 1975, was brought into force with effect from 1982 as per a notification which was published on 24.1.1986. Several issues cropped up in the enforcement of the provisions of the Act and to safeguard the interests of the members of the Scheduled Tribes as well as the transferees, an amendment was introduced in 1986. Later, the 1999 Act was brought into force. As per Section 22 of the 1999 Act, the 1975 Act was repealed. Actions already taken under the 1975 Act were however saved by the said Section. Section 4 of the 1999 Act says that a transfer of property by a member of a Scheduled Tribe, after the commencement of the Act, to a person other than a member of the Scheduled Tribe, without the previous consent in writing of the competent authority, shall be invalid. As per Section 5(1), any transfer of land possessed, enjoyed or owned by a member of the Scheduled Tribe to a person other than a member of the Scheduled Tribe effected on or after 1.1.1960 and before the commencement of the Act is deemed to be invalid. The proviso to Section 5(1) says that nothing in the Section shall render invalid any transfer of land possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of the Scheduled Tribe effected during the aforesaid period and the extent of which does not exceed 2 Hectares. It can thus be seen that transfers effected between 1.1.1960 and the date of commencement of the 1999 Act, of lands of extent less than 2 Hectares, are treated as valid.

7. In the case on hand, the predecessor of the petitioners had obtained the

property by virtue of document No.440/1995, a copy of which is produced as Ext.P4. The previous title deed which is produced as Ext.P5 is document No.2373/75. Exts.P4 and P5 are documents executed between 1.1.1960 and 24.1.1986. The extent of land involved is 3.04 Acres of property in Sy.No.1210/1, which is less than the limit prescribed in the proviso to Section 5(1). As such, the invalidity of the transaction as contemplated in the 1999 Act does not apply in the case of the petitioners. Respondents 5 and 6 cannot hence have a valid claim over the property on the basis of the 1999 Act. The contention raised in the counter affidavit filed by respondents 5 and 6 is that the documents have been obtained by influencing the tribals and exploiting their ignorance of the law and hence they are entitled to the benefit. Such a contention cannot be sustained in view of the specific legal provision. If respondents 5 and 6 have a case that the transfers are otherwise invalid, their remedy cannot be by taking the law into their hands and trespassing upon the property which had been sold by their predecessors.

8. The counsel for the petitioner placed reliance on two Division Bench judgments of this Court in *M/s.Harrisons Malayalam Ltd. v. State of Kerala* [2007 (4) KLT 540] and *Jithesh v. State of Kerala* [2013 (4) KLT 565] in support of the contention that encroachments to defeat personal property rights need not always require the injured person to avail of the civil remedy and it is open to the Court to issue a writ of mandamus directing the Police to maintain law and order and avert breach of peace. The Court also held that though the right of citizens to disobey a law that they think is unjust and unconstitutional is recognised, the persons so disobeying the law, whatever be their motives for doing so, will have to face the consequences, and the law must take its own course. In view of the specific provisions of the 1999 Act and the law laid down by this Court in the aforesaid decisions, the petitioner is entitled to succeed.

9. The writ petition is allowed. It is declared that properties covered by Exts.P4 and P5 do not come within the purview of the 1999 Act. There will be a direction to the 3rd respondent to provide adequate and sufficient Police protection to the petitioners and their family members to enjoy their property covered by Ext.P1 document and to protect their freedom of movement through the aforesaid property. Necessary consequential action shall be taken by the official respondents in view of the declaration made above.