(2021) 01 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11057 Of 2020

Malankara Syrian Catholicate Diocese Of Pathanamthitta	APPELLANT
Vs	
District Collector Civil Station And Ors	RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:
Kerala Education Act, 1958 — Section 6(1)

Citation : (2021) 01 KL CK 0038

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : C.S. Manilal, K. Shaj, Renjit George

Final Decision : Disposed Of

Judgement

1. The above-captioned writ petitions are filed by the Malankara Syrian Catholicate seeking to quash the communication issued by the Village Officer, Seethathode village, which has been produced as Ext.P2 in both the cases, by which the request of the petitioner to effect transfer of registry and to permit them to pay basic tax was turned down. Their prayer in these writ petitions is to quash Ext.P2 and for issuance of directions to the 2nd respondent to accept land tax and effect transfer of registry in respect of the property covered by the sale deeds produced as Ext.P1 in both the cases. In view of the nature of issues raised, both these writ petitions are taken up and disposed of by a common judgment.

2. It is the case of the petitioner that two items of property were purchased by the petitioner on the strength of sale deed No. 1304/19 and 1305/19 registered at the Perinad Sub Registrar's Office. Document No.1304/19 was executed by a certain Joseph Abraham and document No.1305/19 was executed by Samuel Abraham and both these documents were executed on 6.11.2019. Sri.Joseph Abraham and Samuel Abraham had purchased the properties by separate sale deeds executed by Sri. Sugathan and his wife Sherly. The petitioner is stated to have approached the village officer contending that he is the landholder and

requested to effect transfer of registry and to pay land tax. However, by Ext.P2 communication, his request was rejected on the ground that O.S.No.56/19 has been instituted by Sri.G.Sugathan and his wife Sherly before the Court of the Subordinate Judge, Pathanamthitta and that the plaintiffs in the said suit has objected to the transfer of registry. The petitioner was informed that his request can only be considered after the proceedings before the civil court is finalized. According to the petitioner, he is a bona fide purchaser for valid consideration and he has been in title and possession of the property from 6.11.2019. The petitioner contends that as per the provisions of the Land Tax Act, 1961, a person in whose name land is registered has a bounden duty to pay the tax due and there is a corresponding duty to the revenue authorities to collect the tax. He would further state that no interdictory orders have been passed by the civil court restraining the payment of tax by the owner of the property. According to the petitioner, the pendency of a civil suit is no ground to refuse to effect mutation as the collection of tax is purely for fiscal purposes. It is in the afore circumstances that the petitioner is before this Court with these writ petitions.

3. Sri. Sugathan is the 4th respondent in W.P.(C) No.11057 of 2020 and his wife Smt.Sherly is the 4th respondent in W.P.(C) No.11062/2020. They have filed counter affidavits stating more or less the same contentions. According to the 4th respondent, the sale deed executed by him/her in favour of the assignees are sham documents. It is further contended that the property assigned is part of a property where a school by name 'Gurukulam U.P.School, Angamoozhi' is functioning. Sri.Sugathan is the Manager of the said school. It is further contended that under Section 6(1) of the Kerala Education Act, sale, mortgage, lease, charge or transfer of possession in respect of any property of an aided school can only be made with the previous permission in writing of an officer not below the rank of District Educational Officer and any transaction made in contravention of the said provision is null and void. It is further contended that Sugathan and his wife have approached the Subordinate Court, Pathanamthitta and have instituted O.S.No.56/2019 arraying Sri. Samuel Abraham and Joseph Abraham as defendants seeking for a declaration that the sale deeds executed by them in the year 2015 in their favour are sham documents and also for declaring their title and possession. They had also filed an application for interim injunction and by order dated 14.9.2020, the defendants have been restrained from disturbing the possession of the plaintiffs over the plaint schedule property and also in exercising the right of the 1st plaintiff as Manager of the school. It is contended that as Sugathan and his wife are still in possession of the suit property, the Revenue authorities were well justified in refusing the request made by the petitioner.

4. Sri.C.S.Manilal, the learned counsel appearing for the petitioner, referred to the decisions of this Court in Rajkumar S. and Others v. Tahsildar, Devikulam (2020 (3) KHC 270), Sudan K.K. and Ors. V. State of Kerala and Ors. (2013 (4) KHC 201), George Pothen and Others v. State of Kerala and Others (2018 (4) KHC 7958) and in Larson T. George v. State of Kerala (2018 (5) KHC 960), and

contended that a landholder is liable to pay tax and the same is bound to be accepted by the revenue authorities. He would contend that in Sawarni (Smt.) v. Inderkaur (Smt.) and Others (1996 KHC 964), the Supreme Court has held that mutation of property and acceptance of land tax will not, by itself either create or extinguish title nor has it any presumptive value on title and it only enables the person in whose favour the mutation has been effected to pay land revenue in question. According to the learned counsel, the sole ground on which transfer of registry was refused was the pendency of the civil suit.

5. Sri.K.Shaj, the learned counsel appearing for the 4th respondent in the writ petitions, contended that a suit for declaring the sale deeds as sham documents is pending and there is also an order of injunction in favour of the plaintiffs. Until finality is attained in the said suit, the revenue authorities have no jurisdiction to accede to the request of the petitioner is the submission.

6. I have considered the submissions advanced. In Ext.P2 communication issued by the Village Officer, the only reason stated is that Sri.Sugathan has objected to the request made by the petitioner to effect transfer of registry on the ground that he has instituted a civil suit. No other reasons are seen stated.

7. Rule 16 of the Transfer of Registry Rules, 1966 states thus:

"The summary enquiry and the decision thereon is only an arrangement for fiscal purposes and does not affect the legal rights of any person in respect of the lands covered by the decisions in transfer of registry cases. The question of legal rights is always subject to adjudication by civil courts and pattas will be revised from time to time in accordance with judicial decisions."

8. In other words, carrying out mutation is only an arrangement for fiscal purposes and will not affect the legal rights of any person in respect of the lands covered by the decision of the revenue authority in transfer of registry cases. The legal rights of the parties can only be adjudicated by the civil courts. If the civil court interferes and adjudicates on the right, the revenue authorities are bound to revise their decision.

9. In Thulasibhai C.C.v. State of Kerala [2010 (4) KLT 215], this Court had held that even if revenue recovery proceedings are pending, there is no prohibition either in the Revenue Recovery Act or in the Transfer of Registry Rules against effecting mutation. In Sudan K.K. Ors. V. State of Kerala and Ors. [2013 (4) KLT 563], it was held by this Court that the pendency of a civil suit can never be a bar with regard to the acceptance of land tax unless specifically restrained by any order passed by the Court. A Division Bench of this Court in Sivasankaran K. v. Tahsildar, Manjeri and Ors. [2017 (3) KLT 428] relying on a decision of the Apex Court in Balwant Singh and Another v. Daulat Singh (Dead) by LRs and Ors. [(1997) 7 SCC 137] has held that mutation entries in revenue records by itself does not create any right, title or interest in the property and it is merely a record for the purpose of collection of land revenue. None of these aspects were taken note of by the Village Officer while refusing the request of the petitioner.

10. In that view of the matter, the 2nd respondent shall reconsider the application filed by the petitioner under the Transfer of Registry Rules, 1966. Before passing orders, the 2nd respondent shall hear the petitioner as well as the objectors. Orders shall be passed within a period of two months from the date of receipt of a copy of this judgment and in tune with the directions above and in accordance with law.

These writ petitions are disposed of.

