
(2025) 07 KL CK 1236

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 26256 Of 2017 and 13488 Of 2019

Rangan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 30-07-2025

Acts Referred:

Kerala Scheduled Tribes (Restriction on the Transfer of Lands and Restoration of Alienated Lands) Act, 1975 — Section 6, 11(1)
Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 — Section 5, 5(1), 5(2), 6, 22

Citation : (2025) 07 KL CK 1236

Hon'ble Judges : Harisankar V. Menon, J

Bench : Single Bench

Advocate : K.S.Madhusoodanan, S.Jessin, K.S.Mizver, P.K.Rakesh Kumar, M.M.Vinod Kumar, K.R.Vinod, M.S.Letha, M.K.Robin Raj

Final Decision : Disposed Of

Judgement

Harisankar V. Menon, J

1. These two writ petitions are filed by the respective petitioners seeking to challenge certain proceedings taken under the provisions of the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 (hereinafter referred to as the 'Act, 1999').

2. The petitioners in W.P(C) No.26256 of 2017 are stated to be the children of one deceased Chathamoppa, who is stated to have made an application under the provisions of the Kerala Scheduled Tribes (Restriction on the Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (hereinafter referred to as the 'Act, 1975'), pointing out that he had originally possessed around 12 acres of land in Survey Nos.290 and 292 of Kottathara Village; but were transferred to the party respondents somewhere during 1964 to 1990 under the guise of various sale deeds. The Revenue Divisional Officer, Ottappalam, by Ext.P2 order dated 28.08.1995 in TLA Case No.1340/1987, found that the case setup by the

deceased was correct and hence, directed the party respondents in this writ petition to deliver possession of the land to the applicant and his brother within 30 days of service of the order, further directing the applicant and his brother to pay compensation under Section 11(1) of the Act, 1975. The petitioners contend that the order at Ext.P2 has become final, since the same has not been challenged by anyone. They point out that the deceased and his brother were impoverished and hence they could not pay the compensation, on account of which they sought loans from the Government for remitting the compensation ordered to be paid by the Revenue Divisional Officer. They contend that they took possession of the land and in support of the afore contention, they also seek to rely on the photographs at Ext.P8. But, the petitioners further contend that the 3rd respondent suo motu reviewed the order at Ext.P2 and issued the order at Ext.P3 dated 10.12.2010 without notice to the petitioners, extending the benefit of the proviso to Section 5(1) of the Act, 1999. The order at Ext.P3 was challenged by the party respondents, as evidenced by Ext.P4 appeal memorandum. The District Collector- 2nd respondent, disposed of the appeal by Ext.P5 order, in the manner stated thereunder. It is challenging the orders at Exts.P5 and P3 issued as above by the 2nd and 3rd respondents, respectively, that the petitioners have filed W.P(C) No.26256 of 2017. The petitioners have also sought a direction to the respondents not to dispossess them from the land covered by Ext.P2 order.

3. The 7th respondent in W.P(C) No.26256 of 2017 has filed W.P(C) No.13488 of 2019, contending that he is the absolute owner of the landed property in Survey No. 290/1 of Kottathara Village covered by Ext.P1 sale deed No.702/1993 of SRO, Agali, executed in his favour, that tax was also being remitted in respect of the afore property, and that proceedings are being taken against the afore property by respondents 3 and 4 on the basis of a complaint filed by the 5th respondent in the writ petition, that the provisions of the Act, 1999, would not apply to the property in question, etc.

4. I have heard Sri K.S.Madhusoodanan, the learned counsel for the petitioners in W.P(C) No.26256 of 2017, Sri.K.R.Vinod, the learned counsel appearing for the party respondents in the aforesaid writ petition and for the petitioner in W.P(C) No.13488 of 2019, as well as Sri.M.K.Robin Raj, the learned Special Government Pleader (SC/ST) for the official respondents.

5. Sri. Madhusoodanan, the learned counsel for the petitioners in W.P(C) No.26256 of 2017, would contend that:

i. The proceedings under the Act, 1975, as evidenced by Ext.P2, having become final, the 3rd respondent did not have any jurisdiction to invoke the provisions of the Act, 1999.

ii. The Act, 1999, did not contain any provisions for taking suo motu steps for cancelling Ext.P2 order issued under the Act, 1975.

iii. Ext.P3 order has been issued under the Act, 1999, without issuing notice to

the petitioners. Though the petitioners filed an application under the Right to Information Act, 2005, seeking the details of the statement said to have been elicited from them, as recorded in Ext.P3 order, no reply has been received in the matter.

iv. Assuming that the provisions of the Act, 1999, would apply, insofar as the said Act can have application only in case of agricultural land, the impugned orders cannot be sustained since there is no averment or finding in the impugned orders or in the affidavits filed on behalf of the respondents that the property in question were agricultural land.

6. Sri.Vinod, the learned counsel for the petitioner in W.P(C) No.13488 of 2019 and the party respondents in W.P(C) No.26256 of 2017, would contend that:

i. The provisions of the Act, 1999, were given retrospective operation from 24.01.1986 under Section 1(3) of the Act, 1999. When that be so, the Revenue Divisional Officer was perfectly justified in invoking the provisions of the Act, 1999, even on the face of the order at Ext.P2 originally issued.

ii. He referred to the provisions of Section 6, read along with Section 5 of the Act, 1999, to contend that an order in the nature of the one at Ext.P3 could be issued by the Revenue Divisional Officer.

iii. He relied on the judgment of the Apex Court in State of Kerala and Another V. Peoples Union for Civil Liberties, Kerala State Unit and Others [(2009) 8 SCC 46], to contend that the application of the Act, 1975, with respect to non-agricultural land was proper, even after the enactment of the Act, 1999.

7. Sri.Robin Raj, the learned Special Government Pleader, sought to sustain the impugned order issued by the Revenue Divisional Officer as above. He has also produced the entire file leading to the issuance of Exts.P2 and P3 orders.

8. After considering the rival contentions as well as the connected records, the following issues arise for consideration in these writ petitions:

i. To what extent the provisions of the Act, 1999, can be applied to the facts and circumstances of the case.

ii. Is the order issued by the Revenue Divisional Officer at Ext.P3, in tune with the provisions of the Act, 1999?

iii. Is the order at Ext.P3, violative of the principles of natural justice?

9. The first issue arising for consideration is as regards the application of the provisions of the Act, 1999, in the case at hand. The petitioner in W.P(C) No.26256 of 2017 contends that, since Ext.P2 order issued under the Act, 1975, has become final, there is no requirement for invoking the provisions of the Act, 1999. Sri.Madhusoodanan, the learned counsel, would also contend that this is especially so since no power for review has been conferred under the provisions of the Act, 1999. True, as contended by the learned counsel, the proceedings

under the Act, 1975, have already been finalized as evidenced by Ext.P2. There is no provision for review of an order issued under the Act, 1975, conferred under the Act, 1999. Reference to some of the provisions of the Act, 1999, is required to be made for an effective evaluation of the said contention. Provisions of Sections 5, 6, and 22 of the Act, 1999 read as under:

"Section 5. Certain transfers to be invalid. -

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any Court, any transfer of land possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the 1st day of January, 1960, and before the commencement of this Act shall be deemed to be invalid:

Provided that nothing in this 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 a Scheduled Tribe effected during the aforesaid period and the extent of which does not exceed two hectares.

(2) Notwithstanding anything contained in sub-section

(1) or in any judgment, decree or order of any Court or other authority, in cases where the land involved in such transfer is used for agricultural purposes, the transferee thereof shall be entitled to retain in his possession the said land upto an extend of two hectares which shall be demarcated by the Revenue Divisional Officer by order and in the manner as may be prescribed.

Section 6. Allotment of lands. -

Notwithstanding anything contained in Section 5 or in any judgment, decree or order of any Court or other authority, a member of a Scheduled Tribe who had effected any transfer of land, possessed, enjoyed or owned by him, to a person other than a member of a Scheduled Tribe, between the 1st day of January, 1960 and the 24th day of January, 1986 and where an application for restoration of right under Section 6 of the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (31 of 1975) has been filed before publication of this Act in the Gazette, but the possession or enjoyment thereof, has not been restored to him and such transfer has been validated by the proviso to sub-section (1) of Section 5 or the transferee thereof has been made eligible for the retention of said land under sub-section (2) of Section 5, shall be entitled to restoration of equal extent of land by way of allotment from the Government:

Provided that where the extent of the land so allotted in respect of which there is eligibility for restoration of rights, is less than forty ares, Government shall allot the rest of the land required to make the total extent equal to forty ares (One acre).

.....

Section 22. Repeal and saving. -

(1) The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (31 of 1975) is hereby repealed.

(2) Notwithstanding the repeal of the said Act, all orders issued by the competent authority or the Revenue Divisional Officer, so far as they are not inconsistent with the provisions of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act. Every proceedings pending before a Court on a complaint under Section 14 of the said Act shall be deemed as a proceeding under the corresponding provisions of this Act and shall be continued accordingly."

Sub-section (1) to Section 5 provides that the 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 01.01.1960 shall be deemed to be invalid. The proviso thereto, however, exempts an extent of 2 hectares from the rigor of the statute. Sub-section (2) of Section 5 also extends the afore benefit up to an extent of 2 hectares, in case the transfer is of agricultural land. Provisions of Section 6 deals with a situation where an application for restoration under the provisions of Section 6 of Act, 1975, has been filed before the publication of the Act, 1999, the possession or enjoyment thereof has not been restored as prayed for by the applicant and the transfer has been validated by the proviso to sub-section (1) of Section 5 or sub-section (2) of Section 5. The applicant, in such situations, is made eligible for restoration of equal extent of land by the Government. Section 22 deals with repeal and savings, and sub-section (2) thereunder saves those orders which are not inconsistent with the provisions of the Act, 1999.

10. Sri. Vinod seeks to rely on the judgment of this Court in Sivarajan v. Prabhakaran [2016 (1) KLT 772], in support of his contention that an order in the nature of the one at Ext.P3 under the Act, 1999, can be issued. In the afore decision, this Court considered a contention raised by the appellant therein with reference to the provisions of Section 5 of the Act, 1975. Considering the afore, this Court held as under:

"7.But the proviso to S.5(1) of the 1999 Act, however, clarifies that S.5(1) shall not apply to transfers effected in respect of properties, the extent of which do not exceed two hectares. In other words, the 1999 Act which was deemed to be in force at the time of execution of Ext.A1 sale deed does not invalidate the said document as the extent of the property involved therein is only 30 cents. Further, the 1975 Act confers on persons who are deprived of lands the right to approach the competent authority for restoration of the same. The said statute also confers power on the Government to suo moto restore lands to persons who are deprived of the same. S.22 of the 1999 Act provides that only orders issued

by the competent authorities under the 1975 Act, so far as they are not inconsistent with the provisions of the 1999 Act, are saved by the said statute. The defendants have no case that orders have been issued in favour of the vendor of the plaintiff under the 1975 Act for restoration of the land. As such, even assuming that the 1975 Act was in force at the time execution of Ext.A1 sale deed and that orders were issued for restoration of the suit property, in so far as the 1975 Act has been repealed and S.22 of the 1999 Act do not save orders issued by the competent authorities under the 1975 Act which are inconsistent with the provisions of the 1999 Act, Ext.A1 sale deed will continue to be valid.”

(underlining supplied)

A reading of the afore judgment would show that it is only when an appropriate order under the Act, 1975, was not issued that this Court held that the provisions of the Act, 1999 would apply. As against the afore, in the case at hand, Ext.P2 order has already been issued under the provisions of the Act, 1975. When that be so, I am of the opinion that the provisions of the Act, 1999, would not apply to the case at hand. This is made clear under Section 6 of the Act, 1999, noticed earlier, wherein it has been categorically found that it is only in a situation where an application under the Act, 1975 has been filed, and possession or enjoyment has not been restored, that the question of seeking allotment of land from the Government arises. A perusal of the provisions of the Act, 1975, shows that Section 6 thereof provides for the issuance of an order directing the reconveyance of the property. Therefore, restoration of the possession of the property in question has already been ordered by Ext.P2 order, and merely by making reference to the provisions of Sections 5 and 22 of the Act, 1999, Ext.P3 cannot be sustained.

11. At this juncture, the contention raised by Sri.Vinod, that since the petitioners had not challenged Ext.P3 order when the same was issued, they are not entitled to maintain this writ petition, requires to be considered. True, the petitioners have not challenged Ext.P3 at that point of time. The petitioners contend that they did not challenge Ext.P3 since they were not aware of the proceedings because they were not parties before the authority when it was issued. It is also contended that the findings contained in the appellate order to the effect that a statement was elicited from the petitioners herein during the course of the proceedings under the Act, 1999, are also not correct or legal. This Court has also perused the files produced by the learned Special Government Pleader, which show that there is a statement available in the file, stated to have been elicited from the petitioners. However, even assuming that the petitioners were heard before issuing Ext.P3 order, I am of the opinion that since they contended that the Authority under the Act, 1999, had no jurisdiction to entertain the matter, the said issue can be raised at any point of time, as held by the Apex Court in *Kiran Singh and others v. Chaman Paswan and others* [AIR 1954 SC 340], wherein the Apex Court has held that it is a fundamental principle that a

decree passed by a Court without jurisdiction is a nullity and that invalidity could be set up whenever and wherever the order is sought to be enforced or relied upon, even if it is at the stage of execution. Therefore, I hold that the petitioners are justified in challenging the proceedings issued under the Act, 1999, through this writ petition. This Court also notice that if the interpretation as extended above is not applied, position may arise whereby already concluded proceedings under the Act, 1975 could be reviewed or re-opened by the statutory authorities with reference to the provisions of the Act, 1999, to the detriment of the marginalized class of society in whose benefit the provisions of Act, 1975, were introduced. The intention of the Legislature was never to disturb the concluded proceedings under the Act, 1975 by virtue of the provisions of the Act, 1999, as noticed earlier. This Court also notices the contention raised regarding the compensation ordered under Ext.P2, having not been paid, the same cannot be enforced. In my opinion, payment of compensation is not a pre-requisite for the enforcement of the order under the Act, 1975. The Act seeks to permit the initiation of recovery steps for the realisation of compensation if not paid.

12. In the light of the aforesaid finding, I hold that Ext.P3 order issued under the Act, 1999, was without jurisdiction. In view of the aforesaid finding, the third issue for consideration as above requires no further discussion. In such circumstances, I allow W.P(C) No.26256 of 2017, setting aside Ext.P3 order issued by the 3rd respondent and Ext.P5 order issued by the 2nd respondent.

13. As regards W.P(C) No.13488 of 2019, the contention raised by the petitioner is to the effect that the property which he purchased pursuant to Ext.P1 sale deed is not to be proceeded against on the basis of the provisions under the Act, 1999. The petitioner contends that he is interdicted from cutting and removing the timber from the afore property on the basis of an obstruction caused at the instance of the 5th respondent herein. However, a writ petition was already filed - W.P(C) No.26256 of 2017, wherein the petitioner in this writ petition was also impleaded, seeking to challenge the proceedings initiated under the Act, 1999, as noticed earlier. The petitioner has not disclosed the aforesaid writ petition when filing this writ petition. In any view of the matter, since I have already held that the proceedings initiated under the Act, 1999 were without jurisdiction in view of the concluded proceedings under the Act 1975, I am of the opinion that respondents 1 to 4 and 6 in this writ petition are only to notice and to verify as to whether the property covered by Ext.P1 sale deed is the very same property; which is the subject matter of Ext.P2 in W.P(C) No.26256 of 2017 and act accordingly. With these observations, this writ petition is disposed of.