

(2012) 08 KL CK 0084

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13998 of 2012

Sahaj Marg Spirituality Foundation

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Kerala Restriction on Transfer by and Restoration of Lands to the Scheduled Tribes Act, 1999 — Section 5, 7, 7(3), 7(6)

Citation : (2012) 3 KLT 931

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : Anil D. Nair, Anil S. Raj, K.N. Rajani, Anila Peter and J. Vivek George, for the Appellant; Joseph George, Government Pleader, for the Respondent

Judgement

A.M. Shaffique

1. The petitioner was in possession of certain item of land which was covered by Ext.P11. Proceedings were initiated by the Revenue Divisional Officer u/S. 7 of the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 and Ext.P11 is the order passed. The complaint of the petitioner is that even before giving him an opportunity to file an appeal the land was taken possession on 08.06.2012, which according to him is bad in law. Hence the petitioner seeks to restore the said land since he had filed an appeal within the period prescribed under the Act. Learned counsel refers to Section 7(3), (5) and (6) of the Act which reads as under.

S. 7. Reconveyance of land:-

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(3) On receipt of an application under sub-section (2), the Revenue Divisional Officer shall make or cause to be made, necessary inquiries in respect of such application and if he is satisfied that the applicant or the person on whose behalf the application has been made is entitled to restoration of possession or

enjoyment, as the case may be, of the land mentioned in the application, he shall, by order, direct the person in possession or enjoyment of such land to deliver possession thereof to the applicant or to the person on whose behalf the application has been made, or as the case may be, to allow him to enjoy such land:

Provided that no order under this sub-section shall be made unless the person in possession or enjoyment of the land has been given a reasonable opportunity of being heard in the matter.

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(5) Any person aggrieved by an order of the Revenue Divisional Officer under sub-section (3) or sub-section (2) of Section 5 may, within a period of thirty days from the date of service of the order, prefer an appeal the competent authority, and the decision of the competent authority on such appeal shall be final and shall not be called in question in any Court of law.

(6) Where an order under sub-section (3) has not been complied with, and

(a) an appeal has not been preferred within the time allowed for such appeal; or

(b) an appeal having been preferred has been dismissed; the Revenue Divisional Officer shall cause the land to which the order relates to be delivered to the transferor by putting him in possession or enjoyment of that land if need be, by evicting any person who refuses to vacate the same.

2. It is not in dispute that an order had been passed by the Revenue Divisional Officer on 30.5.2012 and according to the petitioner it was served on the petitioner on 1.6.2012. But it is stated in the operative portion of the order that the petitioner has to deliver possession of the property within 3 days from the date of receipt of the order. Apparently this is not contemplated under the provisions of the Act. There is no such provision u/S. 7 to call upon the petitioner to surrender possession within 3 days from the date of receiving the order. Still further it is seen from the sub-s.(5) of S. 7 that the order becomes final only after the appeal is decided. Again sub-s.(6) indicates, that when an order under sub-s.(3) has not been complied with and an appeal has not been preferred during the time allowed for such appeal or the appeal which is preferred is dismissed the R.D.O. shall cause the land to which the order relates to be delivered to the transferor by putting him in possession. Therefore, going by the provisions of Act, in a case where an appeal is filed, unless it become final, Revenue Divisional Officer does not have jurisdiction to take possession of the land and vacate the person in possession and therefore the action taken by the Revenue Divisional Officer is clearly bad in law. The third respondent had filed a counter affidavit stating the circumstances under which the power had been exercised. But in respect of the grounds raised by the petitioner, no specific counter is filed. Under these circumstance, I am of the view that this Writ Petition is only to be allowed and Ext. P11 order to the extend it states that the

possession has to be taken within the period of three days is set aside. It is open for the petitioner to pursue the remedies in the appeal filed as Ext. P12.

In the mean time, the possession shall be restored to the petitioner till the disposal of the appeal which shall remain in force as provided under S. 7(6) of the Act.