

(2022) 02 KL CK 0087
In the High Court Of Kerala
Case No : CON.CASE(C) NO. 2065 Of 2020

Sri. Mohandas N.S

APPELLANT

Vs

Smt. Rani P. Eldo

RESPONDENT

Date of Decision : 10-02-2022

Acts Referred:

Transfer of Registry Rules, 1966 — Rule 10, 28

Citation : (2022) 02 KL CK 0087

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : Anil S.Raj, K.N.Rajani, Radhika Rajasekharan P., Anila Peter, Sajen Thampan, Tek Chand

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.

1. This Contempt Case is filed complaining that the directives contained in the judgment dated 22nd June, 2020 in W.A. No. 759 of 2020 are not

complied with in accordance with the directions issued by this Court. The subject issue that was considered by this Court in the writ appeal arose

under the provisions of the Transfer of Registry Rules, 1966 ('Rules, 1966' for short).

2. In fact, the learned single Judge directed the Tahsildar, Kanayannur Taluk, Ernakulam to take a decision in respect of the transfer of registry sought

for by the petitioner on account of 0.45 Ares of property situated in survey No. 2549/1 of Ernakulam Village, in the light of Ext. P1 registered sale

deed under Rule 28 of the Rules, 1966 dealing with transfer in favour of a person proving title by adverse possession for 12 years or more.

3. In the appeal, basically, this Court has confirmed the order passed by the

learned single Judge, however, clarifying the judgment of the learned single Judge and directing the Tahsildar, Kanayannur Taluk to comply with the directions contained in the judgment of the learned single Judge, taking into account the contentions put forth by the appellant, however, without insisting for the production of the purchase certificate issued by the Land Tribunal under the Kerala Land Reforms Act, 1963.

4. In fact, the Tahsildar, Kanayannur Taluk has passed Annexure A5 order dated 08.10.2020 after a detailed scrutiny of the issues raised by the petitioner and declining the transfer of registry to the above extent of the property, basically holding as follows:

On verification of a copy of document No.2273/1957 it is seen that Velayudha Menon sold to Bhaskara Menon 12.75 cents in Sy.No.602/7 and 1/10 cents in Sy.No.602/9. Vide document No.2024/79 Bhaskara Menon sold 1.37 Ares in Sy.No.2549/1 to Gopalan Nair. In the description in the schedule, the old Survey number is

narrated as 602/7. In that no excess land is seen conveyed and boundaries are noted. It is seen in the document No.1838/17 an extent of 1.82 Ares in old Sy.No.602/7,

Sy.No.2549/1 owned by Gopalan Nair is seen transferred to the applicant. As per statement it is submitted that, from 1957 onwards the property is in the hands of predecessors hence an order has to be passed under R.28. Gopalan Nair got only 1.37 Ares and no document was produced to show how he got excess land.

Applicant got property in 2017. R.28 is used in cases where no document could be produced for the properties in continuous possession and ownership for 12 years

and more. Applicant got the property only on 22/5/2017. Hence no action can be taken as per R.28.â??

5. Therefore, according to the petitioner in the Contempt Petition, the specific directions issued by this Court on the basis of Rules 10 and 28 of the

Rules, 1966 have not been undertaken by the respondent and thus, violated the directions contained in the judgment of this Court. It is also the case of

the learned counsel for the petitioner that Rule 10 of the Rules, 1966 was specifically referred to by this Court in order to convey to the Tahasildar the

manner in which the power is to be exercised by the Tahsildar and therefore, the Tahsildar was duty bound to carry out a detailed enquiry with

respect to the adverse possession enjoyed by the petitioner over the afore extent

of property; but, the Tahsildar has not undertaken such an exercise, which is tantamount to a clear contempt, being a deliberate attempt to interfere with the authority exercised by this Court through the judgment in question.

6. On the other hand, the learned Senior Government Pleader, has invited our attention to Rule 28 of the Rules, 1966 and submitted that Rule 28

applies only in the case of parties who have no documents of title, in a summary enquiry, and are shown to have been in actual, continuous and

uninterrupted possession as reputed owners for 12 years; and in such circumstances alone, a detailed enquiry was to be undertaken by the Tahsildar. It

is further submitted that, in the instant case, the order of the Tahsildar clearly shows that the petitioner has purchased the property on 22.05.2017 and

there is no recital at all with respect to any excess land. Therefore, the sum and substance of the contention is that the Tahsildar was duty bound to

conduct an enquiry in regard to the adverse possession, only when no document of title is produced before the Tahsildar for conducting the enquiry in

contemplation of Rule 28 of the Rules, 1966.

7. But, this is a case where the petitioner has produced the registered document having an extent of 1.82 Ares in old survey number 602/7

corresponding to new survey No. 2549/1 held by one Gopalan Nair, the title of which could not be traced. Therefore, according to the learned Senior

Government Pleader, the provisions of Rule 28 of the Rules, 1966 would not help the petitioner, and therefore there is no wilful or deliberate attempt on

the part of the Tahsildar in complying with the directions issued by this Court.

8. We have heard the learned counsel for the petitioner Sri. Anil S. Raj and the learned Senior Government Pleader Sri. Tek Chand for the

respondent, and perused the pleadings and materials on record.

9. In fact, as directed by this Court, the respondent has passed Annexure A9 order dated 08.10.2020. The contention advanced by the petitioner is that

the order is not passed in accordance with the directions contained in the judgment and no enquiry was undertaken by the respondent. In our

considered opinion, on going through our judgment, it is clear that the nature of the power that is to be exercised by the Tahsildar as well as the Village

Officer under the Rules, 1966 is explained and certain observations are also made in that regard. But, we have never issued any specific direction to

the Tahasildar to conduct the enquiry in a particular manner. We are saying so because, Rules, 1966 clearly and categorically specifies the manner in

which the enquiries are to be conducted. Anyhow, the Tahsildar has conducted an enquiry, which, according to him, was done by exercising the

powers conferred under the Rules, 1966.

10. In our view, while considering a contempt petition, the court needs only to look into whether there was any deliberate or wilful disobedience, or

attempt made by the contemnor in complying with the directions issued by the court.

11. Having gone through the order passed by the Tahsildar, we have no hesitation to hold that the Tahsildar had conducted an enquiry on the basis of

the documents produced by the petitioner and arrived at the conclusions based on the document of title of the petitioner and interpreting Rule 28 of the

Rules, 1966.

12. Having analyzed the situation, we are of the definite opinion that even if there is any illegality in the order passed by the Tahsildar, that is a matter

to be looked into by the appellate authority, if and when the order is challenged. Having gone through the judgment, we do not find any deliberate

attempt made by the respondent to interfere with the authority of this Court, in order to proceed against the respondent under the Contempt of Courts

Act, 1971 and the Rules constituted thereunder, nor we do not think that the order is in any manner contumacious in nature.

Needless to say, the Contempt Case fails and accordingly, it is dismissed.