(2021) 06 KL CK 0436

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10953 Of 2021

Sumesh T.G — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision : 28-06-2021

Acts Referred:

Kerala Land Reforms Act, 1964 — Section 81(1)(e)

Citation : (2021) 06 KL CK 0436

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : Rejeesh M.A, Anoop Antony, Varada Surendran, Amminikutty K

Final Decision : Disposed Of

Judgement

Raja Vijayaraghavan V, J

1. The petitioner states that he is the absolute owner in title and possession of property having an extent of 4.05 Ares in survey No.204/1-1-2 of

Kumaly village. The said property was acquired by the petitioner on the cover of Exhibit P1 & P2 sale deeds. He contends that he has effected

mutation in his favour and has been paying land tax. He applied before the revenue authorities and they have issued possession certificate as well as

location certificate to the petitioner. As the petitioner required â??Nijasthithi certificateâ??, he approached the 3rd respondent and submitted a

request. It is contended that a report was called for from the 4th respondent and the said authority has issued Ext.P7 recommending the issuance of

the certificate. However, by Ext.P8 order, the 3rd respondent refused to issue revenue records on the ground that the Land Resumption

Commissioner has interdicted the same. The petitioner contends that this Court by Ext.P9 and P10 judgments have directed the concerned Village

Officers to issue the revenue certificates without any adverse entries. It is in the afore circumstances that the petitioner has approached this Court

seeking to quash Ext.P8 and for a further direction to the 3rd respondent to issue revenue certificate as requested for in respect of properties covered

under Exts.P1 and P2 sale deeds.

2. I have heard Sri. Rejeesh M.A., the learned counsel appearing for the petitioner and the learned Government Pleader.

3. Sri. Rejeesh submitted that the order passed by the Special officer has been set aside by this Court by judgment in W.P.(C) No.40002 of 2016 and

connected cases. While setting aside the order, it was held that that proceedings under the Land Conservancy Act, 1957, can be invoked only for the

purpose of resumption or removal of encroachment from Government lands and not in respect of property owned by individuals and obtained by deeds

which have been legally executed and registered in accordance with law. The revenue authorities were ordered to accept basic tax from the

petitioners therein on the strength of the title deeds relied on by them subject to adjudication of title in proceedings, if any, initiated by the Government.

4. I have heard the learned Government Pleader as well and have considered the submissions made across the Bar.

5. Exts.P1 and P2 sale deeds show that the petitioner has acquired title over the property covered under the deed. He has effected mutation and has

been paying tax. His request for issuance of â??Nijasthithi certificateâ?? was refused in view of certain orders issued by the Land Resumption

Commissioner. As rightly pointed out by the learned counsel, this Court by judgment dated 7.11.2018 in W.P.(C) No.40002 of 2016 had interfered with

the said order and had held that the rights of individuals to enjoy the property cannot be interdicted by such proceedings. It was further held that the

remedy of the respondent - State Government is to institute appropriate civil suits before the competent Civil Court in the matter of title and not by

issuing the impugned proceedings under the Land Conservancy Act. The same view has been taken by this Court in Exts.P9 and P10 judgments as

well.

6. The respondents have raised a contention that the property owned by the petitioner is part of larger extents of properties, which had earlier secured

exemption under Sec.81(1) (e) of the Kerala Land Reforms Act, 1964, on the ground that it is plantation land. It is contended that the fragmented plots

of land are being used for non exempted purposes and therefore illegal. A Division Bench of this Court in the common judgment dated 04.04.2017 in

W.A.Nos.564 & 612 of 2017 has held that the question as to whether the petitioners-landowners would be actually using the lands in question for non-

exempted purposes and thus violating the exemption clause would arise only when they actually use of the land for quarrying purposes and not at the

stage when they seek a Possession Certificate for any such prospective use and that those objections and contentions are not relevant and germane

for refusal of issuance of such revenue certificates and that the respondent-State authorities are fully at liberty to raise all such contentions and such

objections at the appropriate time when a cause of action in that regard actually arises. In view of the said judgment, the respondents are obliged in

law to consider the request of the petitioner without being burdened down by the provisions of the Land Reforms Act. Furthermore, this Court in

Devassia v. Sub Registrar [2015(1) KLT 825] has held that the provisions of the KLR Act do not place any embargo on transfer and the transfer of

registry is for fiscal purposes on transfer and that said Act also does not curtail fragmentation of exempted lands from the purview of ceiling, but that

exempted category of land, to have continuity of the qualification of exemption, the alienee or the transferee shall use the land for any of the purposes,

for which exemption would be granted and if the land is used for a non-exempted purpose, either before or after the purchase, then certainly the

respondent-State authorities may have the competence to take appropriate action as is warranted on law and facts, in that regard. In that view of the

matter, the contention forcefully advanced by the learned Government Pleader cannot be sustained.

Resultantly, this writ petition is disposed of directing the concerned respondent to forthwith take up the request made by the petitioner for issuance of

revenue certificates including the â??Nijasthithi certificateâ?? as recommended by the 4th respondent in Ext.P7 in respect of the properties covered

under Ext.P1 and P2 and shall issue the same to the petitioner. Before parting, it is made clear that the directions issued as aforesaid will be subject to

the adjudication of the matters involved in a properly instituted civil suit or such other proceedings.

