
(2012) 12 KL CK 0002
In the High Court Of Kerala
Case No : Writ Petition (C) No. 15082 of 2012

Synudheen

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Transfer of Registry Rules, 1966 — Rule 3(vi)

Citation : (2013) 1 KLJ 453 : (2013) 1 KLT 221

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.R. Venkatesh, for the Appellant; K.C. Vincent (GP), for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—All these petitioners are having various items of properties in Alathur Village, Palakkad District. The first petitioner had obtained 0.02.42 hectares of land in Sy. No. and 267/4 and 267/3, Block No. 28, as per a registered gift deed No. 2062/2000 of Sub Reg Office, Alathur executed by his brother. Ext. P1 is the copy of the same. Ext. P2 is the registered Jenmom Assignment Deed No. 2404/1997 by which his brother obtained property from one Mani and Sundari. They obtained the property as per Assign Deed No. 1937/1977 executed on behalf of the Alathur Brahmananda Swamy Sivayogi Sidhasramam by its President. Ext. P3 shows that the first petitioner was paying tax. Ext. P4 is the copy of the location certificate. Ext. P5 is the copy of the possession certificate and Ext. P6 is the copy of the permission issued under the Kerala Land Utilisation Order. The petitioners now want to assign their property. It is mentioned in the Writ Petition that National Land Records Modernisation Programme as contemplated under R. 3(vi) of the Transfer of Registry Rules, 1966 has been sought to be implemented as per Ext. P7 notification and Ext. P8 is the notification issued by the Government for implementing the same in certain villages including the villages covered by the two Sub Registrars Offices,

viz., Alathur and Vadakkancherry. The said system envisages that as a pre condition it is mandatory for the assign obtain an extract of the Record of Right from the village concerned. The Reco Right is issued as per the data available in the software Revenue Land Info System (RELIS). According to the petitioners, there had been so-many mistakes and errors in the data contrary to the manual records. Even persons who are holding properties and are remitting tax regularly and have obtained possession certificates are denied the issuance of extract of Record of Right. Now the first petitioner is denied the right to transfer his property. The said right is protected by the Constitution as per the Transfer of Property Act. The Tahsildar, by Ext. P9 which was issued in an application filed by the first petitioner for Record of Right, took the view that the assignment in 1977 by the Sidhasramam is not valid. It is submitted that the Tahsildar has no power to go into the validity of a document and therefore the action is blatantly illegal. For preparing the Record of Right, he cannot go into the validity of the title. It is also the case of the petitioner except in Alathur and Vadakkancherry, Ext. P8 notification has not been implemented in any other villages.

2. The second petitioner is also denied the Record of Right in respect of his property. The third petitioner is a licenced document writer who has joined the Writ Petition to espouse the grievance raised by similarly placed persons as that of the first and second petitioners. It is submitted that because of the new system, there is almost a 50% drop in the registration of documents in both the Sub Registrars Offices.

3. It is submitted that the guidelines for online transfer as per Ext. P11 is inconsistent with the provisions of the Transfer of Registry Rules, 1966. The petitioners rely upon Ext. P12 to show that therein, it is stated that insistence on Record of Right and online transfer of registry need be only on properties where in the Transfer of Registry/Pokkuvaravu/Mutation can be effected. It will also show that the actions will have to be in tune with the provisions of the Transfer of Registry Rules and Registration Rules. Therefore, it is contended that there cannot be any prejudgment on the documents proposed to be executed as now attempted by the Tahsildar by Ext. P9. The petitioners therefore seek to quash Exts. P9 and P11 and seek for a direction to register the documents which are otherwise in order, without insisting for production of Record of Right extract.

4. The fifth respondent has filed a detailed statement explaining the various steps taken to prepare the Record of Right. The sum and substance of the contention is that the online transfer system is introduced as an experimental basis. The new scheme is to be implemented in two villages, viz., Alathur and Vadakkancherry apart from certain 16 other villages. The details of the applications received have also been stated. It is also stated that production of Record of Right is insisted as mandatory for registration to avoid illegal transfer. When the Record of Right is issued, the registering officer can effect transfer and the same will be received online in the concerned village office. This helps to effect mutation on the basis of the registration of documents.

5. In the counter affidavit filed on behalf of the first respondent, Exts. R1 (a) and R1 (b) Government Orders have been produced. The same governs the e-District Project launched in Kerala under the National e-governance Plan. It is stated that a modified programme, viz., National Land Records Modernisation Programme (NLRNP) has been formulated by the Government of India. The same is being implemented in the State through three departments, viz. Revenue Department, Survey and Land Records Department and Registration Department. The computerisation of Land Records is one of the major components of the scheme. The Department of Land Revenue has developed a software, viz., Revenue Land Information System (RELIS) for online mutation/transfer of registry with the support of National Informatic Centre. Sanction was accorded by the Government as per Ext. R1 (c) for implementing the system in Palakkad District on a pilot basis and the Government has amended the Transfer of Registry Rules and insisted Form IB along with applications for effecting transfer of registry.

6. Alathur Village is one of the resurveyed villages in Alathur Taluk and land transactions are made after effecting transfer of registry so as to ensure updation of records through online transfer of registry. As per the system the buyers need not go to the village office for effecting transfer of registry subsequent to registration. When the petitioners documents were verified, it is gathered that the property cannot be alienated. That is why the Tahsildar has rejected the application for mutation. It is mentioned that all the documents are prepared by hiding the facts mentioned in will No. 1150/1929 and it is clear that subsequent documents are not having any legal validity as everything void ab initio. As per the Transfer of Registry Rules, the transfer of registry can be effected only on a land, where the seller has absolute ownership. As per the circular from the Land Revenue Commissioner, for effecting transfer of registry in the case of partial transaction of land, the Tahsildar is the authorised person and with the concurrence of the Tahsildar, the Village Officer can effect mutation. Hence, no invalidity can be attached to the order passed by the Tahsildar. It is further explained in para 6 that the new system will avoid the labour of the persons involved. Fraudulent and shabby transactions of land are also sought to be avoided by implementation of the project and the online mutation process in the two villages are being done on a pilot basis.

7. Learned counsel for the petitioners submitted that Ext. P9 order cannot be supported for any reason. It is submitted that the Tahsildar cannot sit in appeal over the validity of a registered document and under any law no such power is conferred on the Tahsildar. The validity or otherwise of a document can be considered only by a competent court in a civil suit, if any, filed by the parties concerned. Herein, there is no declaration of invalidity of title by any competent court. It is therefore submitted that the Tahsildar cannot on a mere look up of the document, state that the same is invalid and cannot be acted upon.

8. It is further submitted that the system that is now being introduced, has not been completed even after a reasonable period is over. It is submitted that the

right of a person for a transfer of his property cannot depend upon the steps, if any, taken for modernisation i of maintenance of the records and system. The property owner has got every right to transfer his property and registration cannot be denied if the document satisfies with all the other conditions stipulated in the Registration Act and Rules. An authority other than Sub Registrar cannot prevent or interfere with the process of registration of a document. There is no valid law to support any such action. It is therefore submitted that Ext. P9 cannot be supported.

9. Learned Government Pleader explained that the proceedings have been initiated in order to have a foolproof system of transfer of registry. Various datas are being collected and they are fed into the system for which a software has been developed. Once the entire components are satisfied, then the system can function smoothly and effectively and all the related records will reflect the correct position and correct entries regarding the transactions, the details of the property owners and the property and other factors. Therefore, the project itself is with a laudable object to streamline the affairs in the department and to avoid any fraudulent transfers.

10. With regard to Ext. P9, learned Government Pleader submitted that there is no invalidity in the order passed by the Tahsildar. Learned Government Pleader also made available the amendment made to the Transfer of Registry Rules, 1966, by G.O. (MS) No. 227/2011/RD dated 16.6.2011. Therein, in clause (vi) of sub-r. (a) of R. 3, the following amendment has been made:

(vi) The Registering Officer shall see that the application for transfer of registry are forwarded to the Tahsildar/Village Officer in a complete form. In the villages notified from time to time under the National Land Records Modernisation Programme, the application in Form IB appended to this Rules should be forwarded online wherever possible for effecting transfer of registry.

It is submitted that the parties will have to co-operate for implementing such a system.

11. Evidently, the Registration Rules have not been amended to have any such system that before registration of the document Record of Right has to be obtained or produced. Therefore, it can be seen that the parties cannot be subjected to such compulsion to obtain Record of Right as a pre condition for registration. It can only be optional for the party concerned. Otherwise, it will interfere with the right of a property owner to transfer his property in terms of his requirement. Of course, the preparation of Record of Right in respect of every item of land may be a laudable idea. But in many cases it may require further verification also and a party cannot be told that his property cannot be sold unless steps for preparing Record of Right is completed. No intending purchaser will wait indefinitely also. The property owners may have to transfer of their property for many urgent purposes such as for purchase of another property; to meet the liability towards loan, if any taken; for meeting the expenses for

education of children; for meeting the marriage expenses of children and the like. Therefore, all those aspects will have to be considered, as rightly pointed out by the learned counsel for the petitioners. The hardship of the parties should be avoided also, if stringent conditions not required under the Registration Act and Rules are imposed and Record of Flight is required for a transfer, that too as a pre condition, then the system will not work at all and the matter will get unduly delayed.

12. Therefore, as far as Ext. P9 is concerned, I am of the view that the petitioners' contentions are well founded. The Tahsildar cannot decide on the validity of a document and the title of a previous owner. In fact, under R. 16 of the Transfer of Registry Rules, it is made clear that mutation effected will not affect the legal right of any true owner. Therefore, as far as the title of the petitioners and the previous owners are concerned, the Tahsildar cannot sit in appeal over the documents itself. The prior documents have been duly registered and they have not been set aside in any civil proceedings. Therefore, they can be acted upon and no objection can be taken on the basis of the alleged incompetence. Ext. P9 is thus quashed. It is made clear that the parties have the option to have Record of Right, but for registration of the document of sale deed etc., the production of Record of Right will not be insisted as a pre condition. If the document fulfills all the requirements under the Registration Act and Rules, the same will be registered also.

The Writ Petition is allowed as above. No costs.