
(2009) 07 KL CK 0006

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16558 of 2009

Thankamma Joseph and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 13, 59(2), 72, 72(1), 72MM
Kerala Revenue Recovery Act, 1968 — Section 44, 44(1), 44(2), 44(3)

Citation : (2009) 07 KL CK 0006

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

**Advocate : Subhash Cyriac, for the Appellant; C.K. Govindan, Government
Pleader for Respondents 1 to 3, for the Respondent**

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.—The grievance of the Petitioner is against the steps taken by the Respondents, particularly the 2nd Respondent, in proceeding against the properties belonging to the Petitioners covered by Exts. P-1 to P-5 sale deeds/settlement deeds, in respect of the amounts allegedly due from one Mr. Abu, who reportedly owed huge amounts to the Government by way of arrears of Agricultural Income Tax. The case of the Petitioner is as follows:

2. The father of the first Petitioner (grandfather of the Petitioners 2 to 6) was a cultivating tenant in respect of the property in question and one Mr. Kooleri Valia Peedikayil Muhammed Kunhi was the jenmi. When the application preferred before the Land Tribunal for assigning the land in question was rejected by the said authority, the father of the first Petitioner had approached this Court by filing O.P. No. 6811 of 1982. Pursuant to the direction given by the Court, it was reported by the authorized officer that the Petitioner's father was in possession of the holding for more than 25 years and as such, the petition u/s 72MM of the KLR Act, 1963 was maintainable (para. 1 of Ext. P-6). It was further held in para.4 of the very same verdict that the real owner (the first Respondent in OP

6811/1982) had actually conceded that the Petitioner therein was in possession of the holding as a cultivating tenant and as such entitled to the assignment of the right, title and interest of the landowner. It was in the said circumstance, that the order passed by the Land Tribunal was set aside and the Land Tribunal was directed by this Court to pass appropriate orders assigning the right, title and interest of the landowner in respect of the holding, in favour of the Petitioner in the O.P. Admittedly Ext. P-6 judgment passed by this Court declaring the rights and liberties of the Petitioner therein has not been subjected to challenge so far. On other hand, it was pursuant to the said verdict, that the Land Tribunal issued Ext. P-7 Assignment Certificate (Patta) on 13-2-1989 in favour of the concerned Petitioner, whereby all the rights and interest including ownership, possession and title were conveyed to the said person. It was accordingly, that the property was subsequently conveyed by the said person (father of the present Petitioners) as per Exts. P-1 to P-5 settlement deed/sale deeds dated 27-10-1992. This being the position, the case of the Petitioners that they are having absolute ownership, exclusive possession and clear marketable title over the property in question cannot be doubted in any manner.

3. In the meanwhile, the present Respondents initiated steps against the Petitioners under the Kerala Revenue Recovery Act. As per Exts.P-8 and P-9 notices which show that the amount specified therein was due to the Government from one Mr. T.T.P. Abu @ Abdulla, South Trikaripur Village and that the property being enjoyed by the Petitioners was liable to be proceeded with, since according to the Respondents, as per the basic tax register, it actually belonged to the said defaulter by name Abu. It is also stated that the conveyance if any, was hit by the mandate u/s 44 of the Revenue Recovery Act. Met with the said circumstances, the Petitioners challenged Exts.P-8 and P-9 by filing WP(C) No. 33689/2000 before this Court which invited Ext. P-10 judgment. After hearing both sides, this Court specifically directed the 2nd Respondent Tahsildar to ascertain whether the defaulter had made any transaction by sale or otherwise to avoid recovery and if so, to consider the next question as to the validity of the sale with reference to the provisions of the AIT Act and RR Act; to be followed by further consequential steps, if the transaction were invalid. It was allegedly in compliance of the said direction, that Ext. P-11 claim petition filed by the Petitioners was considered by the 2nd Respondent leading to Ext. P-12 order; whereby it is simply said that the property actually belonged to the defaulter Shri T.T.P. Abu and hence that the transaction involving acquisition of the right under the K.L.R. Act was clearly hit by Section 44 of the Revenue Recovery Act. The 2nd Respondent held as per Ext. 12 order that, despite issuance of notice to the parties concerned, only the Petitioners turned up, but they did not produce requisite materials to substantiate their case and hence that further steps were liable to be proceeded against, to recover the property and realize the due amount.

4. A statement has been filed from the part of the Respondents 1 and 2 seeking to support the course and steps taken by the 2nd Respondent and to sustain Ext.

P-12. As observed herein before, the specific direction given by this Court as per Ext. P-10 was to ascertain whether the defaulter had made any transaction or sale to avoid recovery. Admittedly, the defaulter was none other than one Mr. Abu. There is no whisper in Ext. P-12, as to any such transfer or sale as conducted by the defaulter Abu in favour of the Petitioners or their predecessor in interest. The connection of the defaulter Abu with the Petitioners or the predecessor in interest has also not been adverted to. That apart, how the property happened to be conveyed by Mr. Abu, reaching the same at the hands of the present Petitioner, is not discussed anywhere in Ext. P-12. Equally or more important is to note that absolutely no reference has been made to the earlier proceedings, particularly Exhibit P-6 judgment, whereby a declaratory relief was given holding that the land in question was liable to be assigned in the name of the father of the first Petitioner (Vendor to Ext. P-1 to P-5 Settlement deed/Sale deed), pursuant to which, Ext. P-7 patta was issued in favour of the said person. On this score alone, Ext. P-12 is liable to be set aside.

5. The only reliance placed to sustain the action pursued by the 2nd Respondent is with reference to Section 44 of the Kerala Revenue Recovery Act which is extracted below:

44(1): Any engagement entered into by the defaulter with any one in respect of any immovable property after the service of the written demand on him shall not be binding upon the Government.

(2) Any transfer of immovable property made by a defaulter after public revenue due on any land from him has fallen in arrear, with intent to defeat or delay the recovery of such arrear, shall not be binding upon the Government.

(3) Where a defaulter transfers immovable property to a near relative or for grossly inadequate consideration after public revenue due on any land from him has fallen in arrear, it shall be presumed until the contrary is proved, that such transfer is made with intent to defeat or delay the recovery of such arrear, and the Collector or the authorized officer may subject to the order of a competent Court, proceed to recover such arrear of public revenue by attachment and sale of the property so transferred, as if such transfer has not taken place:

Provided that, before proceeding to attach such property, the Collector or the authorized officer shall

(i) give the defaulter an opportunity of being heard; and

(ii) record his reasons therefore in writing.

6. Obviously, the above provision is attracted only under three different circumstances as stipulated therein; where the involvement of the defaulter in relation to the transfer of immovable property in question is very much essential. In the instant case, admittedly since the defaulter is none other than Abu and since there is no case for the Respondents that Abu had transferred the property to the Petitioners or to the predecessor in interest (father of the 1st Petitioner)

so as to evade the payment of arrears, the reliance placed on the said provision is quite wrong and misconceived. To put it more clear, the situation contemplated under Sub-section 1 is not attracted, since there is no question of any conveyance to the Petitioner or the predecessor in interest after serving any written demand on Mr. Abu. Similarly, Sub-section 2 is not attracted, since there is no finding or materials to show that Abu had transferred the land in question and that too, to defeat the payment of arrears. Coming to Sub-section 3. the same will be attracted only if the transfer of immovable property is to near relatives or for grossly inadequate consideration after public revenue due on land had fallen in arrears. In the above circumstances, the idea of the 2nd Respondent as to the scope and ambit of the legal provisions is also not correct, if not deplorably poor in all respects.

7. Yet another aspect to be noted in this regard is the mandate u/s 72 of the Kerala Land Reforms Act, which is extracted below:

72(1) On a date to be notified by the Government in this behalf in the Gazette, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of kudiyruppus and holders of karaimas) entitled to fixity of tenure u/s 13 and in respect of which certificates of purchase under Sub-section (2) of Section 59 have not been issued, shall, subject to the provisions of this section, vest in the Government free from all encumbrances created by the landowners and intermediaries and subsisting thereon on the said date:

Provided that nothing contained in this sub-section shall apply to a holding or part of a holding in respect of which an application for resumption under the provisions of this Act is pending on such date before any Court or Tribunal or in appeal or revision.

(2) Where in the case of a holding or part of a holding mentioned in the proviso to Sub-section (1), the order rejecting the application for resumption, either in part or in full, has become final, the right, title and interest of the landowner and the intermediaries, if any, of the holding or part of the holding, as the case may be, in respect of which resumption has been finally rejected, vest in the Government free from all encumbrances created by the landowner and the intermediaries, if any, and subsisting thereon on the said date.

(3) Where any land or portion of a land is restored to the possession of any person under the provisions of this Act after the date of notified under Sub-section (1), the right, title and interest of the landowner and intermediaries, if any, in respect of such land or portion of land shall, from the date of such restoration, vest in the Government free from all encumbrances created by the landowner and intermediaries and subsisting thereon on the said date.

(4) Where in the case of a holding or part of a holding, the landowner or an intermediary is a minor or a person of unsound mind or a member of the Armed Forces or a seaman or a legal representative of any such member or seaman, or

a small holder, the right, title and interest of the landowner and intermediaries, if any, in respect of such holding or part of a holding shall vest in the Government--

(a) on the expiry of six months from the commencement of the Kerala Land Reforms (Amendment) Act, 1969, or on the date notified under Sub-section (1), whichever is later, in cases where no application for resumption of the holding or part of the holding has been preferred;

(b) in any case where application for resumption has been preferred, on the date of which the order rejecting such application, either in part or in full, has become final or on the date notified under Sub-section (1), whichever is later.

(5) Where an intermediary has resumed any land under the provisions of this Act the right, title and interest of the landowner and the other intermediaries, if any, in respect of the said land shall vest in the Government free from all encumbrances created by the landowner and the other intermediaries, with effect from the date of resumption or the date notified under Sub-section (1), whichever is later.

8. By virtue of the above provisions, the concerned property will stand vested with the Government, free from all encumbrances created by the landowners and intermediaries and subsisting thereon as on the said date. Admittedly, the matter was considered by this Court as to the claim put forth by the Vendor to Exts. P-1 to P-5 title deeds, whereby it was held that the Petitioner therein (father of the 1st Petitioner) who was a cultivating tenant was entitled to get the land assigned in his favour and necessary direction was given to the Land Tribunal to pass appropriate orders in this regard. It was accordingly, that the matter was considered and Ext. P-7 Assignment Certificate (Patta) was issued. It also remains to be an admitted fact that the Respondents have not so far chosen to challenge Ext. P-6 judgment/Ext. P-7 Patta in any manner. Since Ext. P-7 Patta/Assignment Certificate is not stated as cancelled, by resorting to any procedure known to law, the title still stands absolute and no interference is possible from the part of the Respondents.

9. The learned Govt. Pleader referring to Ext. P-6 submits that Government was not a party to Ext. P-6 and hence that no reliance can be placed on the said verdict. True, the Government was not a party to the said proceedings but the Land Tribunal, Kanhangad was very much there, as the 2nd Respondent and necessary direction was issued to the concerned Land Tribunal. It is also not revealed from the cause title/face sheet of the said verdict as to who represented the 2nd Respondent. However, the Respondents cannot plead ignorance as to the course of events; particularly since it was pursuant to Ext. P-6 judgment, that the position was duly conveyed to the appropriate authority; who considered the matter and issued Ext. P-7 Assignment Certificate/Patta, conveying the property to the cultivating tenant (none other than the father of the first Petitioner). This being the position, the contention now raised, stating that the Government was not a party to Ext. P-6, cannot be of any help at this stage, i.e. after two decades

and is rather stale.

10. In the above facts and circumstances, the attempt made from the part of the Respondents to sustain Ext. P-12 miserably fails. The impugned order Ext. P-12 cannot have any existence, either on facts or in law and it is hereby set aside. It is declared that the properties covered by Exts. P-1 to P-5 owned, possessed and enjoyed by the Petitioners are not liable to be proceeded against, in respect of the amounts allegedly due from Mr. Abu, the defaulter.

The Writ Petition is allowed. No cost.