

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

CRP.No. 450 of 2003 (F)

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AGAINST THE JUDGMENT IN AA 104/1993 of APPELLATE AUTHORITY (LR),
KOZHIKODE DATED 27-04-1994**

**AGAINST THE ORDER IN OA 347/1976 of LAND TRIBUNAL-II,PAYYANNUR
DATED 15-12-1988**

REVISION PETITIONER(S)/APPELLANTS/APPLICANTS::

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- 1. MANIKKAM, D/O. KUNHAPPU,
KANAYI, KOROM AMSOM, KANAYI DESOM
KANNUR DIST. (DIED)**
 - 2. PARU, D/O. KUNHAPPU,
KOROM AMSOM, KANAYI DESOM, KANNUR DISTRICT. (DIED)**
 - 3. THAMBAI, D/O. KUNHAPPU,
KOROM AMSOM, KANAYI DESOM, KANNUR DISTRICT.**
 - 4. KALLYANI, D/O. KUNHAPPU,
ALAKKODE, P.O., KANKOL
KANNUR DIST.**
 - 5. NARAYANAN, S/O. KUNHAPPU,
KANAYI AMSOM, KANNUR DISTRICT.**
 - 6. VIJAYAN, S/O. KUNHAPPU,
MANIYARA, P.O. KANAYI, KOROM AMSOM DESOM
KANNUR DIST.**

**ADDL.P7. YASODHA K., D/O. KANNADA MANIKKAM,
KANNADA HOUSE, KANAYI MUKKUD,
P.O. KANAYI, PAYYANNUR, KANNUR DISTRICT.**

**(ADDL. P7 IS IMPEADED AS THE LEGAL HEIRS OF THE DECEASED 1ST PETITIONER
VIDE ORDER DT. 14.07.2015 IN I.A. 1776/2015)**

**ADDL.P8. GOPALAN K., S/O. KANNADA PARU,
KANNADA HOUSE, KANAYI MUKKUD,
P.O., KANAYI, PAYYANNUR (VIA),
KANNUR.**

**(ADDL. P8 IS IMPEADED AS THE LEGAL HEIRS OF THE DECEASED 2ND PETITIONER
VIDE ORDER DT. 14.07.2015 IN I.A. 1775/2015)**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S)/RESPONDENTS/RESPONDENTS/5TH APPELLANT:

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1. VENGAYIL MADHAVAN NAYANAR
ADVOCATE, P.O. PANAPUZHA, KANNUR DISTRICT. (DIED)
 2. DISTRICT COLLECTOR, KANNUR.
 3. TAHSILDAR, TALIPARAMBA.
 4. CHAIRMAN,
TALUK LAND BOARD, TALIPARAMBA.
 5. THAMBAYI ALIAS JANAKY,
D/O. KUNHAPPU (LATE)
KOROM AMSOM, KANAYI DESOM, P.O. KANAYI,
KANNUR DIST.
- ADDL.R6. MELATH GOURI AMMA, AGED 75 YEARS,
W/O. LATE VENGAYIL MADHAVAN NAYANAR,
P.O. PANAPPUZHA, VIA MATHAMANGALAM,
KANNUR - 670306.
- ADDL.R7. JAYALAKSHMI, AGED 56 YEARS,
D/O. VENGAYIL MADHAVAN NAYANAR,
P.O. PANAPPUZHA, VIA MATHAMANGALAM,
KANNUR - 670306.
- ADDL.R8. PADMANABHAN NAMBIAR, AGED 53 YEARS,
S/O. LATE VENGAYIL MADHAVAN NAYANAR,
P.O. PANAPPUZHA, VIA MATHAMANGALAM,
KANNUR - 670306.
- ADDL.R9 UNNIKRISSHANAN NAMBIAR, AGED 48 YEARS,
S/O. LATE VENGAYIL MADHAVAN NAYANAR,
P.O. PANAPPUZHA, VIA MATHAMANGALAM,
KANNUR - 670306.
- ADDL.R10. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY TO GOVERNMENT,
SECRETARIATE, THIRUVANANTHAPURAM - 695 001.
- (ADDL. R6 TO R9 BEING THE LEGAL HEIRS OF THE DECEASED 1ST RESPONDENT
AND ADDL. R10 ARE IMPEADED VIDE ORDER DT. 12.03.2014 IN I.A. 1938/11 IN CRP
450/03)

BY SPL. GOVERNMENT PLEADER SMT. SUSHEELA BHAT

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

C.R.P. No. 450 of 2003

Dated this the 14th day of July, 2015

ORDER

This revision petition is directed against the order dated 27.04.1994 in A.A.No. 104/1993 before the Appellate Authority (LR) Kozhikode, whereby, the Appellate Authority dismissed the appeal confirming the order of dismissal passed by the Land Tribunal.

2. The facts absolutely necessary for the purpose of disposal of this revision petition are as follows:

The petitioners had filed O.A.No.347/1976 before the Land Tribunal, Payyannur for assignment of certain extent of land comprised in RS No. 79/2A and 100/2A (There is some confusion regarding the actual survey number). That petition was initially dismissed. An appeal was preferred by the petitioners before the Appellate Authority and the Appellate Authority, by its order dated 21.07.1987, set aside the order of the Land Tribunal dated 24.05.1976 and

remanded the matter back to the Tribunal for fresh disposal with notice to all parties concerned. The Appellate Authority also directed a thorough enquiry to be conducted by the Land Tribunal into the matter and to ascertain whether the land had already vested with the Government so as to capable of being assigned to the petitioners. It appears that there was a C.R.P. before this Court from the said proceedings and that was disposed of by order dated 03.07.1987 with a direction to the Land Tribunal to dispose of the matter as expeditiously as possible.

3. After remand, notice was issued to all parties and it appears that a authorised officer was deputed to identify the property and furnish a report with a plan identifying the property and such other details as are necessary under the statute.

4. The report so filed by the authorised officer is marked as Ext.C1. Petitioner No.7 and respondents 1 and 2 to 4 before the Land Tribunal filed objections. In the

objection filed by petitioner No. 7, though he claimed possession over the property, he had to concede that usufructs was being auctioned by the revenue department. The first respondent claimed that the Tribunal had no jurisdiction to confer new rights on the applicants before it and that they were not in possession of 2.86 acres in RS No. 79/2A from 1975 onwards. He further contended that the claim of the petitioners is that they are in possession of 3 acres in RS No.100/1A as it now stands. Their claim of two acres 86 cents was rejected and the land was taken possession of by the Government.

5. The learned Government Pleader, who represented the State in the proceedings, contended that the Land Board is incompetent to assign the excess land taken possession of under the ceiling provisions of the Kerala Land Reforms Act and therefore the O.A. is only to be dismissed.

6. The Land Tribunal relied on Ext.C1 report, which showed that 2.86 acres of land in RS No.79/2A of Kanayi Desom claimed by the petitioners has already been taken possession of as surplus land as surrendered by the first respondent as per order No.643/73 dated 30.12.1975 and that usufructs were being auctioned by the revenue department.

7. Before the Land Tribunal, it appears that the only document made available was a basic tax receipt dated 09.05.1985. Finding it to be inadequate to clothe the petitioners with authority and right to continue in possession or to seek assignment, the Land Tribunal dismissed the application. The petitioners went up in appeal as A.A. No. 104/1993. The Appellate Authority, finding that there were no infirmities attached to the Land Tribunal's order, dismissed the appeal. Hence the revision.

8. The learned counsel appearing for the revision petitioners drew attention of this Court to the fact that it is

not correct to say that the only document produced before the Land Tribunal was the basic tax receipt of 1985. Along with list dated 26.09.1988, ten documents were produced which would clearly establish the rights claimed by the petitioners.

9. Both the authorities below have not adverted to this aspect and that has resulted in miscarriage of justice.

10. It appears that as much as ten documents were in fact produced by the petitioners before the Land Tribunal initially. But that may not have much relevance as of now in the sense that the proceedings are going on before the Taluk Land Board in respect of the property in question. What could be gathered from the orders of the Land Tribunal in this case is that the property in relation to which right is claimed by the petitioners was taken over as excess land by the Government in ceiling proceedings as against the first respondent and the Government is in possession of the land. If the petitioners have a case that they have any right over

the property, their remedy lies in applying under 85(8) of the KLR Act. In fact, it would appear that such proceedings are pending. That could be discerned from the proceedings of the Taluk Land Board dated 06.02.1997 in TLB No. 648/73/TBA, wherein, the Taluk Land Board concerned has passed an order, the operative portion of which reads as follows:

“5. Therefore, in the best interest of meeting the end of justice in view and to avoid further confusion, the Land Board make the following interim order in the matter:

a) that the order to take over surplus land from R.S.No.79/2A of Kanayi desom, Korome village of Taliparamba Taluk, will stand suspended until further orders.

b) Tahsildar, Taliparamba should see that the occupation in the portion of land in R.S.No.79/2A and 100/2A, as not dispossessed of as directed by the Hon.High Court. The possession taken will also stand freezed until such time as is necessary for final decision in this case.

c) The occupants will be at liberty to possess and use the land during the pendency of this order. But they should not transact the same in any manner other wise.

d) The Authorised Officer of Land Board will be deputed for a thorough further enquiry and verification in the matter.”

11. This would indicate that the claim of the petitioners is being considered by the Taluk Land Board concerned and quite rightly so. If as matter of fact, the land in respect of which claim is laid by the petitioners has already been taken possession of by the Government, the remedy of the petitioners lies under filing an application under Section 85(8) of the KLR Act and agitating their claims before the Taluk Land Board concerned.

12. As already stated in view of the earlier extracted portion, it would appear that Taluk Land Board is looking into the matter. It will be sufficient to safeguard the interest of the petitioners in this regard by pointing out that the orders passed by the Land Tribunal and the Appellate Authority in these proceedings will not stand in the way of Taluk Land Board determining the right of the petitioners in accordance with law and in the light of the rights claimed by them over the property.

13. This revision petition is therefore disposed of observing that the observation made by the Land Tribunal or the Appellate Authority shall not stand in the way of Taluk Land Board proceeding in accordance with law in respect of the claim preferred by the petitioners also untrammelled by any of the observations made in these proceedings. It is also made clear that if the petitioners are successful before the Taluk Land Board in 85(8) proceedings, they will be at liberty to approach the land Tribunal afresh.

It need not be mentioned that the possession shall not be transferred since in the light of the order passed by the Taluk Land Board which has already been referred to above. The possession is directed to be kept by the petitioners till the proceedings are over, if they are in actual possession.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge