

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

CRP.No. 486 of 2004 ()

SM 38/1976 of TALUK LAND BOARD, ALATHUR.

PETITIONER(S)/LEGAL HEIRS OF LATE SRI. T.V. KRISHNAN:

1. T.K.GIRIJAKUTY, W/O.ASHOK KUMAR,
PALANGAD HOUSE, MARUTHA ROAD, PALGHAT.
2. SANTHAKUMARI, W/O. LATE T.V.KRISHNAN,
THAZHATHE HOUSE, KANNANNUR OLIVE MOUNT POST,
PALGHAT.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENT(S)/RESPONDENTS:

1. THE TALUK LAND BOARD, ALATHUR.
2. THAHASILDAR, ALATHUR.
3. STATE OF KERALA,
REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT,
TRIVANDRUM.

ADDL. R4 IMPEADED.

4. PUSHPAMANI, W/O. RAMADAS,
TOTTUNKAL HOUSE,
THANISSERY (P.O.),
PALAKKAD DISTRICT.

ADDL. R4 IMPEADED VIDE ORDER DATED 1010.2014
IN I.A. 3265/13 IN C.R.P. 486/04.

R1 TO R3 BY SPECIAL GOVERNMENT PLEADER
SMT. SUSHEELA BHAT.

ADDL.R4 BY ADV. SRI.M.PREMKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 26-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

P. BHAVADASAN, J.

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C.R.P. No. 486 of 2004
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Dated this the 26th day of May, 2015.

ORDER

This is yet another typical instance where the ceiling case initiated before the Taluk Land Board is carrying on for ever and ever with no end in sight in the near future.

2. This time it is one Krishnan who was the declarant. He has left the world and his children are before this Court. Proceedings started as early as in 1976 and proceedings after proceedings continued thereafter both before the Taluk Land Board and before this Court. Taluk Land Board computed and recomputed ceiling limits and directed to surrender various extents of land and the legal heirs of Krishnan approached this Court and this Court while allowing some of the claims, directed the Taluk Land Board to reconsider the issue. On record, the final order is the order of this Court in O.P.8691 of 2001 dated 8.8.2001 filed

by Girijakutty, the legal heir of Krishnan complaining against the notice issued to Girijakutty by the Taluk Land Board. The claim therein was that after taking possession of property from the declarant, the Taluk Land Board decided to assign the same to persons of their choice, and thereafter the declarant cannot be further asked to surrender property. In the said Original Petition, it was pointed out that 10.49 acres mentioned in the order dated 26.5.1998 was excess land, out of which 6.95 acres has already been taken possession of. 3.54 acres were in dispute with regard to the claim made by third parties. This Court while disposing of the Original Petition observed as follows:

"3. In the circumstances of the case, only 10.49 acres mentioned in Ext.P2 order can be taken possession of. According to the petitioner, out of which 6.95 acres of land was already taken possession of and 3.54 is in dispute because of the claim made by third parties. This matter should be reconsidered and the authority should see that if 6.95

acres of land were already taken possession of, no other land should be taken possession of in respect of the same. With regard to 3.54 acres of land, issue has to be decided according to law after final decision in the claims made by third parties. If reconveyance as mentioned in Ext.P2 is not considered, that also has to be considered. Therefore, with regard to the area which has to be surrendered, a specific order has to be passed by the Taluk Land Board, if any other land other than that was already surrendered is going to be taken possession of. Ext.P3 is set aside without prejudice to the right of the Taluk Land Board to assign the land which was already taken possession of and which is mentioned in Ext. P2 order with the survey number mentioned therein. If no land is taken possession of as submitted by the petitioner, fresh order shall be passed restricting the land as mentioned in Ext.P2 after giving an opportunity for hearing to the petitioner. Since Ext.P3 is set aside, Ext.P4 order for auction is also set aside. ..."

3. It appears that A.G. Pushpamani, by a registered deed had acquired 4.40 acres from the legal heirs of Krishnan. That property was taken

possession of and in a proceedings before the Taluk Land Board, they decided to reconvey the same to Pushpamani. While deciding to do so, they directed the petitioner to surrender equal extent of 4.40 acres. That made the petitioner to approach this Court.

4. Petitioner points out that at the time when option was exercised and the Taluk Land Board was called upon to take possession of the same, they could have objected. But after taking possession of the land, the liability of the declarant to that extent of land is over and cannot thereafter be asked to surrender further extent of property when the Taluk Land Board decided to reconvey the same to a person of their choice.

5. Apart from the above, if it is on the basis of a registered assignment deed in favour of Pushpamani that the property had been assigned and if the land remains in the possession of Pushpamani, then the declarant is entitled to take

aid of Section 7E of the Kerala Land Reforms Act (for short 'the Act'). In support of the above contention, learned counsel relied on the decisions reported in **Rajeev v. District Collector** (2014(4) K.L.T. 209) and **State of Kerala v. Thomas Kurian** (2014(4) K.L.T. 417) and contended that the petitioner cannot be asked to surrender additional extent of land.

6. Learned Special Government Pleader appearing on behalf of the State contended that the procedure adopted by the Taluk Land Board is correct and that the property had already been taken possession of long ago and that Sec. 7E of the Act may not apply at all. Further, at the time at which possession was taken over from Pushpamani, Sec. 7E of the Act was not available in the statute book and therefore, the question of application of Sec. 7E of th Act does not arise for consideration.

7. Even though the contention of the learned Special Government Pleader may appear

attractive at the first blush, on a close scrutiny, it can be found to be devoid of merit. Going by the records, 4.40 acres was taken possession of in pursuance to the statement filed by the declarant and the Taluk Land Board was holding the same. Of course, they are free to convey or deal with the matter as provided under the Act. But once having taken possession of and then decided to deal with the property as they liked, they cannot now turn round and direct the declarant to again surrender an equal extent.

8. The order impugned is dated 25.3.2004. Sec. 7E was introduced by Amendment Act 21 of 2006.

9. The contention of the petitioner is that if it was, as a matter of fact, done by a registered deed in favour of Pushpamani executed by the declarant that persuaded the Taluk Land Board to reconvey the land to the said person, it must obviously be on the basis of Sec. 7E of the Act in which case the petitioner cannot be asked to

surrender again an extent of 4.40 acres of land.

10. There seems to be some force in the above contention. After having taken possession of the land from the petitioner, if the State or the authority concerned decides to convey the land in one of the modes described under the Act, it escapes one's understanding as to how subsequently authority can direct the declarant to surrender that much extent of land.

11. As pointed out by the learned counsel for the petitioner, the decision to reconvey the land to Pushpamani was based on some principle in which case, it is difficult to understand how the petitioner can be directed to surrender 4.40 acres of additional land.

12. It is here that the application of Sec. 7E of the Act comes into play.

13. In the decision reported in **Rajeev v. District Collector** (2014(4) K.L.T.209) and **State of Kerala v. Thomas Kurian** (2014(4) K.L.T. 417) this

Court had elaborately considered the application of Sec. 7E of the Act and the contingencies under which the benefit is available to the person concerned. Of course, in the case on hand, the issue has not been considered from that perspective.

14. If reconveyance to Pushpamani is to be considered on that basis, then necessarily the benefit of Sec. 7E of the Act will have to be considered. It must be noted that when initially option was given by the declarant, he must have indicated that an extent of 4.40 acres will be taken possession of though it might have been outstanding with Pushpamani. If at that point of time Taluk Land Board has a case that they could not have taken possession of the same as it was outstanding with a stranger, certainly they could have directed to exercise option in respect of 4.40 acres. There is no such case for the Taluk Land Board in this case.

They took possession of 4.40 acres and thereafter they have conveyed it to her. After passage of a long period they cannot be heard to say that the declarant should surrender 4.40 acres.

In the above circumstances, the order directing the petitioner to surrender 4.40 acres is set aside and the matter is remanded to the Taluk Land Board to determine the matter afresh in the light of what has been stated above. The Taluk Land Board shall dispose of the matter afresh as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this order.

sb.

P. BHAVADASAN,
JUDGE