

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

CRP.No. 1924 of 2002 ()

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AGAINST THE ORDER IN AA 46/1994 of APPELLATE AUTHORITY, (LAND REFORMS),
KANNUR DATED 17-08-2001, S.M. NO.127/73 DATED 29.06.1991 OF THE LAND
TRIBUNAL NO. II, KASARGOD**

REVISION PETITIONER(S)/APPELLANT - B PARTY NO.3:

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THAPPI ALIAS SUNDARI,
W/O. P.PRABHAKARA RAI, KULLOOR VILLAGE, KASARAGOD TALUK
P.O.CHARLA.**

BY ADV. SRI.SUBHASH SYRIAC

RESPONDENT(S)/1ST RESPONDENT -A PARTY & STATE

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- 1. AITHA, S/O. PANJI, KULLOOR VILLAGE,
KASARAGOD TALUK. (DIED)**
 - 2. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY,
GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.**

ADDL. RESPONDENTS 3 TO 8 IMPEADED

**ADDL.R3. APULU ALIAS CHOWKARU,
W/O. LATE AITHA,
CHOYITHLU HOUSE,
NEAR KARIPARU, KULLOOR VILLAGE,
CHERLA P.O. PIN 671325.**

**ADDL.R4. MAYILU ALIAS KALYANI,
D/O. AITHA,
-DO- -DO-**

ADDL.R5. KAMALA, -DO- -DO-

ADDL.R6. BABU, S/O. AITHA, -DO- -DO-

ADDL.R7. JANAKI, D/O. AITHA, -DO- -DO-

ADDL.R8. HARIRAMA, S/O. AITHA, -DO- -DO-

CRP No. 1924 of 2002 ()

**(IMPLEADING THE RESPONDENTS 2 TO 7 AS ADDITIONAL RESPONDENTS 3 TO 8 AS
PER ORDER DATED 6.8.2008 BY MSN (J) IN I.A. 1950/2005)**

R2 BY GOVERNMENT PLEADER SRI. K.K. SAIDALAVI

R2 TO R4 BY ADV. SRI.LATHEESH SEBASTIAN

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
31-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

C.R.P. No.1924 of 2002

Dated this the 31st day of August, 2015

ORDER

Aggrieved by the order dated 17.08.2001 in A.A.No. 46/1994 of the Appellate Authority (Land Reforms), the B party No.3 before the Appellate Authority has come up in revision.

2. Suo motu proceedings were initiated in respect of a parcel of land in the name of A party and the B party was shown as landowners. It is seen from the records that on an earlier occasion, it was found that the applicant before the Land Tribunal was found to be a tenant, but that order was challenged by the third party by filing an appeal. The Appellate Authority allowed the appeal, set aside the order and remanded the matter for fresh disposal directing the Land Tribunal concerned to provide an opportunity to adduce evidence to both parties. After the matter reached the Land Tribunal on remand, evidence was adduced and

the Land Tribunal, on an appreciation of materials before it, came to the conclusion that the A party i.e., the person who claimed tenancy rights, was entitled to fixity of tenure and allowed them to purchase the right, title and interest of the landowners. Aggrieved by the said order, one of the landowners went up in appeal.

3. In the appeal, the Appellate Authority confirmed the order of the Land Tribunal. It is the said order that is under challenge.

4. The main grievance of the revision petitioner is that the Appellate Authority has not adverted to any of the issues that arose for consideration in the case and has simply endorsed the finding of the Land Tribunal. The Appellate Authority has not cared to go into the materials on record to see whether the reasoning given by the Land Tribunal is justified or not. In fact, there is no reasoning at all as to how the Appellate Authority found that the Land Tribunal's order is justified.

5. The learned counsel appearing for the revision petitioner contended that this Court in several decisions had occasion to consider the orders of present nature and has condemned such orders. This Court held in all those decisions that it is obligatory and mandatory on the part of the appellate Authority to formulate the points and consider the merits and demerits of the case and also to examine the reasoning given by the Land Tribunal whether the application is allowed or dismissed. This is a statutory duty which cannot be done away with. It is therefore contended that the order of the Appellate Authority cannot stand.

6. The learned counsel appearing for the respondents on the other hand contended that the Land Tribunal has considered the entire issue in considerable detail and there is no justification as to why the matter should be reconsidered by the Appellate Authority. It is also pointed out that the proceedings is of the year 1973 and several decades have passed.

7. The mere fact that the proceedings is of the year 1973 and that time has elapsed does not mean that the matter should not be dealt with in accordance with law. Section 102 of the Kerala Land Reforms Act confers power on the Appellate Authority to entertain an appeal preferred by an aggrieved party. There can be no manner of doubt that the petitioner before this Court is aggrieved by the order of the Land Tribunal since the tenancy claim set up by his adversary has been accepted. As to the manner in which an appeal has to be dealt with under the Section 102 of the Kerala Land Reforms Act, this Court in several decisions has held that it is obligatory and mandatory on the part of the appellate authority to give reasons for its order. It has to examine the records available before it and has to consider the merits and demerits of the case. Any order passed without application of mind cannot be sustained. See (2007 (1) KLJ 772), (2007 (2) KLT SN 69), (1986 KLT SN 92), (1984 KLT SN 15), (1981 KLT SN 82), (1987 (2) KLT 987). In the

case on hand, the appeal has been disposed of as follows:

“I have gone through the records of the case and heard the Advocate for both sides. The Lower Court has issued Certificate of purchase after due consideration of all the facts available and discussing the Civil cases involved. This has been discussed in detail in the order of the Lower Court. No evidence has been produced before this Court to refute the findings of the Lower Court.

In the result, I find no reason to interfere with the orders of the Lower Court and the appeal is dismissed. There is no order as to costs.”

8. Needless to say that the disposal of the appeal is totally unsatisfactory and is contrary to the principle laid down by this Court in the above decisions. The only available option for this Court is to remand the matter to the Appellate Authority directing the Appellate Authority to consider the merits of the case as enjoined by the principles laid down in the decisions referred to above.

9. For the above reasons, this revision is allowed, the impugned order is set aside and the matter is remanded to the Appellate Authority for fresh consideration in accordance with law and in the light of what has been stated above.

10. Since several years have elapsed, it is only proper to direct the Appellate Authority to dispose of the matter within a short span of time. If the Appellate Authority so feels, it may issue notice to the parties as it deems fit and proper.

The parties shall appear before the Appellate Authority on **29.09.2015**. The appellate Authority shall make every endeavour to dispose of the matter as expeditiously as possible, at any rate, within a period of three months from the date of appearance of the parties. Copy of this order shall be forwarded to the Appellate Authority concerned.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge