

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

CRP.No. 815 of 2007

AGAINST THE PROCEEDINGS IN TLB 141/73/Amb of TALUK LAND BOARD,
AMABLAPPUZHA DATED 15-02-2006

REVISION PETITIONERS/NOT PARTIES:

1. MANKA LALITHA, W/O. LATE GREGARIOUS
THUNDUMPRAYIDATHU VELIYIL, THUMPOLY MURI,
PATHIRAPPALLY VILLAGE, AMBALAPUZHA TALUK.
2. VIJAYAN, S/O LATE GREGARIOUS OF DO. DO.
3. GREGARIOUS VINUMON,
S/O LATE GREGARIOUS OF DO. DO.
4. GREGARIOUS VINODKUMAR,
S/O LATE GREGARIOUS OF DO. DO.

BY SMT. SUMATHI DANDAPANI, SENIOR ADVOCATE.
BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS/DECLARANTS & STATE:

1. GREGORY THOMAS, S/O LATE VICTORN GREGARIOUS, (DIED)
ARATTUKULANGARA VEEDU,
MARARIKULAM MURI,
MARARIKULAM NORTH VILLAGE, CHERTHALA TALUK.
2. AMMINI EMMANUEL, D/O LATE VICTOR GREGARIOUS,
ARATTUKULANGARA VEEDU,
MARARIKULAM MURI, MARARIKULAM NORTH VILLAGE,
CHERTHALA TALUK.
3. THE TALUK LAND BOARD,
AMBALAPUZHA.
4. THE TAHSILDAR, TALUK OFFICE,
CHERTHALA, ALAPPUZHA DISTRICT.
5. THE TAHSILDAR, TALUK OFFICE,
AMBALAPUZHA, ALAPPUZHA DISTRICT.

6. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

ADDL.R7 LENAMMA THOMAS, W/O. LATE GREGORY THOMAS,
AGED 55 YEARS, RESIDING AT ARATTUKULAM HOUSE,
MARARIKULAM NORTH P.O., CHERTHALA.

ADDL.R8 RAJU THOMAS A., S/O. GREGORY THOMAS,
AGED 36 YEARS, RESIDING AT ARATTUKULAM HOUSE,
MARARIKULAM NORTH P.O., CHERTHALA.

ADDL.R9 SHEELA, W/O. BABU, ARATTUKULAM, MARARIKULAM NORTH
POST, MARARIKULAM.

(ADDL.R7 AND R8 ARE IMPEADED AS ADDITIONAL
RESPONDENTS 7 AND 8 AS PER ORDER DTD.14.07.2008 IN
IA.1114/08)

(ADDL.R9 IS IMPEADED AS THE LEGAL HEIR OF DECEASED
1ST RESPONDENT AS PER ORDER DTD.23.6.15 IN I.A.1477/08
IN CRP. 815/07)

R2 BY ADV. SRI.JOHN BRITTO

R2 BY ADV. SRI.C.A.RAJEEV

R2 BY ADV. SRI.C.RAJENDRAN

R2 BY ADV. SRI.K.R.RANJITH

R2 BY ADV. SMT.R.S.SREEVIDYA

R6 BY GOVERNMENT PLEADER SMT. LILLY LESLIE.

ADDL.R7 BY ADV. SRI.P.CHANDRASEKHARAN PILLAI
(VENNELA)

ADDL.R7 BY ADV. SMT.GISA SUSAN THOMAS

ADDL.R8 BY ADV.SRI.S.P.ARAVINDAKSHAN PILLAI

ADDL R9 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

ADDL R9 BY ADV. SRI.V.VARGHESE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 23-06-2015, ALONG WITH WPC. 11770/2007, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

**Civil Revision Petition No.815 OF 2007 &
Writ Petition (Civil) No.11770 OF 2007**

Dated this the 23rd day of June, 2015.

O R D E R

CRP No.815/2007 is directed against the order dated 15.02.2006 in TLB No.141/73/Amb of Taluk Land Board, Ambalapuzha. Ceiling proceedings were initiated against Victor Gregarious who filed a statement under Section 85A of the Kerala Land Reforms Act. Initially it was found that the total extent of land held by the family is 38 Acres 67.980 cents. By order dated 23.07.1976 after excluding the land permissible under the Land Reforms Act, the extent of land to be surrendered was determined as 11 Acres 49.500 cents and 15 Acres 18.480 cents. Soon after the order, 7 Acres 92.448 cents were taken possession of by Tahasildar, Ambalapuzha. That order was challenged in CRP No.4121/1976 and the matter was remanded to the Taluk Land Board. By order dated 05.04.1977 the Taluk Land Board re-determined the extent to be exempted and

excluded from the total extent of excess land and determined the balance extent of excess land to be taken possession respectively as 15 Acres 16 cents, 11 Acres 51.980 cents and 3 Acres 59.532 cents. The Taluk Land Board passed an order dated 23.07.1977 afresh.

2. A request was made by the wife of the declarant to re-convey 1 Ares and 12.012 cents of land taken possession of as is formed portion of the residential compound of her son Gregory Thomas and to take possession of equivalent extent offered by her. That was rejected. That order was challenged by her in CRP before this Court and as per the order in the CRP, 1 Acres and 12.012 cents of land was re-conveyed and equal extent of land was taken possession of. Suffice to say that the procedures of re-opening due to various reasons continued and ultimately by the impugned order dated 15.02.2006 it was found that balance extent of 1 Acres and 93.480 cents of land is to be taken possession of from the declarant who by the time was no more.

3. Challenge in this CRP is by the second wife of Victor Gregarious and their children on the basis of a settlement deed

dated 30.03.1970, details of which are given in page 3 of the memorandum of Civil Revision Petition. According to the petitioners, that settlement can be treated only as a gift deed and that is protected by Section 84 (1A) of Kerala Land Reforms Act. Since the beneficiaries under the settlement deed were not heard in the proceedings, they say that the order is bad in law and their claims will have to be considered.

4. W.P.(C) No.11770/2007 contains the following prayer:

- (i) To issue a Writ of Mandamus or any other appropriate order or direction, directing the respondents 1 to 4 not to dispossess the petitioner from the land comprised in Sy.No.2/11A (R.S.No.679/1) of Mararikulam North Village, Cherthala Taluk pursuant to Ext.P5 order, until such time that Ext.P7 application sought to be filed by the petitioner before the Land Tribunal, Alappuzha, is received by the said authority and disposed of in accordance with law and as per the Rules and procedures yet to be framed and as envisaged under the Act 21 of 2006.

5. The petitioner in WP(C) No.11770/2007 claims to be a Company incorporated under the Companies Act and they claimed

that by virtue of Ext.P1 sale deed they purchased 74 cents of land comprised in survey No.2/11 (R.S.No.679/1) from respondents 5 to 8 in the writ petition who are the petitioners in CRP No.815/2007. The petitioner in the writ petition claims to have obtained possession of the property by virtue of the said sale deed and they say that they are entitled to protection under Section 7E of the Kerala Land Reforms Act. They therefore contended that unless their rights under Section 7E is determined, the Taluk Land Board may not be permitted to take possession of land as per order dated 15.02.2006.

6. Learned counsel appearing for the petitioners in the revision petition pointed out that the settlement deed dated 30.03.1970 is in fact a gift deed and if that be so, it falls within the period between 01.01.1970 and 05.11.1974 and qualifies to be exempted under Section 84(1A) of Land Reforms Act. This valuable right of the petitioners to have their right determined has been denied to them since no notice of proceedings which culminated in the order dated 15.02.2006 was issued to them and they have not been heard.

7. It may be noticed here that the petitioner in WP(C) No.11770/2007 is none other than the assignee from the petitioners in CRP No.815/2007. Therefore, to a great extent the fate of the writ petition will depend upon the fate of the CRP.

8. Sri.P.Chandrasekharan Pillai who appears for respondents 7 and 8 in the CRP contends that the claim made both in the CRP and in the writ petition is without any basis whatsoever and it is a clear case of abuse of process of court. Learned counsel pointed out that though Manka Lalitha claimed to be the wife of Victor Gregarious, there was no legal marriage between them and she had status of only a mistress. She and the other petitioners in the CRP had staked their claim before the Taluk Land Board earlier and the Board negatived their claim. Dissatisfied with the order of the Board, they instituted O.S.No.553/1990 for declaration of title, recovery of possession and for other consequential reliefs on the basis of the so called settlement deed. The defendants in the said suit were State of Kerala, Taluk Land Board, Ambalappuzha and the Land Board, Thiruvananthapuram. The State opposed the suit. Evidence was

adduced in the suit and holding that the gift deed is bogus and the suit is not maintainable, the suit was dismissed. An appeal filed as A.S.No.36/1998 resulted in confirmation of the decree of the trial court and the appeal was dismissed. It is therefore contended by the learned counsel that a gift deed which was found to be not valid should not now be allowed to be put forward to stake any claim.

9. The present order challenged in the CRP appears to have been passed on the basis of a petition filed by the wife of Victor Gregarious for re-opening the proceedings and for re-conveying certain extent of property made mention of her in her application.

10. On going through the records, it is found that the petitioners in the CRP did stake their claim in the ceiling proceedings initially as could be seen from Ext.R1(a), judgment in O.S.No.553/1990. The petitioners in the CRP based their claim in the suit on the so called settlement deed which they put forward now, as their basis for title in the suit and for other reliefs prayed for in the suit. In the suit, the trial court found that the gift deed is not valid and declined the relief to the

plaintiffs in the suit. An appeal filed by them did not succeed. Therefore, the claim based on the so called gift deed dated 30.03.1970 is no longer helpful to them. Further, it is seen from the records that three of the petitioners in the CRP namely, Vijayan, Vinumon and Vinod had filed O.P.No.2950/1991 before this Court challenging the proceedings of the Land Board. In the O.P it was prayed that the proceedings dated 15.07.1989 of the Land Tribunal be set aside as null and void and not binding on the petitioners. The said O.P was disposed of as follows:

"5. This Court cannot in these proceedings quash Exhibit P-3 order of the Land Tribunal dated 15-7-1989 at the instance of the petitioners. The original declarant and his legally wedded wife challenged those proceedings before this Court unsuccessfully. The petitioners, who claim themselves as the children of the original declarant cannot challenge those orders. The Taluk Land Board has already taken a lenient view and gave back 28.5 cents to the fifth respondent, who is the mother of the petitioners. I do not think that any more indulgence can be shown to the petitioners and the fifth respondent in this respect. The Original Petition is devoid of any merit and is dismissed".

11. It can thus be seen that the document dated 30.03.1970 based on which claim is put forward by the petitioners was found to be invalid and does not confer any right on the petitioners. Apart from the above fact, the Taluk Land Board had rejected the claim on an earlier occasion and in the suit as well as in appeal the same view was taken by the civil court. In the original petition referred to above also this Court declined to interfere with the order of the Taluk Land Board in that regard. Therefore, the present contention based on the said document and the grievance voiced that the petitioners had not been heard before the impugned order has been passed is without any basis whatsoever. CRP No.815/2007 has necessarily to fail.

12. Coming to WP(C) No.11770/2007, it is very vehemently contended by the learned counsel for the petitioner that the Company is a bonafide purchaser for valuable consideration and they had no knowledge about the proceedings of the Taluk Land Board and the fact that the right of their vendors had been negatived. On going through the document of

title namely, settlement deed, the Company came to understand that the vendors had valid title to the property and that made the Company to purchase the property. They, therefore, contended that they are entitled to the benefit of Section 7E of Kerala Land Reforms Act.

13. The claim of the Company has to fail for more than one reason. The Company is a pendente lite transferee of the property. It was during the pendency of the appeal against O.S.No.553/1990 that purchase was effected by the Company. Being a pendente lite transferee, they are bound by the decree. They cannot be heard to say that they were unaware of the suit. Section 52 of Transfer of Property Act which deals with doctrine of lis pendens does not protect even a bonafide transferee. The gift deed put forward by the vendors was found to be invalid conferring no manner of right.

14. Learned counsel appearing for the petitioner in WP(C)No.11770/2007 placed considerable reliance on the decision in **Rajeev vs. District Collector** (2014 (4) KLT 209). Paragraph 6 of the said decision reads thus:

"6. The following pre-requisites have to be satisfied before claiming the benefit of '*deemed tenancy*' under S.7E of the Act.

- i) The claimant should be in possession of the land not exceeding the permissible extent.
- ii) The possession should have been acquired by the claimant or his predecessor-in-interest.
- iii) The acquisition should be by way of purchase or otherwise on payment of consideration.
- iv) The acquisition by the claimant should be from any person holding land in excess of his ceiling area, and
- v) The acquisition should be during the period between the date of commencement of the Kerala Land Reforms Act, 1963 and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005".

15. Learned counsel went on to contend that the Company satisfies all the requirements mentioned above and therefore the Company is entitled to protection under Section 7E of the Kerala Land Reforms Act. The contention is without any basis whatsoever. Section 7E reads as follows:

"7E. Certain persons who acquired lands to be deemed tenants.-Notwithstanding anything to the contrary contained in section 74 or section 84 or in any other provisions of this Act, or in any other law for the time being in force or in any contract, custom

or usage, or in any judgment, decree or order of any court, tribunal or other authority, a person who at the commencement of the Kerala Land Reforms (Amendment) Act, 2005, is in possession of any land, not exceeding four hectares in extent, acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area, during the period between the date of the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964), and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be deemed to be a tenant”.

16. The crucial words as far as the writ petition is concerned are 'from any person holding land in excess of the ceiling area'. The declarant was Victor Gregarious.

17. One may here recall the suit filed by vendors of the Company. The suit O.S.No.553/1990 was for declaration of title, recovery of possession and for permanent prohibitory injunction. It is obvious from the relief sought for in the plaint that the vendors had no right over the property. Further it has been found in the suit as well as in the proceedings of the Taluk Land Board that the so called gift deed cannot be accepted and no

rights accrue to the beneficiaries under that deed. Section 7E of the Kerala Land Reforms Act does not protect any person who does not satisfy the conditions mentioned thereon. The contention that the Company was unaware of the pendency of the suit cannot be countenanced. They have purchased land from persons who have absolutely no right over the same. It, therefore, follows that the Company is also not entitled to any relief in the writ petition.

For the above reasons, the Civil Revision Petition and the Writ Petition are dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge.