

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

CRP.No. 606 of 2009

(AGAINST THE ORDER IN AA 146/1998 of APPELLATE AUTHORITY (LR),
KANNUR DATED 29-05-2009

OA 13600/1976 of LAND TRIBUNAL No.IV, TALIPARAMBA)

REVISION PETITIONER/RESPONDENT/APPLICANT:

1. V.V.NARAYANAN,S/O.KUNJIRAMA WARRIER,
AGED 57 YEARS, KAKKANKOVIL MEETHALE VEETIL
MANIYOOR DESOM, P.O.CHEKKIKULAM.
2. V.V.SUBRAMANIAN, S/O.KUNJIRAMA WARRIER,
AGED 46 YEARS, -DO- -DO-
3. GOPALAKRISHNAN,S/O.MADHAVA WARRIER,
AGED 30 YEARS, -DO- -DO-
4. GEETHA, D/O.MADHAVA WARRIER,
AGED 28 YEARS, -DO- -DO-

BY ADVS.SRI.JOHNSON P.JOHN
SRI.BABY MATHEW

RESPONDENTS/APPELLANT/RESPONDENT:

1. CHAIRMAN,
BOARD OF TRUSTEES, SREE MANIYOOR SUBRAMANIA TEMPLE
MANIYOOR, CHEKKIKULAM.
2. MANIYOOR DEVASWOM,
SREE MANIYOOR SUBRAMANIA TEMPLE, MANIYOOR
CHEKKIKULAM.
3. P.V.KUNJIRAMAN,S/O.KUNJIRAMA WARRIER, (DELETED)
NEAR SUBRAMANYA SWAMY TEMPLE, MANIYOOR, KODALI
CHEKKIKULAM.

CRP.No. 606/2009

ADDL.R4 STATE OF KERALA REPRESENTED BY DISTRICT COLLECTOR,
KANNUR.

R3 DELETED FROM the PARTY ARRAY AT THE RISK OF the
PETITIONERS VIDE ORDER DTD. 11.11.10 IN I.A.850/10 IN
CRP 606/09

ADDL. R4 IS IMPEADED AS PER ORDER DTD.30.3.12 IN
I.A.796/12 IN CRP.606/2009

R1 BY ADV. SRI.K.RAJESH SUKUMARAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Civil Revision Petition No.606 OF 2009

Dated this the 10th day of June, 2015.

O R D E R

Aggrieved by the order of the appellate authority setting aside the order of the Land Tribunal-IV, Taliparamba directing issuance of purchase certificate to the petitioner in O.A.No.13600/1976, claimants have come up in revision.

2. The property admittedly belonged to Devaswom and it is alleged that one Padmanabha Pattar in 1935 took certain extent of property on oral lease. Padmanabha Pattar in his turn, according to the claimants, given an oral lease of 18 cents to Lakshmi Varassiar in 1938. She held the property from there on. She had two children namely, KunhIRama WarriEr and Devi Varassiar. In 1967, after the death of Lakshmi Varassiar, her two children partitioned the property and 9 cents comprised in survey No.65/9 was set apart to the share of the petitioners, who are legal heirs of KunhIRama WarriEr, along with other items of properties. The petitioners applied to the Land Tribunal

concerned and obtained purchase certificate. Devaswom coming to know about the same assailed the issuance of purchase certificate in appeal alleging fraud and on other grounds. The appellate authority found that issuance of purchase certificate is not proper (grounds for which will be referred to later), set aside the order of the Land Tribunal and had the O.A as far as 9 cents in survey No.65/9 dismissed.

3. Learned counsel appearing for the revision petitioners contended that the first ground relied on by the appellate authority is that tenancy was after 1977 which is hit by Section 74 of Land Reforms Act. The second ground is that the property comprised in survey No.65/9 having an extent of 9 cents is part of the temple premises and it is therefore exempted under Section 3(1)(x) of Kerala Land Reforms Act. Learned counsel contended that both the grounds relied on by the appellate authority are unsustainable both on facts and in law. The reason for arriving at a conclusion that tenancy commenced after 1977 is that the petitioners were able to produce tax receipts only after 1977. Learned counsel went on to

point out that the appellate authority seems to have forgotten various other documents and contentions of the petitioners.

4. Referring to Ext.B1, it was contended that that is a document executed by Padmanabha Pattar in favour of Kunhiraama Marar wherein it is recited that the property assigned to Kunhiraama Marar is the balance property after having assigned property to Lakshmi Varassiar. This shows that as early as in 1940 lease in favour of Lakshmi Varassiar was recognised. It is true that in the document executed by Padmanabha Pattar in favour of Kunhiraama Marar it is stated that “മുൻപ് കാക്കാംകോവിൽ ലക്ഷ്മി വാരസ്യാർക്ക് തീര് കൊടുത്തത് കഴിച്ച് ബാക്കിയുള്ളതും”. The appellate authority then banked on the word 'തീര് കൊടുത്തത്' and pointed that since no document in respect of the same was produced, lease cannot be accepted.

5. Learned counsel appearing for the revision petitioners went on to point out that even the case set up by the claimants was that 18 cents were given to Lakshmi Varassiar on oral lease and there could not have been a document therefore to that effect. The fact that the document in 1940 makes mention of

lease in favour of Lakshmi Varassiar and the partition deed of 1967 etc. will clearly show that the finding of the appellate authority that lease as per evidence started in 1977 has no legs to stand.

6. Learned counsel appearing for the revision petitioners then went on to point out that even assuming for argument sake that the property forms part of temple property and exempted under Section 3(1)(x) of Kerala Land Reforms Act, the proviso to that Section has not been considered. The proviso to the said Section exempts those lands with regard to permanency of tenancy under any previous Act or under the Kerala Land Reforms Act.

7. In support of his contention, learned counsel appearing for the revision petitioners relied on the decision in **Gopalan Nair vs. State of Kerala & another** (1988 (1) KLJ 93). Viewed from any angle, it is contended that the appellate authority's order cannot stand.

8. Learned counsel appearing for the respondent-Devaswom contended that a perusal of the boundaries of the property of

which assignment has been granted to the petitioners would clearly show that it is situated within the compound wall of the temple and it is part of the temple premises. Further it is contended that the petitioners have obtained a common purchase certificate in respect of the properties comprised in survey Nos.59/1 and 65/9 even though these properties are situated 1 kilometers apart. It is also pointed out that the appellate authority could not be found fault with in holding that no document has been produced showing lease in favour of Lakshmi Varassiar. It is therefore contended that no grounds are made out to interfere with the order of the appellate authority.

9. After having heard the counsel on both sides and also after having perused the records, this Court finds it extremely difficult to concur with the finding of the appellate authority. The finding of the lower appellate authority that the lease commenced only after 1977 is quite uncharitable. As rightly pointed out by the learned counsel for the petitioners, in the document executed by Padmanabha Pattar in favour of Kunhrama Marar in the year 1940 lease in favour of Lakshmi Varassiar is clearly mentioned

and only the balance property is dealt with under the document of 1940. That clearly shows that even prior to document of 1940, transaction between Padmanabha Pattar and Lakshmi Varassiar had taken place. It is too much to believe that a recital to that effect would have been included in the document of 1940 anticipating the fixity of tenure at much later stage.

10. One shall not forget here that the definite stand taken by the claimants before the Tribunal was that lease in favour of Lakshmi Varassiar was an oral lease and the claimants have succeeded to the estate left behind by Lakshmi Varassiar. They effected partition in 1967 which is evidenced by Ext.B2. The said document states about the tracing of title to the property and also deals with several other items of property.

11. It is significant to notice that one of the statements in Ext.B2 is that 'രജിസ്റ്റർ ചെയ്യാത്ത തീരാധാര പ്രകാരം'. Of course, there is nothing directly to indicate that that recital refers to the property in question. But the fact remains that the family had obtained property by a document which was not registered. It cannot be disputed that oral lease is possible. That is precisely the case set

up by the claimants in this case. Therefore, merely because the claimants have been able to produce basic tax receipts only after 1977 does not lead to the conclusion that the lease set up by the claimants commenced only after 1977. That finding therefore needs re-consideration.

12. However, one fact has to be noticed. Even as accepted by the claimants, the property in survey Nos.59/1 and 65/9 are separately situated and are separated by a distance of 1 kilometer. The Land Tribunal has given a common purchase certificate for the two properties with common boundaries. Of course, appellate authority has reserved liberty to the petitioners to obtain separate purchase certificate in respect of the property comprised in Survey No.59/1.

13. Coming now to the 9 cents of property comprised in survey No.65/9 over which claim is laid, the appellate authority was persuaded to decline relief to the petitioners on the ground that it forms part of the temple property. There can be no doubt that it is so. But the question is whether that by itself is sufficient to deny relief to the claimants. It is here that the

decision in **Gopalan Nair vs. State of Kerala & another** (1988 (1) KLJ 93) assumes significance. It was a case where tenancy right was given in respect of a property situated in Malabar area so is the case in this case also. In the reported decision, it was contended that the property regarding which tenancy was claimed and purchase certificate was issued formed part of temple premises and aid was taken on Section 3(1)(x) of the Kerala Land Reforms Act to deny benefit to the claimants.

14. This Court referring to the proviso to Section 3(1)(x) of Kerala Land Reforms Act found that in cases where explanation operates prohibition, Section 3(1)(x) cannot apply. Proviso is an exception to Section 3(1)(x). Therefore, it follows that even if the property regarding which claim is laid formed part of the temple premises, if the proviso to Section 3(1)(x) is available to the claimant, then the claimant may be entitled to permanency of fixity of tenure and for purchase certificate. This aspect has been lost sight of by the appellate authority. However, the fact remains that common purchase certificate has been issued in respect of the property comprised in survey Nos.59/1 and 65/9.

It becomes necessary to separately identify the property with boundaries in respect of which tenancy is claimed.

For the above reasons, this petition 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. It is made clear that the identity of the property shall be ascertained in case the appellate authority finds that claimants are entitled to purchase certificate. Parties shall appear before the appellate authority on 15.07.2015. The appellate authority may make every endeavour to dispose of the matter as expeditiously as possible, at any rate, within a period of four months from the date of appearance. Registry to send back the records forthwith.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A. to Judge.