

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

OP(C) .No. 2470 of 2013 (O)

AA 8/2005 of APPELLATE AUTHORITY (LR) , ALAPPUZHA
DATED 24-02-2009

PETITIONER:

THE SECRETARY,
TRAVANCORE DEVASWOM BOARD, THIRUVANANTHAPURAM-3.

BY ADV. SRI.KRISHNA MENON, SC, TRAVANCORE DEVASWOM BOARD

RESPONDENTS:

1. JOSEPH GEORGE,
ANITHOTTATHIL, KARIKODU, THODUPUZHA EAST P.O.
685585.

2. JOSEPH THOMAS,
ANITHOTTATHIL, KARIKODU, THODUPUZHA EAST P.O.-685585.

3. MATHAI PAILY,
CHENNAMKULATHU, ALAKKODU, ELAM DESOM P.O.
THODUPUZHA-685588.

4. V.S.RAGHAVAN,
VADAKKETHOPPIL, KARIKODU, THODUPUZHA-685584.

5. ABOOBACKER,
SAITHUMUHAMMED, MANICKAL, KARIKODU,
THODUPUZHA-685584.

6. MUHAMMED KHAN BHASHEER,
MANICKAL, KARIKKODU, THODUPUZHA-685584.

7. JOSEPH MATHEW,
ANITHOTTATHIL, KARIKKODU, THODUPUZHA EAST-685585.

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8. ALPHONSA K.SEBASTIAN,
W/O.P.T.JOSEPH, PADINJAREYIL, KARIKODU,
THODUPUZHA-685584.

9. P.T.JOSEPH,
S/O.THOMAS, PADINJAREYIL, KARIKODU,
THODUPUZHA EAST-685585.

10. CYRIL P.JACOB,
S/O.KUNJACKO, PADATHIL HOUSE, KARIKKODU,
THODUPUZHA EAST-685585.

11. ABRAHAM,
S/O.MICHAEL, CHAMAKKALAYIL, KARIKKODU,
THODUPUZHA EAST-685585.

12. MATHEW,
S/O.THOMAS, KOCHUMUTTAM HOUSE, AVOLI P.O.,
MUVATTUPUZHA-686667.

13. CICILY,
D/O.THOMAS, KADALIKKATTU HOUSE, (KOCHUMUTTAM HOUSE),
AVOLY P.O., MUVATTUPUZHA-686667.

14. MARIYAKKUTTY
W/O.ULAHANNAN, PADINJAREKKUDIYIL, KARIKKODU,
THODUPUZHA EAST P.O., 685585.

15. LOVELY JOSEPH,
W/O.JOSEPH, KUZHIKANNIYIL HOUSE, KARIKKODU
THODUPUZHA EAST P.O.-685585.

16. DR.GEORGE,
S/O.IYPE, POTTAYIL HOUSE, KARIKKODU,
THODUPUZHA EAST P.O.-685585.

17. BABY,
W/O.DR.GEORGE, POTTAYIL HOUSE, KARIKKODU,
THODUPUZHA EAST P.O.-685585.

18. SMT.SAROJINI AMMA,
W/O.LATE RAGHAVAN NAIR, VADAKKETHOPPIL, KARIKKODU
THODUPUZHA EAST P.O.-685585.

19. KRISHNAKUMAR,
S/O.LATE RAGHAVAN NAIR, VADAKKETHOPPIL, KARIKKODU,
THODUPUZHA EAST P.O.-685585.

20. THE CHIEF SECRETARY,
KERALA STATE, TRIVANDRUM-695001.

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21. MOTHER GENERAL,
DEEPTHI TOM, CONGRIGATION OF SISTERS OF ST.MARTA
KARIKKODU, THODUPUZHA EAST P.O.-685585.

* ADDL.R22 IS IMPEADED:

ADDL.R22: K.K.RAJEEV, SECRETARY,
KARIKKODE BAGAWATHY TEMPLY ADVISORY COMMITTEE OFFICE,
KARIKKODE, THODUPUZHA EAST P.O., THODUPUZHA - 685 585.

* ADDL.R22 IS IMPEADED AS PER ORDER DATED 13.08.2015 IN
I.A.NO.11361 OF 2013

R7 BY ADV. SRI.MATHEW JOHN (K)
R7 BY ADV. SRI.DOMSON J.VATTAKUZH
R8,R9,R11,R12,R13 & R21 BY ADV. SRI.V.M.KURIAN
R10 BY ADV. SRI.RAJU K.MATHEWS
R16 & R17 BY ADV. SRI.N.NEELAKANDHAN NAMBOODIRI
R20 BY GOVERNMENT PLEADER SRI.REJI JOSEPH
ADDL R22. BY ADV. SRI.T.V.GEORGE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DSV/24/8/15

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APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT-P1: COPY OF THE APPEAL MEMORANDUM (LESS ANNEXURES) IN
A.A.NO.8 OF 2005.

EXHIBIT-P2: COPY OF ORDER DATED 24.2.2009.

EXHIBIT-P3: COPY OF I.A.NO.23/2009 IN A.A.NO.8 OF 2005.

EXHIBIT-P4: COPY OF I.A.NO.24/2009 IN A.A.NO.8 OF 2005.

EXHIBIT-P5: COPY OF COMMON ORDER DATED 30.3.2011 IN I.A.NO.23
OF 2009 AND I.A.NO.24 OF 2009 IN A.A.NO.8 OF 2005.

RESPONDENTS' EXHIBITS :

EXHIBIT-R8 (A) COPY OF THE JUDGMENT DATED 30.07.1970 IN
O.S.NO.41/67.

EXHIBIT-R8 (B) COPY OF THE PLAINT IN O.S.NO.41 OF 1967

// True Copy //

P.A. To Judge

DSV/24/8/15

B.KEMAL PASHA, J.

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O.P.(C). No.2470 of 2013

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Dated this the 13th day of August, 2015

J U D G M E N T

A property is allegedly acquired for the development of a temple coming under the Travancore Devaswom Board, is the subject matter herein. According to the Travancore Devaswom Board, who is the petitioner herein, the Land Tribunal had illegally dealt with an extent of around 4.2 Acres of property belongs to the Travancore Devaswom Board, and issued purchase certificates to various persons. According to the petitioner, they came to know about it only during the course of O.P.No.15066 of 1998 of this Court. On coming to know about it, the Travancore Devaswom Board wanted to challenge the matter. This Court had directed the Travancore Devaswom Board to file an appeal in case they are aggrieved. Consequently, the appeal was filed before the Appellate Authority.

2. As the appeal was filed out of time, the Appellate

Authority wanted the appellant to file an application for getting the delay condoned in filing the appeal. Even though opportunities were granted to the Devaswom Board, ultimately the appeal happened to be dismissed for default.

3. Thereafter, within 30 days of the dismissal, an application for re-admission of the appeal was filed along with an application for getting the delay condoned. It seems that through Exhibit P5 order the appellate authority has disposed of the application for re-admission of the appeal, the application for getting the delay condoned, as well as the appeal itself. Exhibit P5 order is under challenge.

4. Heard Adv.Sri.Krishna Menon, the learned counsel for the Travancore Devaswom Board, Adv.Sri.Mathew John and Adv.Sri.Domson J. Vattakuzhy, the learned counsel for the 7th respondent, Adv.Sri.V.M.Kurian, the learned counsel for respondent Nos. 8, 9, 11, 12, 13 and 21, Adv.Sri.Raju K. Mathews, the learned counsel for the 10th respondent, Adv. Sri. N.Neelakandhan Namboodiri and Adv.Sri. P.S.Narayana

Raja, the learned counsel for respondent Nos.16 and 17, Adv.Sri.Reji Joseph, the learned Government Pleader for the 20th respondent and Adv.Sri.T.V.George, the learned counsel for the additional 22nd respondent.

5. The learned counsel for the petitioner has argued that the course adopted by the appellate authority cannot be justified as all the matters were disposed of through a composite order which should not have been done by the Appellate Authority. It has also been pointed out that the Appellate Authority has gone into the merits of the appeal itself and has decided the matter as if a decision has been entered on the merits of the appeal; which was quite unwarranted. It has also been pointed out that the application for getting the delay condoned was not properly dealt with through Exhibit P5 order.

6. *Per contra* all the learned counsel appearing for the respondents have argued that there was inordinate delay in filing the appeal and the appeal itself was filed without an

application for getting the delay condoned, and it was such an appeal that was dismissed for default. It is also argued that even on merits of the appeal, an appeal will not lie. It has been further pointed out that there was sufficient notice to the Travancore Devaswom Board with regard to the proceedings before the Land Tribunal and therefore, they cannot be heard to say that the purchase certificates were fraudulently obtained by the parties.

7. On going through Exhibit P5, it seems that the Appellate Authority was carried away in considering the merits of the appeal as such in passing Exhibit P5 order. Instead of considering the application for getting the delay condoned for filing the appeal, the appellate authority has chosen to pass a composite order on the merits of the appeal, application for getting the delay condoned, as well as the application for re-admission of the appeal.

8. In fact, there was no properly filed appeal at all. In such case when an application was filed for the re-

admission of such an appeal, along with an application for getting the delay condoned, appellate authority ought to have considered the application for getting the delay condoned at first, and then passed an order on the question of admission of the appeal. Instead of that, it seems that a composite order has been passed by way of Exhibit P5, mostly by dealing with the merits of the appeal. At present, the merits of the appeal do not arise for consideration at all. It seems that the appellate authority has not considered the merits of the application for getting the delay condoned, properly. The appellate authority has taken the decision that there was no merit in the appeal and therefore, there is no merit in the application for getting the delay condoned. Matters being so, Exhibit P5 order is liable to be set aside.

In the result, this Original Petition (Civil) is allowed. Exhibit P5 order stands set aside. The matter is remitted to the appellate authority for entering a fresh decision on the question as to whether the delay can be condoned or not.

In case, the appellate authority takes a decision that the delay can be condoned, then only the question of merits in the appeal comes up for consideration. In such case, the Appellate Authority will consider the merits of the appeal. Otherwise, no such question arises. The parties shall appear before the appellate authority on 16.09.2015.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/17/8/15