

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

O.P.No. 21705 of 1998 (H)

PETITIONER:

**ADV. ALAN PAPALI
S/O. PERCY GERALD PAPALI
PAPALI HOUSE, KAKKANAD P.O.,
COCHIN - 30**

BY ADV. SRI.K.RAMAKUMAR (SR.)

RESPONDENTS:

- 1. KERALA STATE HOUSING BOARD,
TRIVANDRUM, REPRESENTED BY ITS SECRETARY**
- 2. THE KERALA STATE HOUSING BOARD, REGIONAL OFFICE
PANAMPILLY NAGAR, COCHIN - 36
REPRESENTED BY THE EXECUTIVE ENGINEER**
- 3. TALUK SURVEYOR, KANAYANOOR TALUK
ERNAKULAM**
- 4. THE SUB REGISTRAR,
SUB REGISTRAR'S OFFICE,
THRIKKAKARA
KAKKANAD**
- 5. THE SPECIAL TAHASILDAR (LAND ACQUISITION)
KERALA STATE HOUSING BOARD,
ERNAKULAM**

R1 & R2 BY ADV. SRI.K.JAYAKUMAR (SR.)

R3, R4 & R5, BY SR. GOVERNMENT PLEADER SRI. THOMAS JOHN AMBOOKEN

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE DOCUMENT NO. 2537/74 OF EDAPPALLY SUB REGISTRAR'S OFFICE**
- P2: COPY OF COMMON JUDGMENT REPORTED IN 1986 KLT 583**
- P3: COPY OF NOTICE DATED 30.10.1998**
- P4: COPY OF TAX RECEIPT DATED 6.12.1993 PERTAINING TO THE PROPERTY OF THE PETITIONER PAID FOR THE YEAR 1993-1994**
- P5: COPY OF PETITION DATED 27.10.1998 SUBMITTED BY THE PETITIONER BEFORE THE REVENUE DIVISIONAL OFFICER**

RESPONDENT(S)' EXHIBITS:-

- R1(a): COPY OF THE LETTER DATED 16.9.1977**
- R1(b): COPY OF THE MAHAZAR DATED 18.9.1977**
- R1(c): COPY OF THE CHARGE CERTIFICATE DATED 18.09.77**
- R1(d): COPY OF THE ORDER IN C.A. NO. 2796-2797 OF 1985 OF THE HON'BLE SUPREME COURT OF INDIA DATED 12.08.1988**
- R1(e): COPY OF THE AWARD 14/86**
- R1(f): COPY OF THE ORDER NO. K. DIS. 10142/98/A5 DATED 17.09.1998**
- R4(a): COPY OF CERTIFICATE OF ENCUMBRANCE FOR THE PERIOD FROM 01.01.1974 TO 20.05.1982 IN RESPECT OF ABOVE SAID PROPERTIES**
- R4(b): COPY OF ENCUMBRANCE CERTIFICATE ISSUED IN THIS REGARD DURING THE PERIOD FROM 21.05.1982 TO 6.2.2006**

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

O.P. NO. 21705 OF 1998

Dated this the 6th day of August, 2015

JUDGMENT

Mr. Percy Gerald Papali owned large tracts of land in Vazhakkala Village (earlier Thrikkakara South Village) of Kanayannoor Taluk in Ernakulam District. The details of the land held by Mr. Percy Gerald Papali under Document No. 1563/1958, SRO, Edappally are as follows:-

Survey Number	Extent
59/4-3	59 Cents
59/5B/6	35 Cents
120/1A	1 Acre 2½ Cents
120/B	1 Acre 78 Cents

Mr. Percy Gerald Papali later executed a settlement deed (Document No. 2537/1974, SRO, Edappally) in favour of his son Mr. Alan Papali in respect of 3.74 ½ acres. 50 cents of land in Survey Nos. 59/4 and 5 out of the 3.74 ½ acres of land so gifted is the subject matter of this writ petition.

2. It is trite law that a settlement deed is nothing but a gift in presenti in favour of the dependent of the donor (settlor). Very little evidence is required to show that a gift

deed is acted upon and the same is presumed to be accepted unless it is onerous or burdensome. The mutation of the property by the donee (settlee) is inconsequential since it is solely for the purpose of collection of tax. This Court by an interim order dated 20.1.2006 directed the Sub Registrar to specify the details regarding ownership. The relevant part of the counter affidavit of the fourth respondent Sub Registrar is extracted below:-

“3. It is submitted that area where the land involved in the above Original Petition is situated, was earlier under the jurisdiction of Sub Registrar, Edappally till 20.05.1982. Thereafter Sub Registrar's Office, Thrikkakara came into existence from 21.05.1982 onwards. Going through the documents executed in respect of Sy. Nos. concerned it is found that only one document has been executed during the period from 1.1.1974 to 20.5.1982 in the Office of the Sub Registrar, Edappally. Document No. 2537/74, a gift deed was executed in favour of Mr. Alan Papali by his father Percy Gerald Papali on 13.8.1974 in respect of 35 cents of land comprised in Sy. No. 59/4-3, 59 cents in Sy. No. 59/5B/6, 1 acre and 2 ½ cents in Sy. No. 120/1A and 1 acre 78 cents in Sy. No. 120/1B.”

It is beyond doubt therefore that Mr. Alan Papali as the donee under the settlement deed had title and possession as regards the 50 cents of land in question.

3. Mr. Percy Gerald Papali died on 18.10.1974 leaving behind his widow and three sons (including Mr. Alan Papali) as his legal heirs. It appears that proceedings were initiated under the Kerala Land Acquisition Act, 1961 in respect of the 50 cents of land in the year 1977. The physical possession of the land is said to have been taken by the Kerala State Housing Board on 16.9.1977 and 18.9.1977. The same was allegedly done in haste to facilitate the then Prime Minister to lay a foundation stone on 25.9.1977. But the notification under Section 3(1) of the said Act dated 20.12.1977 and the declaration following on 04.12.1979 were however quashed. This was done by a Division Bench of this Court in **Rajagopalan Nair & Others v. Kerala State Housing Board [1986 KLT 583]**. The said decision arose out of OP.No.3279/1982 filed by the uncle of the petitioner Mr. Arnold Papali in respect of adjacent lands. The Supreme Court in Civil Appeal Nos. 2796-2797 of 1988 later set aside the decision of the Division Bench. It seems that Award No.14/1986 had been passed in the meanwhile under the Land Acquisition Act, 1894. This would at best mean that Award No.14/1986 shall be final and conclusive as against the persons mentioned therein.

4. The persons mentioned in Award No. 14/1986 are Mr. Percy Gerald Papali as the Pattadhar and his wife Rosalie Papali as the occupant. Mr. Alan Papali who was the real owner in possession was not made a party either to the land acquisition proceedings or the Award. The proceedings commenced under the Kerala Land Acquisition Act, 1961 and terminated under the Land Acquisition Act, 1894. The respondents have no case that the petitioner who is the real title holder was put on notice or heard. The respondents have also no case that the settlement deed in favour of the petitioner is sham and not acted upon. The only contention is that the petitioner being an interested person should have objected to the land acquisition proceedings. The petitioner has a definite case that he knew about the proceedings only when he received the notice dated 30.10.1988. The notice (marked Ext. P3) is seen issued by the Taluk Surveyor for the purpose of identification of the property. The fifth respondent Special Tahsildar has in his counter affidavit mentioned about the changes made in the village records. The changes were made in favour of the Kerala State Housing Board only in the year 1998. The writ petition has been filed on 04.11.1998 soon after and the same cannot at all be said to be belated as is

objected. The reliefs sought therein are for a declaration that Award No. 14/1986 is not binding on the petitioner and in the alternative to recover possession of the land.

5. It is also contended by the respondents that absence of notice will not vitiate the Award relying on **Francis v. State of Kerala and Others [1966 KLT 123]**. That was a case where the lawful owner was a party to the Award which was allegedly passed without notice to him. Here is a case where the lawful owner in possession was not put on notice or impleaded at any point of time. The award is seen to have been passed behind the back of the title holder which should not affect his rights at all. The following observations in **Tukaram Kana Joshi and Others v. Maharashtra Industrial Development Corporation and Others [(2013) 1 SCC 353]** are apposite.

“It is pertinent to note that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the “law”, as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration

caprice. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State."

I can understand if a public notice was given indicating the name of the petitioner leave alone personal notice in the proceedings for acquisition. The name of the petitioner did not figure anywhere and it is too much to contend that he should have known by prophecy. The petitioner cannot be blamed for not objecting to the acquisition proceedings as a person interested therefore. I should also note that there is no rival claim for the compensation amount necessitating a reference to the land acquisition court.

6. The irresistible conclusion therefore is that the petitioner has lost neither his title nor possession under an Award to which he is a party. The petitioner can be stripped of his title and possession in land acquisition only under an Award with him on the party array. The deprivation of the title and possession can only be by resort to the procedure prescribed for land acquisition with notice. Otherwise the same would amount to an infraction of the right guaranteed under Article 300A of the Constitution of India. There is no

necessity to direct the respondents to return the possession of the property to the petitioner. This is because I have held that neither has the legal possession been lost by the petitioner nor gained by the respondents under a binding Award. It is declared that Award No. 14/1986 does not prejudicially affect the interest of the petitioner. This is so in respect of 50 Cents of land in Survey No. 59/4 and 5 of Vazhakkala Village which is reportedly now used as playground. The compensation amount if any deposited can be withdrawn by the respondents on appropriate motion. The right of the respondents to initiate proceedings afresh for land acquisition if they so desire however remains unhindered.

The writ petition is disposed of. No costs.

Sd/-
V. CHITAMBARESH
JUDGE

DCS