

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WA.No. 844 of 2012 () IN WP(C).32680/2010

APPELLANT(S)/PETITIONER:

GOPINATHAN
S/O KAYYELIKUNNIMEL CHATHUKUTTY, VATTAKURUVIL HOUSE
KORANGADU, THAMARASSERY P.O., KOZHIKODE-673573.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA

RESPONDENT(S)/RESPONDENTS:

1. THE PRINCIPAL CHIEF CONSERVATOR OF FOREST, KERALA.
VAZHUTHAKKAD, THIRUVANANTHAPURAM, 695 001.
2. THE CUSTODIAN
(ECOLOGICALLY FRAGILE LANDS) AND CHIEF
CONSERVATOR OF FORESTS (WILDLIFE)
THIRUVANANTHAPURAM, 695 001.
3. THE DIVISIONAL FOREST OFFICER (D.F.O.)
NILAMBUR NORTH DIVISION, NILAMBUR, MALAPPURAM-676505.
4. THE ECOLOGICALLY FRAGILE LAND CLAIM
DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
KERALA VAZHUTHAKKAD
THIRUVANANTHAPURAM REPRESENTED BY
THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS-695001.
5. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST
SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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W.A.No. 844 of 2012

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Dated this the 18th day of March, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

The appellant filed W.P.(C).No.32680/2010 challenging Ext.P-7 order passed by the 1st respondent rejecting Ext.P-6 application made by him under Sec.10A of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, (Act 21 of 2005), as amended by Act 32 of 2009. By the judgment under appeal, the learned Single Judge disposed of the Writ Petition leaving it open to the appellant to pursue his remedies before the Tribunal constituted under Sec.10 of Act 21 of 2005. It is this judgment, which is under challenge before us.

2. We heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents.

3. Ext.P-6 application made by the appellant under Sec.10A of the Act as amended, was rejected by Ext.P-7 order only on the basis that the appellant acquired ownership over the property by Exts.P-1 and P-2 documents dated 12.6.2000, after the appointed

day under Act 21 of 2005, viz., 2.6.2000. According to the 1st respondent, to maintain an application under Sec.10A, the applicant should have acquired ownership over the property in question before 2.6.2000.

4. Having heard the learned counsel for the appellant and also the learned Special Government Pleader appearing for the respondents, we are inclined to think that the date, 2.6.2000 mentioned in Sec.10A introduced by Act 32 of 2009, only qualifies the extent of land specified in Sec.10A(1) and not acquisition of ownership of the property. Further, in the context of Act 26 of 1971, a Full Bench of this Court in the case *Parameswara Sastrigal v. State of Kerala*, reported in 2008 (2) KLT 461, has clarified the legal position that the purchaser of a property would step into the shoes of the original owner of the property and therefore, also the appellant herein, who has purchased the property on 12.6.2000, has got all the rights, which his seller had in respect of the property including to maintain an application under Sec.10A of the Act.

5. Therefore, the premise on which Ext.P-7 order has been passed rejecting Ext.P-6 application made by the applicant under Sec.10A of the Act is incorrect and illegal. For that reason, Ext.P-7

order could not have been sustained. Therefore, the judgment of the learned Single Judge relegating the appellant to pursue his remedies before the Tribunal under Sec.10 is set aside. The Writ Appeal is disposed of setting aside Ext.P-7 and directing the 1st respondent to re-consider Ext.P-6 application made by the appellant in terms of the provisions contained under Sec.10A of Act 21 of 2005 as amended, and to pass orders thereon on merits and with notice to the appellant.

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Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge