

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 6543 of 2006 (D)

PETITIONER(S):

M.J. JOB, AGED 40 YEARS,
S/O. JOHN, MANNAPARAMBIL, JUHN'S HOUSE
PUNNAPRA, ALAPPUZHA-1.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENT(S):

1. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, ALAPPUZHA.
2. THE DIRECTOR, INDUSTRIES AND
COMMERCE, THIRUVANANTHAPURAM.
3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, INDUSTRIES DEPARTMENT, THIRUVANANTHAPURAM.
4. THE MANAGING DIRECTOR, KERALA STATE
INDUSTRIAL DEVELOPMENT CORPORATION, KESTON ROAD
KOWDIAR P.O., THIRUVANANTHAPURAM.
- *5. KANOIL AND FOODS LTD,
SREEKARYAM, TRIVANDRUM
REPRESENTED BY THE MANAGING DIRECTOR,
N.KANNARAJ, SAROJ
CHEKKALAMUKKU

*ADDITIONAL 5TH RESPONDENT IS IMPEADED AS PER THE ORDER DATED 01.04.2015
IN I.A.NO.1935 OF 2013.

#6.PRAKASAN AGED 60 YEARS, S/O LATE K.SHANKARA MENON,
PROPRIETOR, SUN PAPERS, RESIDING AT KADEKUZHY HOUSE,
MARADU, KOCHI- 682 034

#ADDITIONAL 6TH RESPONDENT IS IMPEADED AS PER THE ORDER DATED 24.06.2015 IN
I.A.NO.8370 OF 2015.

R,R4 BY ADV. SRIM.PATHROSE MATTHAI (SR.)
R,R4 BY ADV. SRI.RONY J.PALLATH
R1 TO R3 BY ADV. GOVERNMENT PLEADER E M ABDUL KHADER
ADDL.R5 BY ADV. SRI.M.M.HUSAIN
R4 BY ADV. SRI.K.JAJU BABU, SC, KERALA STATE INDUSTRIAL
DEVELOPMENT CORPORATION
ADDL R6 BY ADV. SRI.A.BALAGOPALAN
R BY ADV. SRI.A.RAJAGOPALAN
R BY ADV. SRI.M.S.IMTHIYAZ AHAMMED
R BY SRI.RONY J..PALLATH, SC FOR KSIDC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-04-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kkj

APPENDIX

PETITIONER' EXHIBITS

- EXT.P1: COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 22.2.2005
- EXT.P2: COPY OF THE GO(MS) NO,97/70/ID DATED 24.08.1970
- EXT.P3: COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 16.12.2005
- EXT.P4: COPY OF THE REPRESENTATION SUBMITTED TO THE 1ST
RESPONDENT DATED 12.01.2006
- EXT.P5: COPY OF THE REPRESENTATION DATED 2.1.2006
- EXT.P6: COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DATED
22.02.2006

RESPONDENTS'S EXHIBITS

- EXT.R4(A): TRUE COPY OF SALE EXECUTED BY KERALA FINANCIAL
CORPORATION DATED 27.03.1996 IN FAVOUR OF M/S KANOIL FOODS
LTD
- EXT.R4(B): TRUE COPY OF ORDER DATED 20.09.1996 ISSUED BY THE 1ST
RESPONDENT IN FAVOUR OF N.KANNARAJN
- EXT.R4(C): TRUE COPY OF CERTIFICATE DATED 03.10.1996 ISSUED BY THE 1ST
RESPONDENT

// TRUE COPY //

PA TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.6543 of 2006

Dated this the 1st day of April, 2015

J U D G M E N T

The petitioner has filed this writ petition challenging Exhibit P3 proceedings by which, an allotment of land made in his favour by the first respondent has been cancelled. As per Exhibit P1 proceedings of the first respondent dated 02.02.2005, the petitioner was allotted an extent of 50cents of land comprised in Survey No.408/8 and 411/1A of Aroor Village for the purpose of setting up an industrial unit manufacturing fibre glass products under the name and style M/s Eldon Products. It is the said allotment that has been cancelled by Exhibit P3. It is stated in Exhibit P3 that, the land had been allotted earlier to one Sri.Kannaraj of Thiruvananthapuram. The land was later resumed and reallocated to the petitioner. The cancellation has been made pursuant to a communication issued by the 4th respondent informing the first respondent that the land had been taken

over by them under Section 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as 'the Act' for short). The petitioner challenges the above order.

2. According to Sri Sanalkumar Advocate who appears for the petitioner, Exhibit P3 is unsustainable and liable to be set aside for the reason that, as per Rule 15 of Exhibit P2, Rules for the allotment of land in development plots on hire purchase basis issued by the Government of Kerala, a bank or financial institution is entitled to take possession of or claim only the improvements effected by the allottee of the land or the value thereof. It is contended that in violation of the above provision, Exhibit P3 has been issued.

3. Advocate Saji Varghese appears for the 4th respondent. A detailed counter affidavit has been filed producing Exhibits R4 (a) to R4(c) documents. According to the counter affidavit, the property had originally been allotted to M/s Ospark Engineering Corporation for setting

up an industry. The land was mortgaged to the Kerala Financial Corporation ('KFC' for short) for the purpose of availing a loan for conduct of the industry. However, repayment of the loan was defaulted. Therefore, the Kerala Financial Corporation initiated action under Section 29 of the Act, took over possession of the land and sold the land in public auction. The property was purchased by one Sri. Kannaraj of Thiruvananthapuram for the purpose of establishing an industry producing coconut oil and cakes. Exhibit R4(a) is the agreement executed by the KFC favour of M/s Kanoil and Foods Ltd.

4. M/s Kanoil and Foods Ltd had taken a term loan of ₹112.5 lakhs from the 4th respondent by mortgaging the very same property. Exhibit R4(c) is the permission granted by the 1st respondent for mortgaging the property. M/s Kanoil and Foods Limited also did not establish the industry as proposed. Repayment of the loan also was defaulted. Therefore, the land was taken over by the 4th

respondent under Section 29 of the Act on 25.05.2005. The property remains in the possession of the 4th respondent. The 4th respondent is also stated to have conducted an auction of the property on 22.02.2006. The additional 5th respondent was the highest bidder. However, the proceedings have not been finalised till date.

5. According to the counsel for the 4th respondent, the contentions of the counsel for the petitioner are without basis. Rule 15 deals with only mortgages of improvements made by the allottee on the land and not to the mortgage of the land itself. Mortgage of land though belonging to the Government is permissible under Rule 7. It was in accordance with the said provision that, Exhibit R4(c) permission was granted by the first respondent. Therefore, Exhibit P1 that was issued without noticing the subsequent developments has been rightly cancelled by Exhibit P3. It is contended that, Exhibit P3 does not call for any interference at the hands of this Court.

6. The Government Pleader appears for respondents 1 to 3. A separate counter affidavit has been filed. It is stated in the counter affidavit that, though the land had been allotted to the petitioner by Exhibit P1, the petitioner had not complied with the stipulations subject to which the allotment was made. Despite a specific direction, remittance of 25% of the value of the land, execution of the agreement and utilisation of the land within a period of six months are conditions that are not complied with. Therefore, it is contended that, cancellation of the allotment is perfectly in order.

7. Heard. The contention of the petitioner in Writ petition rests entirely upon Rule 15 contained in Exhibit P2. Rule 15 deals with the procedure to be adopted on resumption of land allotted for the purpose of establishing an industry. Sub Rule (a) of Rule 15 deals with a situation where an allottee has effected improvements in the property without mortgaging the same to a financial

institution. Sub Rule (b) deals with a situation where the allottee has mortgaged or in any other way encumbered the improvements on the land, superstructure etc. The procedure to be adopted in such a case has been stipulated in sub rule (b). Sub rule (b) of Rule 15 is extracted hereunder.

b) If the allottee has mortgaged or in any way encumbered the improvements on the land, superstructure etc. to a bank or financial institution for the purpose of raising funds for the construction of buildings, purchase of machinery, working capital etc. thereby creating a first charge in favour of such bank or financial institution, the Director of Industries & Commerce will, if he finds an alternate person or persons or company to whom the land and building could be allotted, pay to the mortgagee the value of these improvements on the basis of valuation made by an officer not below the status of an Executive Engineer of the Public Works Department provided that the amount payable shall not exceed the amount for which the improvements have been valued by the above competent authority less valuation charges. After settlement of the dues of the above said bank or financial institution and the claims of the Government, the ownership of the improvement shall vest in the Government. The Director

of Industries & Commerce shall, then dispose of the land and improvements thereon to any other person or group of persons or company in accordance with the rules for sale or hire purchase of Industrial Estate.

A perusal of the above provision shows that, the same applies only to a situation where the allottee has created a mortgage in respect of the improvements alone, by mortgaging the same to a financial institution or bank. In such cases, provision has been made for payment of the value of such improvements to the financial institutions so as to enable the first respondent to re-allot the land and buildings to a prospective industrialist. The said provision cannot be construed as limiting the power of the first respondent or the financial institution that has advanced money to an industrialist on the security of the land that was allotted. The contention of the counsel for the petitioner is that, the power of the respondents would have to be limited to recovery of value of improvements alone since the land actually belongs to the Government and not to the allottee. It is contended that, no title has been

conveyed to the allottee in respect of the land. Though it is true that no title has been conveyed to the allottee of the land, the fact remains that the land has been allotted to the particular person for the purpose of setting up an industry. Rule 7 empowers the first respondent to permit a land to be mortgaged. Rule 7 is extracted herein under for convenience of reference.

The land allotted under these rules and/or the improvements thereon including super-structures, buildings etc. shall not be alienated or encumbered in any manner without prior sanction in writing of the Director of Industries & Commerce. Every alienation or encumbrance duly made by the hirer shall be notified by the hirer and the Director of Industries and Commerce to the already aliene/holder of encumbrance right in the interest if any.

8. It is in exercise of the power conferred by the above provision that Exhibit R4(c) permission has been granted by the first respondent. Therefore, there is nothing on record to indicate that the mortgage that was created by Sri.Kannaraj of M/s Kanoil and Foods Ltd suffered from any

infirmity. It was certainly within the powers of the 4th respondent to repossess the land, in the event of default in repayment of the loan. In the present case, they have actually repossessed the land and are in possession thereof. According to the counter affidavit of respondents 1 to 3, apart from receiving the allotment Exhibit P1, the petitioner has not done anything pursuant thereto, to take possession of the land or to comply with the directions of the first respondent. Therefore, when it was brought to the notice of the first respondent that the allotment was made without noticing the charge on the property in favour of the 4th respondent, the allotment has been cancelled. I do not find any infirmity in Exhibit P3. The action is perfectly justified in the facts and circumstances of the case.

For the above reasons, this writ petition fails and is accordingly dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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W.P.(C) No.6543 of 2006

The words "The additional 5th respondent " occurring in the 11th & 12th lines of 4th paragraph of the judgment at page 4 are corrected as "The additional 6th respondent", vide order dated 24.06.2015 in I.A.No.8370/2015 in W.P.(C) No.6543/2006.

Sd/-
Registrar (Judicial)