

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 185 of 2008 (V)

PETITIONER(S):

**KEEZHURIDATHI PRABHAKARAN,
VAZHUNNAVAR, P.R.NAGAR P.O., (VIA) MATTANUR,
KANNUR DISTRICT.**

**BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY**

RESPONDENT(S):

- 1. CHIEF SECRETARY,
STATE OF KERALA, THIRUVANANTHAPURAM.**
- 2. SECRETARY LAND BOARD,
THIRUVANANTHAPURAM.**
- 3. TALUK LAND BOARD, THALASSERI.**
- 4. DISTRICT COLLECTOR, KANNUR.**
- 5. TAHSILDAR, TELLICHERRY.**
- 6. VILLAGE OFFICER, CHAVASSERI P.O.**
- 7. PUTHIAPURAYIL AMERI ABDULLA,
CHAVASSERI AMSOM, VELIYAMBRA DESOM, P.R.NAGAR POST,
(VIA) MATTANUR, THALASSERI TALUK.**
- 8. PUTHIAPURAYIL AMERI YUSAF,
CHAVASSERI AMSOM, VELIYAMBRA DESOM, P.R.NAGAR POST,
(VIA) MATTANUR, THALASSERI TALUK, KAWDIAR.**

**R1 TO R6 BY SPECIAL GOVERNMENT PLEADER SMT.SUSHEELA R.BHATT
R7 & R8 BY ADV. SRI.GRASHIOUS KURIAKOSE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 185 of 2008 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE NOTICE DTD.28.2.1990 BY TAHSILDAR.

EXT.P2: TRUE COPY OF THE NOTICE DTD.9.3.2007.

**EXT.P3: TRUE COPY OF THE ORDER DTD.29.5.2006 OF THE LAND TALUK BOARD,
THALASSERY.**

**EXT.P4: TRUE COPY OF THE NOTICE DTD.7.5.2007 ADDRESSED TO THE COLLECTOR
WITH COPY TO PETITIONER.**

**EXT.P5: TRUE COPY OF THE ORDER IN OP.NO.4471/2001 OF HIGH COURT OF
KERALA.**

EXT.P6: TRUE COPY OF THE ORDER IN CRP.NO.1607/202 OF THIS HON'BLE COURT.

EXT.P7: TRUE COPY OF THE REVENUE RECEIPT DTD.23.5.2006.

EXT.P8: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED ON 1.8.1997.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.K. ABDUL REHIM, J.

W.P.(C)No.185 of 2008

Dated this the 18th day of February, 2015

JUDGMENT

The petitioner herein was the declarant before the Taluk Land Board, Thalassery in the proceedings SM No. 24/76 initiated for determination of excess land held by him, who was an unmarried adult person. Through the order No. 24/76/TLB/TLY, dated 17/06/1982 the Taluk Land Board directed the petitioner to surrender 29.50 Acres of land comprised in different survey numbers. Through the said order the extent of land to be surrendered comprised in different survey numbers were specified. Even though the petitioner challenged the above said order in CRP No.1863/1982 before this court, it was dismissed on 20/11/1989. Thereafter, an extent of 25.05 Acres comprised in 3 distinct survey numbers were taken over possession from the petitioner, on 01/03/1990. It is also revealed that another extent of 0.75 Acres was

taken over possession subsequently, on 27/04/1992. Thereafter, an erratum order was issued by the Taluk Land Board on 14/11/2000 modifying the extent of land to be surrendered as 28.69 acres. As per the said order an extent of 1.20 Acres in survey No. 121 and 1.39 acres in survey No.114 of Chavassery Amsom, Valiyambra Desom was also ordered to be surrendered. The above said land was taken over by the Tahsildar pursuant to the order of the Taluk Land Board, on 20/11/2000.

2. Subsequently, the respondents 7 and 8 herein had filed an application before the Taluk Land Board claiming exemption with respect to 2.65 Acres of land comprised in survey No.114, claiming that they have purchased the land as per document number 682/1993 of SRO Uliyil. They have filed a writ petition before this court as OP No.4471/2001, in which this court directed the Tahsildar, Thalassery to dispose of the claim petition filed by respondents 7 and 8 after giving them opportunity of hearing. The Tahsildar rejected the

petition, aggrieved by which respondents 7 and 8 had filed another Writ petition as OP No.26458/2001. This court in judgment dated 15/07/2002 had dismissed the writ petition stating that when the order of the Taluk Land Board is not challenged, its execution by the Tahsildar cannot be assailed. Thereupon the respondents 7 and 8 had preferred CRP No.1607/2002, presumably challenging the order passed by the Taluk Land Board requiring surrender of 1.39 Acres comprised in Survey No.114. The said revision petition was disposed of through Ext.P6 order. It is evident from Ext.P6 order that the grievance voiced was regarding the revised order issued by the Taluk Land Board directing surrender of 1.39 Acres from survey No.114. It was contended that the said order was issued after a long lapse of 18 years after determination of the extent of land to be surrendered by the petitioner as 29.50 Acres. However, this court disposed of the writ petition by directing that the respondents 7 and 8 have to be given opportunity to present their case before the

Taluk Land Board. The Taluk Land Board was directed to determine whether the 1.39 Acres comprised in survey No.114 belongs to respondents 7 and 8 or not.

3. Pursuant to Ext.P6 order the matter was heard by the Taluk Land Board after issuing notice to respondents 7 and 8, on 06/02/2006. The Taluk Land Board issued Ext.P3 order on 20/05/2006 holding that, the land purchased by respondents 7 and 8 comprised in survey No.114 which was ordered to be surrendered through proceedings of Taluk Land Board dated 14/11/2000, is not included in the surplus land. It was found that 1.39 Acres of land in RS No.114 of Veliambra Desom of Chavassery Village is belonging to respondents 7 and 8, and the order dated 14/11/2000 of the Taluk Land Board is revised to that extent. The Taluk Land Board further found that the 1.39 Acres mentioned above should be re-conveyed to respondents 7 and 8, after recovery an amount of Rs.278/- entered in the compensation roll and paid to the petitioner. Further in

Ext.P3 it was ordered that the 1.39 Acres re-conveyed has to be substituted from the possession of the petitioner and therefore the said extent of land comprised in Re-Survey No.121 has to be taken over possession, for which necessary direction was issued to the Tahsildar. Pursuant to Ext.P3 order of the Taluk Land Board the Village Officer concerned had issued Ext.P2 notice to the petitioner requiring him to surrender 1.39 Acres comprised in Survey No. 121. It is aggrieved by Exts.P2 and P3, this writ petition is filed.

4. Contention of the petitioner is that he was not given notice in any of the proceedings initiated on the basis of the claim petition submitted by respondents 7 and 8. It is contended that he was not issued with any notice in any of the proceedings before this court initiated at the instance of respondents 7 and 8 or in the proceedings before the Taluk Land Board which had culminated in Ext.P3 order. It is further contended that the re-opening of order passed by the Taluk Land Board

dated 14/11/2000 was not possible in view of the time limit stipulated in the proviso to sub- section (9) of Section 85 of the Kerala Land Reforms Act, 1963. Further contention raised is to the effect that when the Taluk Land Board had categorically found that 1.39 Acres of land comprised in survey No.114 belongs to respondents 7 and 8, a consequential recomputation of the total excess land to be surrendered by the petitioner ought to have been made and the extent of land exempted should have been deducted from the total stock of land which the petitioner is liable to be surrendered.

5. Heard; learned counsel appearing for the petitioner, Senior Counsel appearing on behalf of respondents 7 and 8, as well as Special Government Pleader (Revenue) on behalf of respondents 1 to 6. Respondents 7 and 8 had approached the Taluk Land Board aggrieved by the order through which an extent of 1.39 Acres of land comprised in RS No.114 was ordered to be surrendered. Initially the Taluk Land Board had

referred the matter for decision of the Tahsildar under the impression that the claim will not come within the purview of Section 85(8) of the Act. The Tahsildar considered the claim and rejected it. When the said order was challenged before this court, it was observed that unless the claimants challenges the order passed by the Taluk Land Board, the claim cannot be sustained. Accordingly, respondents 7 and 8 had filed the revision petition before this court. In Ext.P6 Order this court specifically directed the Taluk Land Board to consider their claim in order to determine whether 1.39 Acres comprised in survey No.114 belongs to the petitioner or not. When the extent and identity of land to be surrendered is determined by the Taluk Land Board either in exercise of power vested under sub-section (5) or under sub-section (7) of Section 85, any person interested in such property determined to be surrendered can approach the Taluk Land Board seeking to set aside the order. Therefore, the claim petition filed by respondents 7 and 8 seeking exemption

with respect to the 1.39 Acres of land in Survey No.114, can only be construed as claim petition under Section 85 (8). If the Taluk Land Board is satisfied about the claim the course left open to the Board is to set aside its order and to proceed afresh either under sub-section (5) or sub-section (7) of Section 85. In Ext.P3 order the Taluk Land Board found that an extent of 2.65 Acres of land comprised in RS No.114 was purchased by respondents 7 and 8 through document No.682/93 of SRO Uliyil. It was further found that the transferor of the the property had devolved title by virtue of document No.2376/92 of SRO Uliyil. It was also found that the assignor in the said document had derived title by virtue of partition deed registered as document No.2824/74 of SRO Uliyil and before that the land was in joint possession of one Keezhuridathil Devakiamma and her children as per partition deed No. 1146/1961 of SRO Uliyil. However, it is not discernible from Ext.P3 order as to whether the Taluk Land Board had considered the question as to

whether the land belonged to the declarant (petitioner) as on 01/01/1970. At any rate the impugned order of the Taluk Land Board is to the effect of exempting 1.39 Acres in survey No.114 from the purview of an order passed under sub-section (5) or (7) of Section 85, fixing the extent of property to be surrendered by the petitioner. In Ext.P3 order the Taluk Land Board had specifically mentioned that the earlier order dated 14/11/2000 is revised.

6. Under the above mentioned circumstances question to be considered is as to whether Ext.P3 order to the extent it directs the petitioner to substitute 1.39 Acres from another survey number can be sustained legally. Nothing is revealed in Ext.P3 to the effect that the petitioner was given any opportunity of hearing when the Taluk Land Board had decided to revise its earlier order dated 14/11/2000. Further, the Taluk Land Board had failed in passing any fresh orders under sub-section (5) or (7) of Section 85 by refixing the extent of land to be

surrendered, after affording opportunity of personal hearing to the petitioner. It had also omitted to consider the question as to whether the extent of 1.39 Acres need to be excluded from the total extent of land liable to be surrendered by the petitioner. Question whether a revision of the order passed under sub-section (5) or (7) of Section 85 can be revised at this point of time, has also not been considered by the Taluk Land Board.

7. Under the above mentioned circumstances, Ext.P3 order to the extent it directed the petitioner to substitute 1.39 Acres of land from RS No.121 of Veliambra Desom in Chavassery Village, cannot be sustained. Hence the impugned order to that extent is liable to be quashed.

8. Therefore this writ petition is allowed and Exts.P3 order to the extent it directed the petitioner to substitute 1.39 Acres of land comprised in RS.No.121 of Veliambra Desom in Chavassery Village is hereby quashed. Needless to observe that further action pursued on the

basis of Ext.P2 notice is also unsustainable.

However, it is made clear that the Taluk Land Board will be at liberty to initiate fresh proceedings either under sub-section (5) or sub-section (7) of Section 85, to the extent if any sustainable under law subject to provisions contained in sub-section (9) of Section 85 with due notice and opportunity afforded to the petitioner.

**Sd/- C.K. ABDUL REHIM
JUDGE**

MJL