

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WA.No. 332 of 2014 () IN WP(C).21547/2006

AGAINST THE JUDGMENT IN WP(C) 21547/2006 of HIGH COURT OF KERALA
DATED 29-10-2013

APPELLANT/PETITIONER:

BELLACHI,
AGED 84 YEARS,
W/O.KUNHAPPU MANIYANI
RESIDING AT CHELLANTHADKA HOUSE, POST MOVVAR-671 543
KASARAGOD DISTRICT. (*DECEASED)
*(LEGAL HEIRS OF THE DECEASED APPELLANT IS IMPLEADED AS
PER ORDER DT.27.8.14

Addl. 2. DAMODARA MANIYANI
AGED 70 YEARS
S/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.

Addl. 3. GOPALA MANIYANI
AGED 69 YEARS
S/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.

Addl. 4. NARAYANA MANIYANI
AGED 60 YEARS
S/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.

Addl. 5. BHASKARA
AGED 51 YEARS
S/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.

Addl. 6. SATYANANDA
AGED 42 YEARS
S/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.

Addl. 7. SADANANDA
AGED 42 YEARS
S/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.

Addl. 8. LEELAVATHI
AGED 68 YEARS
D/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.

Addl. 9. LAKSHMI
AGED 62 YEARS
D/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.

Addl. 10. RENUKA
AGED 44 YEARS
D/O.BELLACHI AND LATE KUNHAPPA MANIYANI
RESIDING AT CHALLANTHADKA HOUSE, KUMBADAJE VILLAGE
P.O.MOVVAR, VIA MULLERIA, KASARAGOD TALUK - 671 543.ADDL.

APPELLANTS 2 TO 10 ARE IMPEADED AS THE LEGAL HEIRS OF DECEASED
APPELLANT AS PER ORDER DATED 27/08/2014 IN IA 765/2014.

BY ADVS.SRI.D.KRISHNA PRASAD
SMT.S.SANTHY
SMT.MINI V.MENON

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE COMMISSIONER OF LAND REVENUE
THIRUVANANTHAPURAM.

3. THE REVENUE DIVISIONAL OFFICER
KASARAGOD AT KANHANGAD.

4. THE SPECIAL TAHSILDAR
LAND ASSIGNMENT, KUMBLA, KASARAGOD.

5. GANGADHARAN MANIYANI
S/O.KRISHNAN MANIYANI, RESIDING AT SATYA SAI VIHAR
ALIKE, POST S.S.VIHAR, BANTWAL TALUK
KARNATAKA STATE, PIN-574 211.

R-R5 BY ADV. SRI.SURESH KUMAR KODOTH
R BY SENIOR GOVERNMENT PLEADER SRI SHYSON P.MANGUZHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

W.A No.332 of 2014

Dated this the 8th day of October, 2015

JUDGMENT

Antony Dominic, J.

Heard the learned counsel for the appellant, the learned Government Pleader appearing for respondents 1 to 4 and the learned counsel appearing for the 5th respondent. This appeal is filed by the petitioner in W.P(c) No.21547 of 2006, who is aggrieved by the judgment of the learned Single Judge, dismissing the Writ Petition

2. The appellant filed Writ Petition challenging Exts.P1, P3 and P5 orders issued under the Land Assignment Act and also for a direction to consider the application, allegedly made by her, for assignment of a plot of land. The background in which the Writ Petition was filed is that, Ext.P1 is an order dated 2.2.1978 passed under the Kerala Land Assignment Act, assigning 3 acres of land to the 5th respondent. According to the appellant, she was in possession of the land and had also made an application for its assignment in her favour. Contending that the assignment by Ext.P1 was made ignoring her claims, she filed Ext.P2 appeal

before the 3rd respondent challenging Ext.P1 order. That appeal was disposed of by Ext.P3 order. In that order, the challenge raised by the appellant against the assignment of land was rejected. However, the appellate authority ordered that, as per the report of the Tahsildar, the 15 links access to the appellant from the southern boundary line of the land assigned to the 5th respondent shall be provided to her. For that limited purpose, the matter was remitted to the Tahsildar. The appellant was not satisfied with Ext.P3 order and therefore filed Ext.P4 revision before the 2nd respondent. The revisional authority passed Ext.P5 order upholding Ext.P2 order and setting aside Ext.P3 order in toto. As a result of the revisional order, the benefit conferred on her by the appellate authority in Ext.P3 was also lost. It was in such circumstances that the appellant had filed Writ Petition challenging Exts.P1, P3 and P5 and with a prayer to consider her application for assignment. The learned Single Judge having dismissed the Writ Petition, the appeal is filed.

3. Having heard the learned counsel for the appellant and the learned counsel appearing for the 5th respondent, we find that there is nothing on record to substantiate the claim of

the appellant that she was in possession of the land assigned or that she had applied for its assignment. In such a situation, there is absolutely no reason either to interfere with Ext.P1 order of assignment, or that part of Exts.P3 or P5, whereby the order of assignment was upheld by the appellate and revisional authorities. However, we do find force in the contention of the appellant that in Ext.P4 revision filed by the appellant, challenging Ext.P3 to the extent her challenge against Ext.P1 was turned down, the revisional authority was not justified in invalidating Ext.P3 in its totality and thereby deprived her the limited right recognised by the appellate authority entitling her for 15 links access from the southern boundary of the land assigned to the 5th respondent to her property. Though the learned counsel for the 5th respondent contended that the revisional authority was entitled to correct any illegality in the order passed by the appellate authority, and this contention is technically correct, such correction of illegality should either be within the scope of the revision or in a suo motu proceedings. In so far as this case is concerned, the power exercised by the 2nd respondent was on the revision filed by the appellant, in which

her grievance was a limited one. Therefore, the revisional authority should not have invalidated Ext.P3 in its totality and thereby to deprive the appellant of the limited right that was recognised by the appellate authority.

4. In such circumstances, we are inclined to direct that if as a matter of fact the appellant is still not having any reasonable access to her property, the Tahsildar should take necessary steps to give effect to that part of Ext.P3 order passed by the appellate authority entitling the appellant for a 15 links access from the southern boundary of the assigned land of the respondent to her property. Accordingly, we direct that the 4th respondent shall inspect the appellant's property and the assigned land, and if it is found that the appellant does not have a reasonable access to her property, the Tahsildar shall take steps for implementing the direction in Ext.P3 order entitling the appellant for an access to her property. It is made clear that on such inspection, which shall be with notice to the appellant and the 5th respondent, if it is found that the appellant has an alternate access, it will not be necessary for the Tahsildar to give effect to Ext.P3, as directed above.

Subject to the above modifications, the Writ Appeal is disposed of.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/