

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WA.No. 1334 of 2014 ()
IN
WP(C).19895/2013

AGAINST THE JUDGMENT IN WP(C) 19895/2013 of HIGH COURT OF
KERALA DATED 15-11-2013

AGAINST THE JUDGMENT IN RP 989/2013 of HIGH COURT OF KERALA
DATED 22-07-2014

APPELLANT(S)/PETITIONER IN WPC & RP:

K.P.ANIL KUMAR AGED 44 YEARS
S/O.PARAMESWARAN PILLAI, KAVIL VEEDU, THURUTHIKKARA
KUNNATHUR, KOLLAM – 690 540.

BY ADVS.SRI.P.B.KRISHNAN
SRI.N.AJITH
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN

RESPONDENT(S)/RESPONDENTS IN WP & RP:

1. THE DISTRICT COLLECTOR, CIVIL STATION,
KOLLAM– 691 001.
2. THE TAHSILDAR
KUNNATHUR TALUK, SASTHAMCOTTA,
KOLLAM – 690 521.

3. THE VILLAGE OFFICER
SOORAYANAD NORTH, KOLLAM – 690 522.
4. KERALA KHADI AND VILLAGE INDUSTRIES BOARD
THIRUVANANTHAPURAM – 695 001.
5. SOORANAD GRAMA VIKASANA SOCIETY (Q-4696)
REPRESENTED BY ITS PRESIDENT K.G.DEVAKI AMMA
SOORANAD NORTH, KOLLAM – 690 522.

R4 BY ADV. SRI.TOM K.THOMAS, SC KERALA KHADI & VILLAGE
INDUSTRIES BOARD

R5 BY ADV. M/S. PIRAPPANCODE V.S.SUDHIR &
JELSON J.EDAMPADAM
BY GOVERNMENT PLEADER SMT. GIRIJA GOPAL FOR R1 TO R3

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ASHOK BHUSHAN , Ag. CJ,
&
A.M.SHAFFIQUE, J.

.....
W.A. No. 1334 of 2014
.....

Dated this the 5th day of January, 2015

JUDGMENT

Ashok Bhushan, Ag. CJ.

Heard the learned counsel for the appellant.

2. This Writ Appeal has been filed against the judgment dated 15th November, 2013 by which the Writ Petition No. 19895 of 2013 was disposed of . The petitioner had filed the above Writ Petition praying for the following reliefs:

- i) *Issue a writ of certiorari or any other appropriate writ or order quashing Ext. P7*
- ii) *issue a writ of mandamus or any other appropriate writ, order or direction directing respondent No. 2 to effect mutation of the property covered by Ext.P4 sale deed as requested in Ext. P5 forthwith;*
- iii) *grant the petitioner such other appropriate reliefs that this*

Hon'ble Court may deem fit and proper;

- iv) grant such other interim reliefs that Petitioner prays from time to time ; and*
- v) award the petitioner the costs of this Writ Petition*

By Ext. P7, the Tahsildar has refused to effect mutation of the property in the name of the petitioner. The detailed facts noted in Ext. P7 order of the Tahsildar itself would suffice to be reproduced here for the purpose of the case.

“The Hon'ble High Court vide order in W.P.(C) No. 7583/13 Board, on the request submitted by Mr. K.P. Anilkumar had directed to consider the request for mutation of land of Sooranad Grama Vikasana Society. Hearing was conducted of Sri.K.P.Anilkumar and Smt. K.G. Devaki Amma, President of the Society, on 21st June, 2013. Due to the non-payment of the debt amounting Rs. 41,10,265/- to the Khadi Board, land belonging to the society in Block 2 of North Village, with survey No. 377/0-2, 378/16-2, 378/13, 308/11, 378/2, 372/11, 378/3, 378/12 has been attached under Section 36 of the Revenue Recovery Act. In furtherance to which K.P.Anil Kumar had approached the High Court and based on the direction of the High Court, through the mediation Centre Sri. K.P. Anilkumar and the Requisition Authority had settled the dispute on the basis of 6 conditions. Under the first condition, the payment of upset value of Rs. 3,99,695/- has been duly paid by Shri. K.P.Anil Kumar. But the second condition which was the repayment of the remaining arrears

to the President of the Society Smt. K.G. Devaki Amma has not been complied. Out of the total due of Rs. 41,10,265/- only Rs. 3,99,695/- has been paid by Shri. K.P.Anil Kumar.

It has been duly informed through letter dated 6-6-2013, bearing No. K.B. /5086/R(CBC) by Secretary of Sooranad Grama Vikasana Society is not closed and the revenue recovery proceedings should be initiated. It is duly informed that 73.33 Ares of land in re-survey block 2 and survey No. 377/9-2, 378/16-2, 378/13, 306/11, 378/2, 372/11, 378/3, 378/12 of Sooranad Grama Vikasana Society in Sooranad Vadakku Village is attached under Revenue Recovery Act due to the non-payment of amount kept in arrears and revenue recovery proceedings should be continued due to the non-payment of balance amount. Under these circumstances, the application put forward by Sri.K.P.Anilkumar to mutate the above mentioned property is hereby rejected.

Sd/- Tahsildar''

3. The learned Single Judge along with Writ Petition No. 19895/2013 disposed of another Writ Petition No. 26169 of 2013, which was filed by the President of the Society who was the mother of the petitioner K.P.Anilkumar, wherein substantially similar reliefs were claimed. The learned Single Judge disposed of both the Writ Petitions by a common judgment directing the

respondents to consider the application filed by the petitioner in W.P.(C) No. 26169 of 2013 for availing the benefit of OTS. It has been submitted before us that no application was preferred for availing the benefit of OTS.

4. Learned counsel for the appellant submitted that under the settlement, which was entered in earlier OP (C) No. 115/2011, the petitioner had complied his part and has paid the upset value of the property as determined by the Collector. He submitted that there was no reason for denying mutation in favour of the petitioner. The learned Single Judge ought to have issued direction to effect mutation in the name of the petitioner since the petitioner has made the payment and sale deed has also been executed. The terms of settlement has been brought on record in O.P. (C) No. 115/2011 on which K.P. Anilkumar was the petitioner whereas the mother of the petitioner was the 4th respondent. One of the terms of the settlement, that is, condition No. 5, is as follows:-

“In case the petitioner and the respondent No. 4 comply with their undertaking as aforesaid, the respondent No. 1 shall intimate the Revenue Recovery Authorities to lift the attachment over the property”.

The above condition contemplates that in case the petitioner and respondent No. 4, mother of the petitioner, both comply with their undertaking, the Secretary, Kerala Khadi and Village Industries Board shall intimate the Revenue Recovery Authority to lift the attachment. There is no dispute between the parties that the Society has not paid its dues and only the part which was to be paid by the petitioner has been complied. According to specific condition No. 5, the property, which was the subject matter of the attachment, is still under attachment since withdrawal of attachment was contemplated on making payment by the Society as per the undertaking. We are of the view that till the entire dues are not cleared by the Society, the property which is now transferred in the name of the petitioner shall remain under attachment and at that juncture the view of the Tahsildar in

refusing to mutate the property in the name of the petitioner cannot be found to be erroneous. As and when the entire dues, which are to be paid by the Society, is cleared it is always open for the petitioner to make an application before the Tahsildar for mutation on the strength of the sale deed obtained as per settlement.

With this observation, this Writ Appeal is dismissed.

Sd/- ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

Sd/- A.M.SHAFIQUE,
JUDGE

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