

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WA.No. 2159 of 2015

JUDGMENT DATED 31-08-2015 IN WP(C) 26266/2015

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APPELLANT(S)/3RD PARTIES:

1. N.A.SHEREEFA, AGED 78,
W/O.LATE KADER PILLAI, ANJIKATH HOUSE, V.M.B. ROAD,
PATHADIPALAM, KOCHI - 682 033.
2. A.K.NAZER, AGED 49 YEARS,
S/O.LATE KADER PILLAI, ANJIKATH HOUSE, V.M.B. ROAD,
PATHADIPALAM, KOCHI - 682 033.
3. A.K.NOUSHAD, AGED 43 YEARS,
S/O.LATE KADER PILLAI, ANJIKATH HOUSE, V.M.B. ROAD,
PATHADIPALAM, KOCHI - + 682 033.
4. SHIMITHA, AGED 35 YEARS,
W/O.A.K.NOUSHAD, ANJIKATH HOUSE, V.M.B. ROAD,
PATHADIPALAM, KOCHI - 682 033.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)

RESPONDENT(S)/PETITIONER & RESPONDENTS:

1. SABNA K.,
W/O.SHIBU, KAVUNGAL PADATHU, THRIKKAKARA - 682 033.
2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
REVENUE DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. ADDITIONAL TAHSILDAR,
TALUK OFFICE, KANAYANNUR TALUK, KOCHI - 682 020.
4. VILLAGE OFFICER,
THRIKKAKARA NORTH VILLAGE, KOCHI - 682 021.

R1 BY ADV. SRI.MATHEWS K. UTHUPPACHAN
R2-R4 BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.No.2159 of 2015

Dated this the 7th day of October 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard learned counsel for the appellants and the learned Government Pleader.

2. This writ appeal has been filed against the judgment of the learned Single Judge dated 31/08/2015 in W.P.C.No.26266/2015. The appellants' case in the writ appeal is that the appellants were not impleaded in the writ petition filed by the 1st respondent whereas by the writ petition, the 1st respondent prayed for the following relief:

“(i) Direct the 3rd respondent by issue of a writ of mandamus or any other appropriate writ, direction or order, to observe/write/endorse in the Thandaper Account seen from Exhibit-P3 and in the tax receipts that the land tax is being received subject to final outcome in O.S.No.617/2007 of the Hon'ble Sub Court, Ernakulam.”

2. The appellants' case is that there were earlier

litigations before this Court in W.P.C.No.23244/2012, in which the appellants were the writ petitioners and this Court, by judgment dated 26/05/2015, had allowed the writ petition with certain directions. Further direction was issued to receive land tax from the writ petitioners, that is the appellants herein, in respect of the property of 40.40 Ares comprised in Re.Sy.No.530/6 of Thrikkakkara North Village. Appellants' case is that the 1st respondent was not a party to the said proceedings and in the writ petition filed by the 1st respondent, he was claiming certain rights in the same plot in the said survey number. The learned counsel for the appellants submits that in any view of the matter, the writ petition ought not to have been entertained by the learned Single Judge without the appellants be made parties. It is further submitted that even the 1st respondent was not a party to W.P.C.No.23244/2012, as noted in the first paragraph of the judgment.

3. The learned counsel for the 1st respondent, refuting the contentions made by the learned counsel for the appellants submits that the writ petition was filed only to ensure that the direction issued by this Court on 26/05/2015 in

W.P.C.No.23244/2012 be complied with. It is submitted that the learned Single Judge has issued only an innocuous direction that an entry be made in the register regarding the receipt of land tax subject to the outcome of the Civil Suit O.S.No.617/2007.

4. We have considered the submission of the learned counsel for the parties and perused the records.

5. There have already been a judgment in favour of the appellants dated 26/05/2015 as noted above wherein the writ petition was allowed with certain directions and the 1st respondent, being not a party to the said proceedings, she could not have filed the writ petition without impleading the appellants. The appellants being necessary parties, the writ petition was not entertainable.

6. We have also noticed that although in the impugned order it has been noted that the 1st respondent, who had filed the writ petition was one of the respondents in W.P.C.No.23244/2012, the array of parties brought on record in the aforesaid writ petition does not show the name of Sabna.K. In the facts of the present case, we are of the view that there is substance in the submission of the learned counsel for the appellants that when

the appellants being necessary parties, no orders could have been passed especially when there is already an order of the learned Single Judge dated 26/05/2015 pertaining to receiving of land tax.

Thus, we allow the writ appeal, setting aside the order of the learned Single Judge. The writ petition filed by the 1st respondent is dismissed on the ground of non-joinder of necessary parties. This judgment shall not preclude the 1st respondent from taking appropriate proceedings.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)
(sd/-)
(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr/07/10/2015

