

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WA.No. 2409 of 2015 IN WP(C).27655/2007

AGAINST THE JUDGMENT IN WP(C) 27655/2007 DATED 11-09-2015

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APPELLANTS/PETITIONERS :

1. KOTTAYAM DISTRICT KOOTTU KRISHI KARSHAKA
KARSHAKASANGAM(REG. NO.150/71), REPRESENTED BY ITS
SECRETARY, A.O.MATHEW, AGED 75 YRS
S/O.LATE OUSEPH, ARTHANAKUNNEL HOUSE, VALLICHIRA
POST, KOTTAYAM DISTRICT.
2. SEBASTIAN, S/O.CHACKO, EDAKKATTU HOUSE,
PALAPRA P.O., MUNDAKAYAM.
3. NARAYANAN, S/O.KOCHUKOCHU,
AGED 71 YEAS, VADAKKEKKARA HOUSE
POONJAR THEKKEKKARA P.O.
4. MATHEW, S/O.JOSEPH, EDAKKATTU HOUSE,
PALAPRA P.O., MUNDAKAYAM.
5. THANKAMMA, W/O GOPALAN,
VADAKKEKKARA HOUSE, POONJAR THEKKEKKARA P.O.
6. JOSEPH KURUVILLA, S/O.KURUVILLA,
NEERANAKKUNNEL HOUSE, CHIRAKKADAVU, PONKUNNAM.
7. JANARDHANAN, S/O.NARAYANAN,
VADAKKEKARA HOUSE, MANNAM MURI
POONJAR THEKKEKKARA VILLAGE.
8. JOSEPH, S/O.THOMAS,
AGED 59 YEARS, THEKKEL HOUSE, KANAYANKAVAYAL P.O.
9. DOMINIC, S/O.MATHAI,
KAIPANANIKKAL HOUSE, THAMBALAKKATTU MURI
KANJIRAPPALLY P.O.

10. GEORGE, S/O.SCARIA,
KAIPANANIKKAL HOUSE, POONJAR, THEKKEKARA VILLAGE.
11. MATHAI, S/O THOMMEN,
CHARALAYIL HOUSE, POOVARANI P.O.

BY ADVS.SRI.P.C.THOMAS
SRI.ROJO J.THURUTHIPARA

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA
THE SECRETARY TO GOVERNMENT, DEPARTMENT OF REVENUE
THIRUVANANTHAPURAM.
2. THE DISTRICT COLLECTOR, IDUKKI.

R1 & R2 BY SPL.GOVERNMENT PLEADER, SMT. SUSHEELA BHATT

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 2409 OF 2015

Dated this the 20th day of November, 2015

JUDGMENT

Shaffique, J.

Petitioners in W.P.(C) No.27655 of 2007 are the appellants who challenge the judgment dated 11.09.2015 by which the learned Single Judge without granting any relief dismissed the writ petition.

2. The short facts involved in the writ petition would disclose that the petitioners claim to be in possession of different parcels of land in Mankulam Village. They were evicted in the year 1978 after promulgation of Kannan Devan Hills (Resumption of Lands) Act, 1971(hereinafter referred to as 'Act'). Petitioners made representations to the Minister and thereafter it is stated that the authorities have conducted survey from time to time. It ultimately resulted in Ext.P14 order dated 21.07.1997, by which opinion was expressed by the Collector that the entire land measuring about 21654.46 acres comprised in Mankulam Village which are available as per

the Basic Tax Register(for short 'BTR') is vested with the Government as per the Act. It is stated that the difference between the area available as per BTR and the area of land vested in the Government as per the award of the Land Board is 2778.63 acres which might be the land mentioned in the petition. It is therefore submitted that on the basis of this report necessary directions are to be issued to survey the land to find out the excess area. According to the petitioners, this report clearly indicates that the property in possession of the petitioners does not come within the purview of the land vested with the Government in terms of the Act and hence following reliefs were sought:

"i) issue a writ of mandamus directing the respondents to complete the survey of the lands as per Exhibit P16 and P19 immediately,

ii) issue a writ of mandamus directing the 1st respondent to take immediate action to return the properties covered by Exhibit P1 to P12, to the petitioners, after completing the survey, expeditiously."

3. Counter affidavit has been filed on behalf of 2nd respondent *inter alia* stating that the Land Board was authorised to examine the restoration of possession of lands in certain areas after giving the applicant an opportunity of being heard and after such enquiry as it deems necessary. After reserving certain extent of lands, the possession of which was vested in the Government towards the promotion of agriculture, Government decided to distribute the balance extent of land for agricultural purpose. Thus, an extent of 5189 acres of land was set apart for assignment on registry to agriculturists and agricultural labourers and a further extent of 1756 hectares of land has been distributed to 2227 cases so far. It is stated that assignment proceedings has been stayed by this Court in W.P.(C) No.32000 of 2005. With regard to the claim made by the petitioners it is stated that the documents claimed by petitioners are null and void, since the right over the land in question had already been alienated by the Poonjar Kovilakam to the predecessor in interest of the KDHP company. It is stated that as per the Village

records, Survey Nos.77/1 and 75/1 of Mankulam Village were in the name of KDHP Company and major portion of which was later resumed by the Government under the Act. It is stated that petitioners are trying to grab the Government land with the support of illegal documents. Further reference is made to the award passed by the Land Board. As per proceedings dated 29.03.1974 an extent of 70522.12 acres of land was ordered to be taken over, out of which an extent of 5189.88 acres of land was set apart for assignment. Respondents therefore denied the claim made by the petitioners.

4. Learned Single Judge after an elaborate consideration of the factual and legal issues involved in the case dismissed the writ petition. It is stated that going by the pleadings and materials on record it is clear that there is serious factual disputes regarding the sale deed relied upon by the petitioners. That apart it is observed that when they were evicted in the year 1978, they should have availed the statutory remedy under Section 7(1) of the Act which provides for

reference of their dispute regarding vesting of land by Land Board. The remedy of the petitioners was to avail the statutory remedy and therefore there is no reason for this Court to interfere at this stage.

5. Having regard to the aforesaid finding we are also of the view that when the land had been taken possession from the petitioners on the basis of the Act, the remedy of the petitioners was to approach competent authority under the Act and without availing such remedy, it may not be possible for this Court at this juncture to reconsider the whole issue and issue directions as prayed for. In terms of Ext.P14 proceedings if the Government conducts measurement of the property and decides to give back possession of the property to the petitioners, it is a different question. But the claim now raised can be considered only if the entire disputed facts are considered on the basis of relevant materials. Therefore such issues regarding title and possession cannot be considered by this Court in a proceeding under Article 226 of the Constitution.

In the said circumstance learned Single Judge has not committed error in dismissing the writ petition. We do not find any ground to interfere with the judgment impugned by exercising the appellate jurisdiction. Hence the Writ Appeal stands dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**