

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.P.RAY

WEDNESDAY, THE 23RD DAY OF JANUARY 2013/3RD MAGHA 1934

WP(C).No. 13677 of 2005 (C)

PETITIONER :

**DESIYA POURA SAMITHI, MAMBRA,
REPRESENTED BY ITS PRESIDENT P.M.MATHAI, S/O. MATHAI
AGED 64 YEARS, KALLOOR THEKKEMURI VILLAGE
MUKUNDAPURAM TALUK,THRISSUR DISTRICT.**

**BY ADVS.SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
REVENUE (E) DEPARTMENT, THIRUVANANTHAPURAM.**
- 2. THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD, ERNAKULAM 682 030.**
- 3. THE TAHSILDAR, TALUK OFFICE, ALUVA.**
- 4. THE EXECUTIVE ENGINEER,
EDAMALAYAR IRRIGATION PROJECT DIVISION,CHALAKUDY.**
- 5. THE DEPUTY DIRECTOR (SURVEY),
COLLECTORATE, KAKKANAD, ERNAKULAM - 682 030.**
- 6. GEORGE S/O. VARKEY, AGED 43 YEARS,
PARAMBIL HOUSE, MAMBRA, KARUKUTTY P.O.
PARAKKADAVU VILLAGE, ERNAKULAM DISTRICT.**

**R1 TO R5 BY GOVT. PLEADER SMT. LILLY
R6 BY ADV. SRI.P.RAMAKRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2013,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

JUDGMENT

None appears. Dismissed for default.

23/01/2013

SD/- B.P.RAY, JUDGE

//TRUE COPY//

P.S. TO JUDGE

Mn

K.SURENDRA MOHAN, J.

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Dated this the 6th day of March, 2015

J U D G M E N T

The petitioner a registered society engaged in various social activities for the welfare of the local people has filed this writ petition challenging Exhibit P12 proceedings of the first respondent by which, an extent of puramboke land has been conveyed to the 6th respondent. The contention of the petitioner is that, Exhibit P12 is vitiated by extraneous considerations and arbitrariness. The short facts of the case are the following:-

2. An extent of 56.5006 cents of land had been acquired for the purpose of a construction what is called the Parakkadavu Main Canal (an irrigation canal). The property was comprised in old Sy.No.497 of Parakkadavu Village which belongs to one Ouseph Varkey, father of the 6th respondent. After construction of the canal, vacant portions of the land acquired were left unused on both sides

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of the canal. In 1979 Sri. Ouseph Varkey gifted an extent of 1acre 10 cents to one Sri. Jose, brother of the 6th respondent. In 1992, the 6th respondent acquired title over the said property as per a deed of exchange. The case of the 6th respondent is that, he had been using an extent of 10 cents of land that was remaining unused, as part of his property.

3. The petitioner had approached this Court by filing O.P.No.10987 of 1994 alleging that the 6th respondent was trying to obtain assignment of the land to his name. The said writ petition was disposed of by Exhibit P2 judgment dated 08.01.1999 recording the submission made by the Government Pleader that no steps were being taken for assignment of the land to anybody as alleged in the original petition. Thereafter, the third respondent Tahsildar initiated steps to remove the encroachment made by the 6th respondent. The 6th respondent thereupon challenged the said action before the Munsiff's Court, Aluva in O.S.No.698

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of 1996. The petitioner herein was the 4th defendant in the said suit. The suit was contested by the parties, tried by the Munsiff's Court and was dismissed by Exhibit P10 judgment dated 28.11.2003. Exhibit P10 judgment has become final.

4. Undaunted, the 6th respondent submitted an application dated 09.03.2000 seeking assignment of the land. Thereafter, he approached this Court by filing O.P.No.8205 of 2000 seeking a direction to consider his application. The said writ petition was disposed of at the time of admission itself directing that a decision be taken on the 6th respondent's application and that, he should not be disturbed until such decision was taken. Accordingly, the matter was considered by the third respondent and was rejected by Exhibit P5 proceedings dated 10.08.2001. It was thereafter that, suit O.S.No.698 of 1998 was dismissed as per Exhibit P10 judgment.

5. In the above circumstances, it appears that, the 6th respondent had approached the authorities again with

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some petition. The 5th respondent has thereupon submitted Exhibit P9 report to the first respondent. The said report was challenged by the petitioner before this court in .W.P (C) No.40909 of 2003. The said writ petition was disposed of by Exhibit P11 judgment directing the first respondent to take a decision in the matter. It is pursuant to Exhibit P11 that, Exhibit P12 order was passed.

6. According to Sri. C.S.Dias who appears for the petitioner, Exhibit P12 has been issued without any justification whatsoever. The 6th respondent had been trying to obtain the land somehow or the other from 1994 onwards. According to the learned Counsel, it is not in dispute that the land had been acquired by the Government for a public purpose and that the same was kept unutilized. It is pointed out that, according to the dicta laid down by the Hon'ble Supreme Court in various decisions on the point, such acquired lands can be used only for some other purpose and cannot be conveyed to private parties. It is

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also contended that, Exhibit P12 has been issued without taking note of the fact that Exhibits P5 and P10 had concluded the issue. Though this writ petition was filed in the year 2005, no counter affidavit has been filed by any of the respondents. The Government Pleader appears for respondent 1 to 5. Advocate P.Ramakrishnan appears for the 6th respondent.

7. According to the counsel for the 6th respondent, apart from the land that was acquired from the father of the 6th respondent, a further extent of land was utilised for construction of the canal. The excess land was utilised consequent to a change in the alignment of the canal that left a portion of the land already acquired, unutilised, while at the same time utilising a portion of the unacquired land that was still in possession of the land owner. Therefore, land in excess of the land actually acquired had been taken possession of, without payment of compensation. A portion of the land acquired has been kept vacant, while the

unacquired land was actually unutilised. It was to set right the said irregularity that, Exhibit P12 has been passed permitting the 6th respondent to be given the excess land that had been taken possession of. The learned Counsel also places reliance on Exhibit P9 report of the 5th respondent to point out that, the above aspects have been found to be correct therein. The Government has the absolute authority under Section 21(a) and 24 of the Kerala Land Assignment Rules, 1964 to grant assignment of lands on registry. Therefore, the first respondent had sufficient powers to issue Exhibit P2. The counsel also questions the locus standi of the petitioner to challenge Exhibit P12 pointing out that, the interest of the petitioner is questionable.

8. Heard. It is not is dispute that, the property in question originally belonged to the father of the 6th respondent Sri. Ouspeh Varkey. The property was acquired from him in the year 1959. It is clear from the records

produced before me that, he had been paid compensation for the land acquired from his possession. The canal in question was constructed utilizing the land so acquired leaving vacant lands at the sides thereof, which remain unused. It is worth noticing that, Sri. Ouseph Varkey, who is no more had no objection regarding the land acquired from his possession, at any time during his life time.

9. Even according to the 6th respondent, in 1984, the father gifted an extent of 1acre 10 cents of land to Jose, his brother. It was only in 1992 that he has acquired title over 1 acre 10 cents of land, under an exchange deed. The Puramboke land which is the subject matter of this writ petition is lying contiguous to the said extent of 1 acre 10cents. Therefore, the contention that the 6th respondent was in possession of the Puramboke land despite the land acquisition proceedings cannot be accepted.

10. It is worth noticing that, the petitioner's earlier application had been considered by the third respondent by

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Exhibit P5 proceedings dated 10.08.2001. The 6th respondent had contended before the said authority that, no land acquisition proceedings had in fact been taken in respect of his property and that the whole transaction was on the basis of an oral undertaking to the effect that the excess land would be reconveyed to him. The third respondent has found in Exhibit P5 as follows:-

It is true that the properties of the 6th respondent's father comprised in Survey Nos. 497/8A-38.50 cents, 497-8B-11.500cents and 497/9C-6.500 cents had been acquired for the construction of the canal vide acquisition file Nos.LAC 290,296 and 297/58 and the Government had paid compensation for the same. After acquisition canal was constructed and the properties acquired came under the control and authority of Irrigation Department.

It is seen from Exhibit P5 that, after examining the records kept by the Assistant Executive Engineer, Irrigation Sub Division, No.2 Chalakudy, that the petitioner had been dispossessed of the land encroached upon by him. The relevant portion of Exhibit P5 is to the following effect:-

The papers kept in the office of the Assistant Executive Engineer, Irrigation Sub Division No.II, Chalakkudy reveals that the petitioner had been evicted from the premises (poromboke land) unauthorisedly and illegally occupied by him and boundaries have been demarcated and survey stones refixed. The canal poromboke lying on both sides of the canal is highly essential for the protection of canal. This also strengthens the view that canal poramboke cannot be assigned under any circumstances by the assigning authority. Apart from this, as early as on 21-06-93 vide proceedings No.3-70/92, the Executive Engineer, Aluva wrote a letter to this respondent and upon receiving the above letter, this respondent hearing vide D3-9796/93 dated 29-04-94 gave notice to Assistant Executive Engineer, Edamalayar Irrigation Project, Chalakkudy, P V George the petitioner herein, Parambi Ouseph informing them of the fact that the boundaries of the land acquired were going to be refixed. And on 29.04.1994 the land acquired for the purpose of construction of the main canal was measured. And at that time it could be found out that petitioner had encroached on the land acquired by the Irrigation Department. When it was found that the boundary markings were removed, the District Collector sent a letter No.C1-1658/96 dated 12-04-96 directing to evict the petitioner from his unlawful occupation and accordingly the boundaries were refixed again and survey stones were laid. For this purpose also notice dated 21-11-96 was served by the respondent i.e. herein one

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George the petitioner and Irrigation Assistant Engineer. Earlier the poramboke that the property in issue owned by Irrigation Department was wrongly included in Survey No.B4-111/3. After completion of the lawful proceedings new survey number could be given to the poramboke land that is 111/5.

It is clear from the above that, the petitioner had been dispossessed of the Puramboke land in the year 1996 itself after which, a new survey number was assigned to the puramboke land. In view of the above, as per Exhibit P5, the petitioner's application for assignment of the land was rejected. The 6th respondent has no case that Exhibit P5 was called in question before any authority at any time or that the same was set aside. Therefore, the said order has become final.

11. Exhibit P10 is the judgment of the Munsiff's Court, Aluva, that has considered the case of the petitioner after full trial. The Munsiff's Court has also found relying on a sketch prepared by the Advocate Commissioner which was prepared with the assistance of Taluk Surveyor that the

6th respondent had no right in respect of the property over which he claimed possession. The said judgment has also become final.

12. It was in the above background that, the 6th respondent had approached the first respondent directly. It is curious that, Exhibit P9 report of the 5th respondent does not refer to any of the above previous proceedings that had ended against the 6th respondent. The only references seen in Exhibit P9 are to a letter dated 24.09.2001 and a report of the Aluva Tahsildar dated 26.11.2001 which are not produced before me. Therefore, no reliance could be placed on Exhibit P9. There is nothing in Exhibit P9 to show that any of the records in the office of either the Tahsildar or the Irrigation Department were perused by the said authority. Exhibit P12 refers to a petition dated 29.12.2004 submitted by the 6th respondent to the Revenue Secretary. The same, going by the date, is after the date of Exhibit P11 judgment. It is on the basis of the said petition that, the proceedings

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Exhibit P12 have been issued. The impression that one gets on reading of Exhibit P12 is that, the same has been passed, without going into any of the previous proceedings, placing entire reliance on an obliging report obtained from the 5th respondent. Therefore, Exhibit P12 is arbitrary and unsustainable.

13. The impugned action of the first respondent is unsustainable for the further reason that, the Hon'ble Supreme Court has held in a number of decisions that lands acquired for public purposes are liable to be retained, even if they are presently kept unutilised for the purpose of being utilised for some public purposes. In **State of Kerala v. Bhaskaran Pillai** [1997 KHC 353: 1997(2) KLT 21], the Apex Court has summarised the position of law in paragraph 4 thereof, as follows:-

In view of admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of S.16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges: whether the Government can assign the

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land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilized for the public purpose envisaged in the Directive Principles of the Constitution.

14. The dictum in the above case has been quoted with approval **Leelawanti v. State of Haryana** [2012(1) SCC 66]. Similarly, **Sulochana Chandrakanth Galande v. Pune Municipal Transport** [(2010) 8 SCC 467], the Apex Court has summarised the legal position in paragraph 22 as follows:-

In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any

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ground, whatsoever.

15. In view of the above authoritative pronouncements, the action of the first respondent in issuing Exhibit P12 cannot be sustained.

For the foregoing reasons, this writ petition is allowed.
Exhibit P12 is set aside.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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