

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 16894 of 2004 (J)

PETITIONERS :

1. RAMA NAIK, S/O. BELA NAIK,
BELVA VILLAGE, KUNDAPUR, KARNATAKA.
2. N.VENKITARAMANA BHAT,
S/O. N.SANKARANARAYANA BHAT, MOGRAL PUTHUR HOUSE,
BEDRADKA, KUDLA, KASARGODE.

**BY ADVS.SRI.V.V.ASOKAN
SMT.S.AMINA**

RESPONDENTS :

1. COMMISSIONER,
LAND REVENUE, TRIVANDRUM.
2. DISTRICT COLLECTOR, KASARGODE.
3. REVENUE DIVISIONAL OFFICER, KASARGODE.
4. THE TAHSILDAR, KASARGODE.
5. VILLAGE OFFICER,
PUTHUR, KUDLU, KASARGODE.
6. THE HEADMASTER, G.U.P. SCHOOL,
MOGRAL, PUTHUR, KASARGODE.
7. B.I.MOHAMMED KUNHI, S/O. ISMAIL HAJI,
BALLUR, PUTHUR, KASARGODE.
8. ABDUL HAMEED, S/O. ABDUL RAHIMAN,
BALLUR, PUTHUR, KASARGODE.

**R1 TO R5 BY GOVERNMENT PLEADER SRI.S. JAMAL
R6 BY ADV. SRI.K.G.GOURI SANKAR RAI
R8 BY ADVS. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE PURCHASE CERTIFICATE NO. 463/79 DT. 27/8/1979.**
- P1(a): COPY OF THE NOC DT 24/6/1979.**
- P2: TRUE ENGLISH TRANSLATION COPY OF THE SALE DEED DOCUMENT NO. 3627/02 SRO KASARAGOD.**
- P3: COPY OF THE BASIC TAX RECEIPT DT 6.6.2003.**
- P4: COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE R2 DT 15-7-2000.**
- P5: COPY OF THE NOTICE ISSUED BY THE R5 TO THE 1ST PETITIONER DT 16/10/2000.**
- P6: COPY OF THE REPLY FILED BY THE 1ST PETITIONER BEFORE THE R5 DT 28/10/2000.**
- P7: COPY OF THE REPORT BY THE R4 DT 6/11/2000.**
- P8: COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST PETITIONER BEFORE THE R3 DT 12/2/2001.**
- P9: COPY OF THE WRITTEN STATEMENT FILED BY THE R6 BEFORE THE R3 DT 21/5/2001.**
- P10: COPY OF THE FORM C NOTICE ISSUED THE R3 TO THE 1ST PETITIONER DT 7-04-2001.**
- P11: COPY OF THE PROCEEDINGS OF THE R3 DT 8-10-2001.**
- P12: COPY OF THE PROCEEDINGS OF THE R2 DT 30/11/2002.**
- P13: COPY OF THE PROCEEDINGS OF THE R1 DT 15/5/2004.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J.

W.P(C). No.16894 of 2004

Dated this the 29th day of May, 2015.

JUDGMENT

The petitioners challenge the alleged relinquishment of land made by the first petitioner under the Land Relinquishment Act, 1958, Kerala (for brevity, Act, 1958). The first petitioner admittedly was the owner of 3.21 Acres of land in R.S. No.269/4 of Puthur Village, the Purchase Certificate of which is said to have been obtained in S.M. No.758 of 1978 on the file of the Special Tahsildar (Land Reforms) No.I of Kasaragod; produced as Ext.P1. The Purchase Certificate was one issued in 1979. Admittedly, adjacent to the said land was situated the Government U.P. School, Mogral-Puthur, Kasaragod. The first petitioner is said to have sold the property to the second petitioner by Ext.P2 Sale Deed dated 08.11.2002 and the second petitioner is stated to have paid tax as per Ext.P3. It is the said property, which is said to have been relinquished by the first petitioner in favour of the

Government U.P. School, the Headmaster of which was impleaded as the 6th respondent herein. The alleged relinquishment was prior to the sale by the 1st petitioner to the 2nd petitioner.

2. The petitioners' submission is that, on 15.07.2000, the first petitioner being informed of a move to assign the subject property to the Government U.P. School, filed Ext.P4 representation before the District Collector contending that the attempt is one fraudulently made based on a forged relinquishment allegedly executed by the first petitioner herein. The first petitioner was issued with a notice as is indicated in Ext.P5 and the first petitioner had submitted a further complaint before the Village Officer as per Ext.P6. The Tahsildar, Kasaragod as per Ext.P7 reported that, in view of the objection raised by the first petitioner, the land owner is not willing to release the land for the purpose as aforesaid. The first petitioner and the Government U.P. School filed their respective versions before the Revenue Divisional Officer as is indicated in Exts.P8 and P9. The relinquishment was accepted by the R.D.O., the 3rd respondent

herein as per Ext.P11. Against which, an appeal was filed, which was rejected as per Ext.P12. A further revision also stood rejected as per Ext.P13.

3. The first petitioner has challenged the above orders assailing the relinquishment made on the contention of a fraud having been played on the petitioner. The first petitioner refuted the execution of the documents as such. The learned counsel for the petitioners place reliance on a decision of this Court in **Pallichal Grama Panchayat v. Lalithambika** [2009 (4) KHC 844] to contend that the first petitioner having raised a valid objection against the relinquishment, before an order of acceptance was passed by the R.D.O.; the R.D.O. could not have passed an order under the Land Relinquishment Act, specifically under Section 4.

4. The learned Government Pleader on the basis of the files, which were directed to be produced, contends that the first petitioner had executed a valid relinquishment under the Act of 1958 on 09.09.1998 in the form prescribed, before the Village Officer, Kudlu and the same was witnessed by the petitioner's son

and the 7th respondent. It is contended that, the objection raised after a long time is not sustainable, since as rightly found by the R.D.O., the same is only an afterthought and must have been on persuasion of others. The first petitioner cannot be permitted to resile from a valid relinquishment made and the intention of the first petitioner is very evident even with reference to the fact that the first petitioner had at an earlier point of time made a relinquishment application, which was rejected by the District Collector.

5. The first petitioner would assail the relinquishment primarily on the ground of the signature having been fraudulently made in the application for relinquishment. The petitioner also has a challenge on the procedure adopted. As per Section 4, any person intending to relinquish any land under Section 3 has to submit an application in the prescribed form to the Revenue Divisional Officer of the Division in which the land is situated. Rule 4 of the Kerala Land Relinquishment Rules, 1958 prescribes that such application shall be presented either in person or through Registered Post to the Revenue Divisional Officer. The

petitioner contends that evidently the relinquishment application was submitted before the Village Officer and that makes it procedurally defective. Further it is contended that the land relinquished would vest in the Government only when an application for relinquishment of the land is accepted in consequence of an order passed by the Revenue Divisional Officer under Section 4 or the Collector under Section 4A. Before passing of the order, the petitioner had raised an objection and there was no warrant for the relinquishment to be accepted in view of the specific contention that the petitioner had no intention to relinquish any land. The relinquishment said to have been made was also denied, and the petitioner had specifically denied the execution.

6. Fraud vitiates every action, but it would have to be established by the person, who asserts a fraud having been perpetrated. It cannot be said that a mere allegation of fraud would vitiate all further actions. The petitioner, if asserting that the application was not executed by him and that the signature was forged, then definitely appropriate action under the civil law

and if necessary, under the criminal law ought to have been initiated. The petitioner but for asserting before the Revenue Divisional Officer that the petitioner had not executed the relinquishment, did nothing further to establish the allegation of forgery and fraud raised.

7. The application itself was one executed in 09.09.1998. True no proceedings were taken on the said application by the Officers under the Act of 1958. It was two years later on 16.10.2000 that the petitioner approached the Village Officer with an objection produced at Ext.P6 on the plea that certain persons are trying to knock off the property. It is not clear as to the information on which such objection was filed and then repeated before the Village Officer, Kasaragod on 16.10.2000. The petitioner did not attempt to verify the records of the Revenue Divisional Officer nor initiate proceedings on the alleged forgery made with respect to the relinquishment application. The manner in which Exts.P4 and P6 objections read, lends credence to the finding of the Revenue Divisional Officer that the objection is only in the nature of an afterthought.

8. As contended by the learned Government Pleader, the records reveal that earlier also, the very same petitioner had made an application for relinquishment of the very same land on 05.09.1989, which was rejected by order No.K.Dis.47449/89/C3 dated 06.03.1992 by the District Collector, Kasaragod. The attested copies of the said documents were produced by the Headmaster of the School before the Revenue Divisional Officer, Kasaragod in the present proceedings by application dated 24.08.2001 and the same is available in the files at page Nos.65 and 67. It is also to be noticed that the application at page No.67 is only a photostat copy without the signature of the petitioner. But the order of the District Collector, though an attested copy, is one validly passed. In such circumstances, the intention to relinquish the land is very evident and the objection raised with respect to the allegation of fraud can only be treated as an afterthought.

9. The procedural irregularity, is alleged in so far as the relinquishment application having been filed before the Village Officer. True the Village Officer's signature is seen in the

relinquishment application available in the files; with his Office seal. That only indicates that the same was executed before the Village Officer, Kudlu. Form A under Rule 3 as prescribed in the Rules require such relinquishment to be made in the presence of the Village Officer and two witnesses. The Village Officer has hence attested that the relinquishment was made before him and the two other witnesses as stated earlier have also put their signatures to the document.

10. It cannot also be said that, as is prescribed, the relinquishment was not filed before the R.D.O. in person or through registered post. The written statement filed on behalf of the School, to the objection filed by the petitioner, produced at Ext.P9 specifically indicates that the relinquishment was made in duplicate and one was handed over to the Headmaster of the School and the other retained with the Village Officer. It is specifically averred that the Headmaster sent the copy of the relinquishment to the Assistant Educational Officer and to the R.D.O. The School is said to be in actual possession and enjoyment of the property also. The contention of procedural

irregularly hence fails.

11. The last contention is with respect to the vesting of the land not materialising, until the passing of the order by the R.D.O. Reliance was placed on **Pallichal Grama Panchayat** (supra). There, the question considered was whether any property had been validly surrendered by the husband of the 1st respondent therein for widening the road and whether the same had come into effect. Therein a declaration at Annexure IV was submitted by the husband in the prescribed form surrendering unconditionally the land to the Panchayat for widening of the road. It was found that the relinquishment could be made only under the provisions of the Act of 1958 and though Annexure IV declaration was made by the land owner, the Panchayat had not forwarded it to the competent authority. In fact the Court also noticed that a suit was filed by certain residents of the locality against the respondent therein and her husband, seeking an injunction from constructing a wall, by reason of the relinquishment made by the husband of the respondent. The suit, in which the Panchayat was impleaded, was dismissed with costs

and the same had become final. It was only later to that, the Panchayat had pursued the proceedings under the Act of 1958. The facts noticed in the said decision would clearly distinguish the present case. It is on the peculiar facts that the learned Single Judge found that there cannot be found any valid surrender or relinquishment of land.

12. In this context a decision of the Division Bench of this Court in **Natarajan R. v. Village Officer, Kanayannur Taluk and others** is very relevant. Answering the question of vesting under Section 4C, the Division Bench held so in paragraphs 8 and 9, which are extracted below:

"8. On submission of an application, the registered holder expresses his intention to unconditionally surrender the land to the Government. What is contemplated in sub-section (2) is the requirement of notice to any other person who is interested in the land, indicating a tenant or any person in possession of such land or disclosed from the revenue records to have a right over such land. Sub-section (3) again provides for the affixture of the notice in the notice board of the office of the RDO and sub-section (4) permits any person interested in the land to file an objection before the RDO. Sub-section (5) contemplates an order, either accepting or rejecting the relinquishment. S.4C speaks of vesting of relinquished lands in Government on acceptance in

consequence of an order by the RDO, or in appeal or revision. On a reading of the above sections, we are of the view that the relinquishment by a registered holder as against him, operates unconditionally, on an application being made under the Act. The act of relinquishment is a voluntary act of the registered holder which is unilateral and takes effect from the date of the application. This is, for reason of the application being an expression of the intention to unconditionally surrender the possession and rights over the land to the Government. The procedure contemplated is to ensure that no further claims are raised on the land by a third party on one count or another. It cannot be gainsaid that if no order is passed, the land reverts back to the registered holder who had relinquished his rights. If no order is passed, definitely by the relinquishment there is no vesting and cannot be final as against any third-party claiming title, possession or any other right over such land. In the instant case, the appellant does not claim any such right over the land in addition to the right of his father. The appellant's claim is as an assignee of his father and what the father, the original registered holder, could not have claimed, definitely the assignee cannot claim.

9. *Administrator, Municipal Committee Charkhi Dadri v. Ramji Lal Bagla, 1995 KHC 908; 1995 (5) SCC 272; AIR 1995 SC 2329, the question was whether after acquisition of land for implementation of a scheme; the scheme having not been executed and the State Government having not extended the period for such execution; whether land reverts back to the original owner. S.44A of the Punjab Town Improvement Act, 1922 provided that "any scheme in respect of which a notification has been published under S.42 shall be executed by the trust within a period of five years from the date of such notification". The proviso empowered the extension of the period by the*

State Government, by order. Though an application was made, no orders were passed. Reversing the judgment of the High Court resorting the land to the owners; their Lordships held:

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"14. In our considered opinion, S.44A cannot be held to be mandatory in the sense that non-compliance with it leads to nullification of the acquisition which has already become final. Such non-compliance cannot also result in divesting of title of the trust nor is there any obligation to restore the unutilised portion(s) of land to its erstwhile owners/persons interested. The reasons are the following:

(a) The section while using the expression 'shall' does not provide the consequence of non-compliance with its requirement. One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed (State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912). The proviso to S.44A empowers the Government to extend the said period. The proviso does not prescribe the outer limit beyond which extension cannot be granted. Nor does it indicate in any manner that the said power can be exercised by the Government only once and no more."

The provisions of the Relinquishment Act too does not provide for any consequence in the event of an order being not passed under S.4; nor does it provide for an outer limit within which time an order of acceptance can be passed. We are, hence, fortified in our view that the absence of an order under S.4 does not lead to restoration of the land to the registered holder who voluntarily relinquished it."

Hence, on an application being properly filed, there cannot be a withdrawal from the relinquishment as such. The allegations of fraud and forgery have also not been pursued in the proper forum in which it could have been urged and the relinquishment be set aside on that count. The intention of the petitioner is clear and the execution has been effected in the presence of the Village Officer and two witnesses, and properly placed before the R.D.O. The only conclusion possible is that the petitioner's objection was only an afterthought, as found by the R.D.O. The second petitioner acquired no right since his purchase is after the relinquishment and that is only a purported exercise to create third party rights. The objection raised by the first petitioner against the relinquishment validly made is not sustainable and the writ petition is devoid of merit.

The writ petition would stand dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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