

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

WP(C).No. 5702 of 2014 (K)

PETITIONERS:

1. N.P.MUHAMMED AGED 61 YEARS
S/O.CHEKKUTTY, KODUVALLY AMSOM
KODUVALLY (PO) NOORKKOOTTUPOYIL KOZHIKODE DISTRICT.
2. N.P. HAMSAGED 56 YEARS
S/O.CHEKKUTTY, KODUVALLY AMSOM
KODUVALLY (PO) NOORKKOOTTUPOYIL KOZHIKODE DISTRICT.
3. ASHRAF, S/O.ASSAIN AGED 42 YEARS
ORUPURAM KANDATHIL HOUSE, KODUVALLY AMSOM
KODUVALLY (PO), KOZHIKODE DISTRICT.
4. P.C.SAINUDHEEN AGED 44 YEARS
S/O.MUHAMMED HAJI K., KODUVALLY AMSOM, KODUVALLY (PO)
KOZHIKODE DISTRICT.
5. N.P.SUBAIR, S/O.ABU AGED 43 YEARS
NORKKOTTUPOYIL HOUSE, KODUVALLY AMSOM, KODUVALLY (PO)
KOZHIKODE DISTRICT.
6. K. ABDUL RAHIMAN, S/O.MOOSA AGED 48 YEARS
KARAKANDATHIL HOUSE, KODUVALLY AMSOM, KODUVALLY (PO)
KOZHIKODE DISTRICT.
7. K.P. MUHAMMED SHAFI AGED 51 YEARS
S/O.MOIDEENKUTTY, VAVAD VILLAGE, KODUVALLY (PO)
KOZHIKODE DISTRICT.
8. ABDUL RAHIMAN, S/O.MOOSA AGED 48 YEARS
OTHAYOTH HOUSE, KODUVALLY VILLAGE, KOZHIKODE DISTRICT.
9. T.P. HAMZA, S/O.MOIDEENKUTTY, AGED 62 YEARS
KACHERIPADIKKAL, THIRURANGADI VILLAGE
TIRURANGADI (PO), MALAPURAM DISTRICT.
10. KOYISSERI PATHUMMA, W/O.T.P.HAMZA AGED 56 YEARS
KACHERIPADIKAL, TIRURANGADI, MALAPURAM DISTRICT.
11. T. ARSHAD, S/O.MUHAMMED AGED 52 YEARS
THUNDIYIL HOUSE, PUTHOOR VILLAGE
THALASSERI KANNOOR DISTRICT.
12. T.ASEES, S/O.MUHAMMED AGED 48 YEARS
THUNDIYIL HOUSE, PUTHOOR VILLAGE
THALASSERI KANNOOR DISTRICT.
13. BALIYIL MUHAMMED HAJI AGED 57 YEARS
S/O.SHEIK, ELANKOD, PANOOR VILLAGE
KANNOOR DISTRICT

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14. BALIYIL SHAFEEK AGED 30 YEARS
S/O.MUHAMMED HAJI ELANKOD, PANOOR VILLAGE
KANNOOR DISTRICT.

15. BALIYIL ABUBAKER AGED 23 YEARS
S/O.MUHAMMED HAJI ELANKOD, PANOOR VILLAGE
KANNOOR DISTRICT.

BY ADVS.SRI.T.SAIDALIKUTTY
SRI.M.I.JOHNSON
SRI.T.K.MOIDEENKUTTY

RESPONDENTS:

1. THE DISTRICT COLLECTOR
WYNAD DISTRICT, COLLECTORATE, KALPATTA
WYNAD DISTRICT.

2. THE SUB REGISTRAR
KALPATTA, THE SUB REGISTRAR'S OFFICE,
KALPATTA WYNAD DISTRICT.

SMT.SUSHEELA BHAT,SPL. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 - TRUE COPY OF THE ASSIGNMENT DEED NO.387/2009 DATED 29-10-2009

EXT.P2 - TRUE COPY OF THE ORDER DATED 16-08-2012 IN CASE NO.TLB 902/73 OF THE TALUK LAND BOARD VYTHIRI.

EXT.P3 - TRUE COPY OF THE PETITION DATED 27-10-2012 FILED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT.

EXT.P4 - TRUE COPY OF THE ORDER NO.L3 22150/53 DATED 30-11-2013 PASSED BY THE 1ST RESPONDENT

EXT.P5 - TRUE COPY OF THE PETITION WITHOUT EXHIBITS IN CRP (LR) NO.442/2012

2ND RESPONDENT'S EXHIBITS

ANNX.R2(A): TRUE COPY OF THE CIRCULAR NO.LB(b12)12005/11(1) DT.1.3.12 ISSUED BY LAND BOARD, THIRUVANANTHAPURAM

ANNX.R2(B): TRUE COPY OF LETTER NO.10654/N1/08/RD DT.24.3.08 OF THE PRINCIPAL SECRETARY TO GOVERNMENT ISSUED TO THE LAND BAORD SECRETARY.

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.,

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Dated this the 15th day of June, 2015

JUDGMENT

The petitioners are challenging Ext.P4 order passed by the District Collector, rejecting their request submitted as per Ext.P3, for issuance of No Objection Certificate to the Sub Registrar, Kalpetta, to register the sale deed preferred by them, in respect of their 125.86 acres of property in Re.Sy.No.505/1 of Block No.28 in Kottappadi Village corresponding to Sy.Nos.186/8, 186/9, 297/8, 9, 10, 12, Re.Sy.No.505/1 in Block No.28 of Kottappadi Village, purchased from M/s.Elestone Tea Estate as per assignment deed No.387/2009 of SRO Kalpatta.

2. Petitioners submit that the Sub Registrar, Kalpatta was not accepting any sale deeds in the said re-survey number for registration, in view of a circular issued by the District Collector, Wayanad-reference No.L3/11/53 dated 15.7.2011. According to them, 125.86 acres of property in Re.Sy.No.505/1 of Block No.28 in Kottappadi Village corresponding to Sy.Nos.186/8, 186/9, 297/8, 9, 10, 12, Re.Sy.No.505/1 in Block No.28 of Kottappadi

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:2:

Village, was purchased by them from M/s.Elestone Tea Estate as per assignment deed No.387/2009 of SRO Kalpatta. The Taluk Land Board had, as per its final order dated 16.8.2012 in TLB 902/73, exempted 123.63 Acres, out of the 125.86 Acres purchased by them as Tea Plantation. It was stated that the Taluk Land Board had ordered surrender of 50 cents of land sold by them to Meppadi Grama Panchayat apart from another extent of 1.73 Acres relinquished by them in favour of the Meppadi Grama Panchayat for the purpose of construction of road. The petitioners stated that they intended to partition the properties and the properties which are exempted by Taluk Land Board as Tea plantation as per order dated 16.8.2012 are liable to be partitioned or sold and there cannot be any prohibition for the sale. Therefore they requested the District Collector by Ext.P3 to cancel the circular issued and to issue a No Objection Certificate to the Sub Registrar to accept the sale deeds for registration.

3. By Ext.P4, the District Collector rejected their request made as per Ext.P3, saying that in case 123.63 Acres of land in Re.Sy.No.505/1 in Block No.28 of Kottappadi Village in Vaithiri

Taluk was permitted, there is every likelihood of sale of the property by fragmentation especially in view of the fact that the persons who were given such permission earlier, have already effected such fragmentation and sale and hence it was necessary to prevent such transfers in the light of the provisions contained in the Kerala Land Reforms Act. It was noticed that appropriate instructions in respect of such transfers were yet to be received from Government or Secretary, Taluk Land Board. Apart from that, it was stated that a batch of identical cases were pending consideration of the High Court and therefore a final decision can be taken only after a judgment was rendered in such cases.

4. Ext.P2 is the order by which the Taluk Land Board had considered the issue in respect of the petitioner regarding the land covered by Ext.P1. By that order the Taluk Land Board had found that 2.23 acres of tea plantation exempted under section 85 had been illegally converted and was liable to be surrendered.

5. The learned counsel for the petitioners pointed out that the circumstances in which permission was denied to them have undergone change and the batch of writ petitions referred to in

Ext.P4, has been disposed of as per judgment dated 13.2.2015 in a batch of cases reported in ***Devassia R.V. and Another v. Sub Registrar, Idukki and Others*** [2015(1) KHC 805], in which this Court issued the following direction in paragraph 14 :

14. In view of the above, these writ petitions are disposed with the following directions:

- i. There shall be a direction to the Revenue Officials to effect mutation in respect of the properties obtained by the purchasers based on valid title.*
- ii. If any of the properties are found to be converted before or after the purchase, the Revenue Officials are free to bring it to the notice of the Taluk Land Board or the appropriate authorities to include the property in the account of the holder of land at the time of exemption for the purpose of ceiling.*
- iii. The registering authority shall not insist for no-objection certificate for the reason that the land is exempted land for the purpose of registration.*
- iv. The transfer of exempted land as a whole or in part can be acted upon for the purpose of registration or effecting mutation.*
- v. In the light of the directions above, the Registering Authority and Revenue Officials are directed to do the needful in these matters to register the document and effect mutation within a*

period of four weeks from the date of receipt of a copy of this judgment. No costs.

6. Smt.Susheela Bhat, the learned Special Government Pleader, pointed out that in view of the fact that the transfers are being effected in order to defeat the very purpose of the enactment of Land Reforms Act and large scale conversions have been effected after such transfers, it was in order to curb such activities employed by the landlords that circulars were issued imposing restrictions and the District Collector did not grant permission.

7. In view of the fact that this Court has already considered the issue in the aforesaid judgment and in view of the fact that the reason stated by the District Collector for denying the permission to the petitioners was the pendency of the writ petition, awaiting the decision therein, it is only just and proper that the petitioners also be allowed to effect transfers/partition of their property strictly in accordance with the conditions stipulated in the aforesaid judgment.

8. The prayers sought in the writ petition are for (i)

direction to respondents 1 and 2 to permit the petitioners to partition or sell their properties and (ii) set aside Ext.P4 order and circular dated 15.7.2011 issued by the 1st respondent to the 2nd respondent.

9. In the light of the above circumstances, the respondents are directed to permit the petitioners to effect partition/sale of their properties covered by Ext.P1 after deducting an extent of 2.23 Acres,(which was found liable to be surrendered and which has already been assigned to Meppadi Panchayat by way of 2 documents in respect of 50 cents and 1 acre and 73 cents) subject to conditions already stipulated in paragraph 14 of the judgment in ***Devassia R.V. and Another v. Sub Registrar, Idukki and Others*** [2015(1) KHC 805] i.e

- (i) the properties shall not be subjected to further conversion;
- (ii) if any of the properties are found to be converted before or after the partition/sale, the revenue officials will be free to bring it to the notice of the Taluk Land Board or to the appropriate authorities to include the property in the

account of the holder of the land at the time of exemption for the purpose of ceiling;

- (iii) the Registering authorities shall not insist for No Objection Certificate for the reason that the land is exempted land for the purpose of registration; and
- (iv) the Registering Authority and Revenue Officials are directed to do the needful in the matter to register the document within a period of four weeks from the date of receipt of a copy of this judgment.

Accordingly the writ petition is allowed as above.

Sd/-
P.V.ASHA,
JUDGE.

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