

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 22741 of 2006 (G)

PETITIONERS:

1. KADIRI,
ALIYAPAPPADA, AGATTI ISLAND, LAKSHADWEEP.
2. AYSHOMMA,
ALIYAPAPPADA, AGATTI ISLAND, LAKSHADWEEP.
3. JAIBI,
ALIYAPAPPADA, AGATTI ISLAND, LAKSHADWEEP.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

1. THE ADDITIONAL SUB DIVISIONAL OFFICER,
AGATTI ISLAND, LAKSHADWEEP.
2. HAMEEDATH THAKKILAPPURA,
AGATTI ISLAND, LAKSHADWEEP.
3. SHAHILA, -DO- -DO-

R2 BY ADVS. SRI.C.S.ABDUL SAMAD

SRI.V.D.BALAKRISHNA KARTHA

R1 BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-12-2015, THE
COURT ON 08.12.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

- P1 : TRUE COPY OF THE ORDER IN REVENUE CASE NO.1/2004, DATED 18.12.2004.
P2 : TRUE COPY OF THE JUDGMENT DATED 7.3.2005 IN W.P.(C) NO.1870/2005.
P3 : TRUE COPY OF THE ORDER DATED 7.10.2005 IN REVENUE CASE NO.1/2004.

RESPONDENTS' EXHIBITS:

- R2(1) : TRUE COPY OF THE NO OBJECTION CERTIFICATE F.NO.13/12/2003-ASDO(4)
DT.15.12.2003.
R2(2) : TRUE COPY HEIR SHIP CERTIFICATE DATED 18.10.2003.
R2(3) : TRUE COPY OF THE NOTICE R.NO.REV.CASE NO.1/2004/165 DATED 18.06.2005.
R2(4) : TRUE COPY OF THE COMPLAINT PETITION DATED 4.9.2006.
R2(5) : TRUE COPY OF THE PETITION DATED 4.9.2006 SUBMITTED TO EXECUTIVE
MAGISTRATE, AGATHI
R2(6) : TRUE COPY OF THE PETITION DATED 7.9.2006 BEFORE THE SUB INSPECTOR,
AGATHI.
R2(7) : TRUE COPY OF THE PETITION DATED 25.09.2008.
R2(8) : TRUE COPY OF THE PETITION DATED 16.12.2008.
R2(9) : COPY OF THE PHOTOGRAPHS OF THE SIGHT.

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). No.22741 of 2006

Dated this the 8th day of December, 2015

JUDGMENT

A dispute that arose between the petitioners and respondents 2 and 3, all living in the island of Agathy, a constituent of Union Territory of Lakshadweep and consequential order passed by the 1st respondent is the subject matter of this writ petition. The Union Territory of Lakshadweep is a collage of 36 islands. Islands are surrounded by Arabian sea and Indian Ocean. The islands are well known for its signalling features and unique traditions, culture and habits. It is also well known for its beauty and serenity. There are courts of Munsiff - Magistrates and a District and Sessions Court. During adverse climatic and weather conditions and seas turn rough, accessibility among the islands become bothersome. In such eventualities to maintain law and order and peaceful atmosphere, Sub Divisional Magistrates are given limited powers as a stop gap arrangement.

2. The writ petition is filed by the petitioners challenging Ext.P3 order passed by the 1st respondent whereby the 1st respondent pursuant to a direction issued by this Court in W.P.(C) No.1870 of 2005, reconsidered an order passed earlier and has issued the following order:

“In view of the above, this Revenue Court orders as follows:

- (1) The Land obtained through document No.5/85 is equally belonging to Kadiri and late Koyammu.
- (2) As no partition has been made between Koyammu and Kadiri before the death of Koyammu on the above landed property, a partition of the said land is required for which the petitioners and counter petitioners may register a partition deed or approach court of law for getting the same partitioned; if so advised.
- (3) Till partition is made as above, half portion of the land acquired through document No.5/85 and the house constructed by Koyammu shall be belonging to the petitioners based on the heir-ship certificate.
- (4) The petitioners and counter petitioners should not encroach the land area other than the half portion of land held by them.”

3. According to the petitioners, the 1st respondent by passing such an order entrenched upon the the powers conferred on a civil court.

4. The facts required for the disposal of the writ petition are as follows:

5. Petitioners and respondents 2 and 3 are residents of Agathi Island, Union Territory of Lakshadweep. Respondents 2 and 3 have instituted Revenue Case No.1 of 2004 before the 1st respondent. First petitioner is the brother and petitioners 2 and 3 are sisters of one late Koyammu. Respondents 2 and 3 are wife and daughter respectively of late Koyammu. During the life time of Koyammu, he along with 1st petitioner had purchased certain landed properties and also constructed buildings thereon.

6. As per the Mohommaden Law, after the death of Koyammu, his wife is entitled to get 1/8 shares, daughter is entitled to get 4/8 shares and the remaining 3/8 shares will go to his brothers and sisters.

7. Suppressing the above facts, respondents 2 and 3 had filed a petition before the 1st respondent on 29.10.2004. First respondent entertained the same based on the averments, put forth by respondents 2 and 3 that the deceased Koyammu had acquired certain properties and that after the death of Koyammu, petitioners are disturbing their alleged peaceful

possession of the said properties. The 1st respondent without properly considering the relevant facts and circumstances and without hearing petitioners 2 and 3 has issued Ext.P1 order dated 18.12.2004, contended the petitioners. Thus aggrieved, petitioners have filed W.P.(C) No.1870 of 2005 before this Court and by Ext.P2 judgment dated 7.3.2005, this Court set aside Ext.P1 order and directed the 1st respondent to re-consider the same also taking into account, whether any serious dispute as to title over immovable properties remain in the subject matter of the case and if so, the Civil Court to decide such issues.

8. However, the 1st respondent overlooking the directions contained in Ext.P2 judgment and also the relevant factors and evidence in the case, has passed Ext.P3 impugned order. By Ext.P3 order the 1st respondent has virtually given a declaration with regard to the title and ownership of the properties and also issued an order in the nature of an injunction restraining the petitioners from entering the properties for using the same. First respondent has absolutely no right whatsoever to entertain a petition concerning a civil dispute and adjudicate the same. It is the further case of the petitioners that, the 1st respondent by

issuing directions contained in Ext.P3 virtually adjudicated a civil dispute that existed between the petitioners and respondents 2 and 3. Therefore, Ext.P3 order is illegal, arbitrary and unreasonable. It is this background, which led to the writ petition.

9. First respondent has filed a counter affidavit refuting the statements and allegations in the writ petition. It is submitted by the 1st respondent that Ext.P3 order was passed pursuant to a complaint received by him from respondents 2 and 3 alleging interference with the peaceful possession, ownership and enjoyment of the properties and seeking necessary measures for removal of the same.

10. After discussing the issues remaining among the parties, 1st respondent has also stated that since no amicable settlement could be arrived at, 1st respondent adjudicated the issues between the parties and the observations in Ext.P3 are made, to maintain status quo. It is thus, the 1st respondent has justified Ext.P3 order passed by him.

11. The 2nd respondent has filed a counter affidavit almost in similar lines in the counter affidavit filed by the 1st respondent

and asserted that Ext.P3 order passed by the 1st respondent does not require any interference at the hands of this Court.

12. Heard Sri.R.Ramadas, learned counsel for petitioners, Sri.S. Radhakrishnan, learned counsel for 1st respondent and Sri.C.S.Abdul Samad, learned counsel for respondents 2 and 3. Perused the records and the pleadings put forth by the rival parties.

13. The question remains to be adjudicated in this writ petition is whether 1st respondent is vested with any power to decide the disputes that arose between the petitioners and respondents 2 and 3 and effect a partition as is done in Ext.P3 order. Learned Standing Counsel for the Lakshadweep Administration who represents the 1st respondent submits that 1st respondent is vested with certain powers to maintain the law and order situation in the Union Territory of Lakshadweep especially when adverse climatic conditions interferes with the smooth functioning of the institutions situated in various islands. In Union Territory of Lakshadweep, the laws that are followed and applicable to the State of Kerala, hitherto apply. When the subject matter of this dispute arose there was only one Civil

Court in one of the islands. Learned counsel for the 1st respondent therefore, submits that when any situation occurs affecting the equanimity, equilibrium and peace prevailing in the islands and when the people are not able to approach the Civil Court, temporary measures are taken by the 1st respondent to give quietus to the issue during the interregnum period. Learned counsel for the 1st respondent justifies Ext.P3 order passed by the 1st respondent in accordance with the exigency that occurred at that point of time. This is stoutly opposed by the learned counsel for the petitioners, who apart from reiterating the contentions raised in the writ petition, pointedly contended that, virtually by passing Ext.P3 order, 1st respondent has effected partition of the properties by declaring incorrectly their respective shares.

14. I have perused Ext.P3 order. The findings therein is the subject issue in this writ petition. On a reading of the same, I have no doubt in my mind that the dispute that existed between the parties is purely a civil dispute. On going through the counter affidavit, it can be seen that the dispute that existed between the petitioners and respondents 2 and 3 are civil in

nature. There is no finding by the 1st respondent that the dispute existed between the parties turned out to be a dispute affecting the peace and harmony either between the parties or the same did have any societal ramification. I could not gather either from the pleadings or the arguments advanced by the respective parties, the source of power enjoyed by the 1st respondent to pass on order in the nature of Ext.P3 effecting the partition of the properties and his power to interfere with the civil dispute that occurred among the parties. However, what I could understand is that, certain powers are vested with the 1st respondent to deal with any emergent situations and any dispute that arose between the residents of the islands, which may in his opinion culminate into a law and order situation. Existence or occurrence of any law and order situation nor any untoward incident are not recited in Ext.P3 order. Even though, the same is running to almost 7 pages, no single allegation is made with regard to the occurrence of any law and order situation pursuant to the dispute that arose between the petitioners and respondents 2 and 3.

15. The statutory authorities must confine the exercise of

their power to the extent/limit provided under any statute or orders issued by the administration for and on behalf of the Government of India. What I gather from Ext.P3 is that the 1st respondent has usurped the power of civil courts and had decided the civil dispute effecting partition of the properties between the petitioners and respondents 2 and 3. So far as the partition is concerned, parties are duty bound to resort to civil remedies. The Civil Procedure Code and Rules of Practice prevailing in the State of Kerala are the laws applicable. Instead of approaching the Civil Court, respondents 2 and 3 approached the 1st respondent and secured a partition in their favour which cannot be sustained under law. Therefore, I have no hesitation to hold that Ext.P3 order passed by the 1st respondent is illegal, irrational and arbitrary. Accordingly the same is set aside. However, when the matter was taken up for hearing on 02.12.2015, it was submitted that with regard to the subject matter of the dispute which led to Ext.P3 order, petitioners and respondents 2 and 3 have entered into a settlement and has registered a document No.44/2009 before the office of the Sub Registry situated in the Agathy island. Learned

counsel for the petitioners in the circumstances sought time and submitted on 04.12.2015 that it is true that such a deed was registered, by which the settlement was entered into only by the 1st petitioner and respondents 2 and 3. Anyhow since I have already found that Ext.P3 cannot be sustained under law, parties are left free to approach the Civil Court if still any civil disputes are existing by and between them. It is made clear that the findings and observations made in this judgment will not stand in the way of any court considering any civil dispute raised by the parties to this Writ Petition.

Writ Petition is allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
05.12.2015