

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 15524 of 2013 (M)

PETITIONER(S):

1. **PRAKASH PLANTATIONS PVT. LTD.,
CHALUMTHALAKKAL BUILDINGS, THOTTAKKATTU P.O.,
VIA PUTHUPALLY, KOTTAYAM DISTRICT-686 539,
REPRESENTED BY ITS DIRECTOR.**
2. **A.P.JOSEPH,
S/O. POULOSE, ARAKKAL HOUSE, VELLARIKUNDU P.O.,
KASARAGOD-671 533.**
3. **P.D.BINISH,
S/O. P.K.DAS, PUNNAKKAL HOUSE, VELLARIKUNDU P.O.,
KASARAGOD-671 533.**

**BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.T.R.SADEESAN
SRI.T.S.SHYAM PRASANTH**

RESPONDENT(S):

1. **STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
2. **THE LAND REVENUE COMMISSIONER,
LAND NBOARD, THIRUVANANTHAPURAM-695 001.**
3. **THE DISTRICT COLLECTOR,
KASARAGOD-671 121.**
4. **THE VILLAGE OFFICER,
BALAL VILLAGE, KASARAGOD-671 533.**
- * 5. **THE SUB REGISTRAR,
HOSDURG SUB REGISTRY, KANHANGAD P.O.,
KASARAGOD-671 315. (CORRECTED)**
- * **'THE SUB REGISTRAR
BALAL SUB REGISTRY, BALAL P.O.,
KASARGOD -671 533.**

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* THE CAUSE TITLE OF THE WRIT PETITION RELATING TO THE
5TH RESPONDENT IS CORRECTED AS ABOVE PER ORDER
DATED 07/08/2013 IN IA 9398/2013)

** ADDITIONAL R6 IMPEADED

6. K.C.JOSEPH, AGED 60 YEARS,
S/O.CHACKO, RESIDING AT KANAKKAT HOUSE,
BALAL P.O., KASARAGOD DISTRICT,
PIN - 671 533. (FORMER SECRETARY,
VELLARIKUNDU PRAKASH ESTATE DIVISION COMMITTEE,
INDIAN NATIONAL TRADE UNION CONGRESS (INTUC),
BALAL P.O., KASARAGOD DISTRICT).

** ADDL.R6 IS IMPEADED AS PER ORDER DATED 12.07.2013 IN IA 9360/2013.

* ADDITIONAL R7 IMPEADED

7. FR.PETER MULLUPARAMBIL S.J.,
AGED 43 YEARS, SECRETARY AND TREASURER,
KERALA JESUIT SOCIETY CHRIST HALL, MALAPARAMBA,
KOZHIKODE.

* ADDL. R7 IS IMPEADED AS PER ORDER DATED 30.08.2013 IN IA 11792/2013.

** ADDITIONAL R8 & R9 IMPEADED.

8. E.C.ABRAHAM, SON OF CHERIYAN,
RESIDING AT KOORANKUNDU, P.O.PILACHIKKARA,
BEEMANDY VILLAGE, VELLARIKUNDU TALUK,
KASARAGOD DISTRICT.

9. BABY MATHEW, SON OF MATHEW, SECRETARY,
KARUNAKARAN SAMSKARIKA VEDI, BALAL MANDALAM COMMITTEE,
P.O. VELLARIKUNDU, RESIDING AT PANAKKATHOTHATHIL HOUSE,
VELLARIKUNDU, KASARAGOD DISTRICT.

** ADDITIONAL R8 & R9 IMPEADED AS PER ORDER DTD.6.7.15 IN IA.12697/14.

R1 TO R5 BY GOVERNMENT PLEADER SRI.SAIDALAVI

R6 BY ADV. SRI.JAWAHAR JOSE

R7 BY ADVS. SRI.T.KRISHNANUNNI (SR.)

SRI.SAJU.S.A

SRI.K.C.KIRAN

SMT.MEENA.A.

R8 & R9 BY ADVS. SRI.K.RAMAKUMAR (SR.)

SMT.AMMU CHARLES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-04-2015 THE COURT ON 27-05-2015, DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF PURCHASE CERTIFICATE DTD.16.5.1978 ISSUED BY THE LAND TRIBUNAL, KANHANGAD TO THE 1ST PETITIONER IN RESPECT OF 275 ACRES OF LAND.
- P2 : COPY OF THE TAX RECEIPT DTD.28.4.2012 ISSUED BY THE 4TH RESPONDENT TO THE 1ST PETITIONER IN RESPECT OF 41 ACRES.
- P3 : COPY OF THE DRAFT SALE DEED DTD.19.1.2013 EXECUTED BETWEEN THE PETITIONERS.
- P4 : COPY OF THE GOVERNMENT ORDER NO.10654/N1/08/RD DTD.24.3.2008 ISSUED BY THE 1ST PETITIONER.
- P5 : COPY OF THE LETTER NO.LB(B12)-12005/11(1) DTD.1.3.2012 ISSUED BY THE 2ND RESPONDENT.
- P6 : COPY OF THE APPLICATION DTD.5.2.2013 SUBMITTED BY THE 1ST PETITIONER TO THE 3RD RESPONDENT.
- P7 : COPY OF THE REPORT DTD.15.5.2013 SUBMITTED BY THE 4TH RESPONDENT TO THE ADDITIONAL TAHSILDAR, HOSDURG TALUK.
- P8 : COPY OF THE ORDER DTD.24.1.2012 OF THIS HON'BLE COURT IN WPC NO.1037/2012.
- P9: COPY OF THE PETITION DTD.12.6.2012 FILED BY THE IMPEADING PETITIONER BEFORE THE LOK ADALAT AND NOTICE DIS.NO.1191/12 DTD.14.6.2012 ISSUED BY THE LOK ADALAT.
- P10: COPY OF THE AFFIDAVIT DTD.14.7.2012 FILED BY THE COMPANY BEFORE THE LOK ADALAT.
- P11: TRUE COPY OF THE LISTS OF SALE OF LAND FOR THE PERIOD 1979 TO 2103 WITH REFERENCE TO THE SERIAL NUMBER GIVEN BY DISTRICT COLLECTOR.
- P12: TRUE COPY OF THE ORDER DTD.7.8.2002 IN IA.NO.1751/2002 IN IP.NO.7/2002 OF PRINCIPAL SUB JUDGE, KOTTAYAM.
- P13: TRUE COPY OF THE ORDER DTD.3.6.2009 IN IA.NO.1513/2009 IN IP.NO.7/2002 OF PRINCIPAL SUB JUDGE, KOTTAYAM.
- P14: TRUE COPY OF THE ACCEPTANCE LETTER DTD.19.10.2012 ACKNOWLEDGE THE RECEIPT OF RS.7 LAKHS.

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RESPONDENT(S)' EXHIBITS:

**EXT.R6(a): TRUE COPY OF PROCEEDINGS OF THE LAND BOARD DTD.21.1.1978 IN
TLB NO.24/73/HOS.**

**EXT.R6(b): TRUE COPY OF INFORMATION RECEIVED BY THE 6TH RESPONDENT
FROM THE DISTRICT COLLECTOR, KASARAGOD.**

IA.11792/2013 IN WPC.15524/2013

**EXT.R6(a):THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE SOCIETY
BEFORE THE DISTRICT COLLECTOR, KASARAGOD ALONG WITH
ANNEXURES DTD.7.8.2013.**

**EXT.R7(a): TRUE COPY OF REPORT NO.TLB2-54112/12 DTD.2.1.2014 SENT BY THE
DISTRICT COLLECTOR TO THE PRIVATE SECRETARY TO HON'BLE CHIEF
MINISTR OF KERALA, THIRUVANANTHAPURAM.**

**EXT.R7(b): TRUE COPY OF REPRESENTATION SUBMITTED BY THE 1ST PETITIONER
HEREIN BEFORE THE DISTRICT COLLECTOR, KASARAGOD ALONG WITH
RECEIPT DTD.28.8.2014.**

EXT. R3(a): A TRUE COPY OF THE JUDGMENT DTD.19.9.2012 IN RP.NO.134/2012.

EXT.R3(b): A TRUE COPY OF THE JUDGMENT DTD.17.1.2012 IN WP(C) 31477/2011.

**EXT.R3(c): A TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR
DTD.27.6.2013.**

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J

W.P.(C)No.15524 of 2013

Dated this the 27th day of May, 2015

JUDGMENT

Aggrieved by the refusal of the 5th respondent to accept Ext.P3 sale deed for registration, the petitioners have approached this Court with this writ petition.

2. The first petitioner is a company registered under the Companies Act. According to the petitioners, the first petitioner company is owning a rubber plantation in Hosdurg, Kasargod District. The petitioners allege that after surrendering excess land out of 600 Acres with them in accordance with the Land Reforms Act, the 1st petitioner company was given Purchase Certificate of the rights of the land owner in respect of 275 Acres as per Ext.P1. After disposal of a major portion out of 275 Acres, 41 Acres are remaining under the ownership and possession of the first petitioner; so allege the petitioners. It is further alleged that out of plantation so sold as small holdings, 213 Acres are even now retained as rubber plantation. The petitioners allege that petitioners 2 and 3 entered into an agreement

with the first petitioner to purchase the remaining 41 Acres with the specific intention of retaining the same as rubber plantation. Clear felling was conducted in respect of the old trees earlier and it is specifically stated in Ext.P3 sale deed that, that rubber trees would be replanted in a portion of the property. However, in view of Exts.P4 and P5 directions, the 5th respondent had refused to accept Ext.P3 sale deed for registration. The first petitioner approached the third respondent as per Ext.P6 representation. However, nothing has been done notwithstanding Ext.P7 report. It is with this background the petitioners have come up before this Court.

3. In the counter affidavit filed by the third respondent, it was contended that Ext.P1 Pattayam is ex-facie fraudulent and was issued in gross violation of the provisions of the Kerala Land Reforms Act. According to the third respondent, a Private Limited Company, under the guise of cultivating tenant has managed to acquire an extent of 275 Acres of "garden land" comprised in Re.Sy.No.112/11A1 of Balal Village (formerly Maloth) of Hosdurg Taluk. According to the respondent, the issue of Purchase Certificate was in gross violation of the ceiling

limits applicable to a Private Limited Company. It was contended that said Purchase Certificate does not bear any official seal or signature of the Tribunal. It was further contended that as per the provisions of the statute, Purchase Certificate can be issued only to a natural person or family as defined in Sub Sections 7 and 8 of Section 2 of KLR Act. Therefore, a Private Limited Company cannot claim the benefits of a cultivating tenant under any stretch of imagination. Based on Ext.P1, the petitioner company was indulged in fragmentation and transfer of the lands and the present attempt is to defeat the ceiling provisions of the Act. The land proposed to be transferred is a pucca rubber plantation. The petitioner has sold an extent of 234 Acres out of the illegally held property of 275 Acres. As per the provisions of the KLR Act, sale of plantation after obtaining exemption and conversion to some other categories of non-exempted lands are liable to be proceeded against as beyond the ceiling limit. The attempt of the petitioner to sell huge extent of land based on illegal documents is liable to be further enquired and proceeded against under the Kerala Land Reforms Act. Therefore, they prayed for the dismissal

of the Writ Petition.

4. The additional 6th respondent who got subsequently impleaded, has contended that the first petitioner is having right, title and ownership only in respect of 8.5 acres of property and the contention that the petitioners are having right, title and ownership over an extent of 41 acres of property is incorrect. It was contended that Ext.P1 Patta was issued to the first petitioner to retain 275 acres of property, only because 265 acres of property comes within the definition of 'plantation' as per Section 2 (44) of the Kerala Land Reforms Act. The extent of 265 acres of property was a rubber plantation. The rubber saplings in the property were cut and removed in the year 1992 and the property retained by the company is a barren land since 1992. Thus for the last 21 years, the property retained by the 1st petitioner company is not a 'rubber plantation'. Thus the Government should have initiated proceedings to recover the properties retained by the petitioner company.

5. Arguments have been heard.

6. The definite case of the petitioners is that as per

Ext.P1 Patta the first petitioner company owned 275 acres of land and out of that 41 acres are remaining under the ownership and possession of the first petitioner as evidenced by Ext.P2. The petitioners 2 and 3 entered into an agreement with the first petitioner company to purchase the remaining 41 Acres with the intention of retaining the same for rubber plantation. However, the 5th respondent refused to accept Ext.P3 sale deed in view of Exts.P4 and P5 directions. While the State would contend that Ext.P1 itself is illegal, the additional 6th respondent could contend that the rubber saplings in the said plantation were cut and removed in the year 1992 and for the last 21 years the property retained by the 1st petitioner is not a rubber plantation. Therefore the 6th respondent would say that the property should have been vested with the Government by the virtue of the provisions of the Land Reforms Act.

7. The only question to be answered is whether the arguments raised by the respondents are valid enough to restrain the first petitioner from transferring the properties in the name of petitioners 2 and 3.

8. When Ext.P3 sale document was presented for

registration it was not acted upon in view of Ext.P4 letter dated 24.03.2008 issued by the first respondent. The second respondent had issued Ext.P5 direction to all District Collectors to comply with the same. The question is whether Exts.P4 and P5 would stand in the way of transfer of 41 acres of property covered by Exts.P1 and P2. As per Ext.P1, the first petitioner company is having properties. Though the respondent State would contend that Ext.P1 is a bogus document, they have not taken any steps to cancel the same. The question whether the Revenue Officials are legally competent or entitled to interdict a registering authority under the Registration Act from registering a sale deed on the ground that subject matter of document is suspected to be revenue puramboke land came up for consideration of a Division Bench of this Court in ***Selvam V. State of Kerala [2010(1)KLT 508]***. The Division Bench going by the provisions contained in the Registration Act and Rules held that such an embargo or interdiction cannot be placed by the Revenue Officials on the registering officers, going by the provisions contained in the Registration Act and the Rules framed there under. Such an

embargo is an interdiction which cannot be placed by the revenue officials on the registering officers. It was observed that it may be proved that large number of bogus pattas are in circulation in that area. However, so long as the provisions contained in the Registration Act do not give any power or authority to the Revenue Officials to middle with the power vested with the registering authority under the Act, the action of the respondent revenue officials could not be countenanced and justified; so held the Division Bench.

9. Viewed in that profile this court is of the view that there can be a direction to the registering authority to accept Ext.P3 sale deed for registration leaving other questions open to be considered in appropriate proceedings. If the respondent state has a case that the first petitioner has illegally possessed the Government land, it is open to the respondent Government to proceed against the first petitioner or its successor in interest. If the Government is the actual owner of the property, any of transfers effected will not be of any use.

Therefore, the writ petition is disposed of directing the first respondent to permit the petitioners to present Ext.P3

and similar sale deeds in respect of remaining properties in Exts. P1 and P2 for registration and to effect the mutation of transfer in accordance with Transfer of Registry Rules untrammelled by Exts.P4 and P5. It is hereby made clear that this judgment will not stand in the way of respondents in proceeding against the party in whose possession the property remains, if Ext.P1 is bogus and it pertains to government lands.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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P.A. TO JUDGE