

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No.15990 of 2013 (W)

PETITIONERS:

1. SREEDHARAN,
AGED 70 YEARS,
S/O.ACHUTHAN, RESIDING AT AMBADI,
SREEDHARAN PILLAI ROAD, PAPPANAMCODE,
THIRUVANANTHAPURAM.
2. SHYAMALA DEVI,
AGED 66 YEARS,
W/O.SREEDHARAN, RESIDING AT AMBADI,
SREEDHARAN PILLAI ROAD, PAPPANAMCODE,
THIRUVANANTHAPURAM.

BY SR.ADV.SRI.R.D.SHENOY
BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENTS :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT (REVENUE),
SECRETARIAT,
THIRUVANANTHAPURAM – 695 001.
2. LAND REVENUE COMMISSIONER, PUBLIC OFFICE BUILDING,
MUSEUM, THIRUVANANTHAPURAM 695 002.
3. THE DISTRICT COLLECTOR, COLLECTORATE,
THIRUVANANTHAPURAM – 695 001.
4. REVENUE DIVISIONAL OFFICER,
THIRUVANANTHAPURAM – 695001.

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5. SPECIAL TAHSILDAR, TRAVANCORE DEVASWOM BOARD,
THIRUVANANTHAPURAM – 695001.
6. TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY,
THIRUVANANTHAPURAM-695001.

Addl.7:-

EDAVOOR SREE MAHA GANAPATHI TEMPLE ADVISORY COMMITTEE,
(R.O.C.No.10617/2013 NSI),
EDAVOOR SREE MAHA GANAPATHI TEMPLE, ARUMANOOR,
POOVAR.P.O.,
PIN CODE –695 525 REPRESENTED BY ITS PRESIDENT,
P.S.RENJITH, AGED 25, S/O.SREEKUMARAN NAIR,
VADAKKECHIKKADI VEEDU, ARUMANOOR, POOVAR.P.O.
PIN CODE – 695 525.

(ADDL. R7 IS IMPEADED AS PER ORDER DATED 16/12/2013 IN
IA 16915/2013.)

R6 BY SRI.P.GOPAL – SC– TDB
ADDL.R7 BY ADV. SRI.P.VISWANATHAN
ADDL.R7 BY ADV. SRI.SUNIL N.SHENOI
R BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS :-

- EXT.P-1 TRUE COPY OF THE SALE DEED DATED 20.1.1966.
- EXT.P-2 TRUE COPY OF THE SETTLEMENT REGISTER.
- EXT.P-3 TRUE COPY OF THE REVENUE SETTLEMENT PROCLAMATION.
- EXT.P-4 TRUE COPY OF THE SETTLEMENT DEED EXECUTED IN FAVOUR OF ONE SMT.BHAGAVATHI AND HER MINOR CHILDREN IN 1106 ME.
- EXT.P-5 TRUE COPY OF THE SALE DEED DATED 14.3.1959.
- EXT.P-6 TRUE COPY OF THE PLAINT IN O.S.NO.478 OF 2008 FILED BEFORE THE MUNSIF'S COURT, NEYYATTINKARA DATED 3.6.2008.
- EXT.P-7 TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONERS BY THE 5TH RESPONDENT NO.A1-98/09.
- EXT.P-8 TRUE COPY OF THE REPLY SENT BY PETITIONERS DATED 22.7.2009.
- EXT.P-9 TRUE COPY OF THE ORDER PASSED BY THE 5TH RESPONDENT DATED 16.10.2009.
- EXT.P-10 TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY PETITIONERS BEFORE THE 4TH RESPONDENT DATED 2.11.2009
- EXT.P-11 TRUE COPY OF THE STAY PETITION DATED 2.11.2009 FILED ALONG WITH EXHIBIT-P10 APPEAL.
- EXT.P-12 TRUE COPY OF THE ORDER DATED 10.11.2009 OF THE 4TH RESPONDENT.
- EXT.P-13 TRUE COPY OF THE JUDGEMENT DATED 19.1.2010 IN WPC NO.33021/2009 (W).
- EXT.P-14 TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE ADVOCATE OF THE PETITIONERS SHRI.V.G.ARUN TO THE 4TH RESPONDENT DATED 7.4.2012.
- EXT.P-15 TRUE COPY OF THE ORDER DATED 13.4.2012 OF THE 4TH RESPONDENT.

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EXT.P-16 TRUE COPY OF THE REVISION PETITION FILED BEFORE THE 3RD
RESPONDENT BY THE PETITIONERS.

EXT.P-17 TRUE COPY OF THE ORDER DATED 17.1.2013 PASSED BY THE 3RD
RESPONDENT.

EXT.P-18 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED
19.3.2013 WHICH WAS COMMUNICATED TO THE PETITIONER ON
11.4.2013.

EXT.P-19 TRUE COPY OF THE PLAINT IN O.S.NO.643/2010 FILED BEFORE
THE MUNSIF'S COURT, NEYYATTINKARA DATED 29.6.2010

RESPONDENTS' EXHIBITS :-

EXT.R6(a) TRUE COPY OF THE MAHAZAR RESTORING POSSESSION OF
DEVASWOM LAND DTD.26-11-2009 PREPARED BY THE SPECIAL
TAHSILDAR (LA) OF THE BOARD.

True copy

P.A to Judge

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

W.P.(C)No.15990 of 2013

Dated this the 27th day of January, 2015

JUDGMENT

Anil K.Narendran, J.

This Writ Petition is filed by the petitioners, who are stated to be the absolute owners in possession of 71 cents of property comprised in Block No.7, Field No.182 of Thirupuram Village in Neyyattinkara Taluk, seeking a writ of certiorari to quash Ext.P7 notice dated nil issued by the fifth respondent, under Section 12 of the Kerala Land Conservancy Act, 1958 (hereinafter referred to as 'the Act'); Ext.P15 proceedings of the fourth respondent dated 13-4-2012 rejecting Ext.P10 appeal filed by the petitioners under Section 16(1)(b) of the Act, against Ext.P9 order dated 16-10-2009 passed by the fifth respondent; Ext.P17 order dated 17-1-2013 of the third respondent disposing Ext.P16 revision petition filed by the petitioners under Section 16(2) of the Act, against Ext.P17 order; and also Ext.P18 order dated 17-1-2013 passed by the second respondent rejecting Ext.P16 revision petition filed by the petitioners as not maintainable in law.

2. By order dated 1-7-2013 this Court recorded the submission made by the learned Standing Counsel for the Travancore Devaswom Board that, after Ext.P9 order passed by the 5th respondent, which was confirmed by the 4th respondent, the Board has taken possession of the property on 26-11-2009 and has taken steps to restore the pond. But at that point of time, further actions in the matter were stopped in the light of Ext.P17 order passed by the third respondent and the same position continues. In such circumstances this Court by order dated 1.7.2013 directed both the parties not to alter the physical condition of the land in question until otherwise ordered by this Court.

3. We heard the arguments of the learned Senior Counsel for the petitioners, the learned Government Pleader appearing for respondents 1 to 4, the learned Standing Counsel for the Travancore Devaswom Board and also the learned counsel for the additional seventh respondent.

4. According to the petitioners they are the absolute owners in possession of the property in dispute and they obtained title and possession over the said property as per Ext.P1 sale deed dated

20-1-1996. The petitioners are also relying on Ext.P2 Settlement Register, Ext.P3 Revenue Settlement Proclamation, Ext.P4 Settlement deed of 1106ME and Ext.P5 Sale deed of 1959 to contend that the property in dispute is not a Devaswom land and that the 6th respondent Board has absolutely no right over the same. According to them, a property will become Devaswom property only on satisfaction of the two conditions enumerated in Clause (i) & (ii) of Section 27 of the Travancore-Cochin Hindu Religious Institutions Act, 1950, and it is evident from the documents on record that the property in dispute can never be a Devaswom land.

5. Alleging that the land in dispute is a Devaswom land, proceedings were initiated against the petitioners under the Land Conservancy Act and by Ext.P9 order passed by the 5th respondent they were directed to vacate the property. Ext.P10 appeal filed by the petitioners ended in dismissal by Ext.P12 order of the 4th respondent. Ext.P16 revision filed by the petitioners was disposed of by Ext.P17 order passed by the 3rd respondent, maintaining the order of stay granted on 16-5-2012 till the disposal of O.S.No.643 of 2010 filed by the petitioners before the Munsiff's Court,

Neyyattinkara. The petitioners have filed the said suit before the Munsiff's court, Neyyattinkara seeking a declaration that the plaint schedule property is not a Devaswom property and also seeking a decree of permanent prohibitory injunction restraining the Travancore Devaswom Board, the defendant in the said suit, from evicting them from the plaint schedule property in any manner.

6. The 6th respondent Board has filed a detailed counter affidavit contending that, the present Writ Petition is not maintainable in view of the pendency of the suit filed by the petitioners before the Munsiff's Court, Neyyattinkara as O.S.No.643 of 2010. According to the Board, the land in dispute belongs to the temple and that the temple pond situated on the northern side of the property was reclaimed by the successor in interest of the original pattom holders. The petitioners and their predecessor in interest are unauthorised occupants of Devaswom land and they are liable to be evicted from the said land by invoking the provisions contained in the Land Conservancy Act read with Section 27 of the Travancore Cochin Hindu Religious Institutions Act. According to the Board, after Ext.P9 order by the 5th respondent, the petitioners were evicted

from the Devaswom land on 26-11-2009, as evident from Ext.R6(a) mahazar and the devotees of the Temple started digging the pond. But the same was stopped in view of Ext.P17 order of the 3rd respondent dated 17-1-2013 to maintain the order of stay granted on 16-5-2012 till the disposal of O.S.No.643 of 2010 pending before the Munsiff's Court, Neyyattinkara.

7. It is not in dispute that, O.S.No.643 of 2010 filed by the petitioners herein seeking a declaration that the property in dispute is not a Devaswom property and seeking other consequential reliefs is pending consideration before the competent civil court. A learned Single Judge of this Court in **Shamsudeen Vs. Travancore Devaswom Board** (2001(1) KLT 292) held that the bar under Section 20A of the Kerala Land Conservancy Act, 1957, is only in respect of a suit for eviction and a suit for declaration and injunction is maintainable. Further by Ext.P17 order, the 3rd respondent has directed the 6th respondent Board to maintain the order of stay granted on 16-5-2012 till the disposal of that suit.

In such circumstances, taking note of the pendency of O.S.No.643 of 2010 on the file of the Munsiff's Court, Neyyattinkara,

we dispose of this Writ Petition, without going into the merits of the rival contentions raised by the parties, by directing the Munsiff's Court, Neyyattinkara to finally dispose of O.S.No.643 of 2010, as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a certified copy of this judgment. Till the disposal of the said suit, the interim order granted by this Court on 1.7.2013 directing both the parties not to alter the physical condition of the land in question shall continue to be in force. All the contentions raised by the parties are left open. The parties are at liberty to produce a certified copy of this judgment before the Munsiff's Court, Neyyattinkara, for compliance.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRA, JUDGE

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