

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 18674 of 2013 (H)

PETITIONER(S):

- 1. KUSUM SINGH, W/O. P.K. SINGH
NOW RESIDING AT KOLIEKANAM ESTATE BUNGLOW
KOLIEKANAM ESTATE, ELAPPARA VILLAGE, PEERMADE TALUK
IDUKKI DISTRICT.**
- 2. ABHISHEK SINGH, S/O.P.K. SINGH
NOW RESIDING AT KOLIEKANAM ESTATE BUNGLOW
KOLIEKANAM ESTATE, ELAPPARA VILLAGE, PEERMADE TALUK
IDUKKI DISTRICT.**
- 3. JOSE M. THOMAS ROY,
MALACKAL HOUSE, LALAM KARTA, LALAM VILLAGE
MEENACHIL TALUK, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.JOICE GEORGE
SRI.P.MARTIN JOSE**

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY
REVENUE (N) DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE DISTRICT COLLECTOR,
COLLECTORATE, PAINAVU.P.O., IDUKKI DISTRICT-685603.**
- 3. THE TAHSILDAR
TALUK OFFICE, PEERUMADE, IDUKKI DISTRICT-685602.**
- 4. SALESH MOHAN SHARMA,
DIRECTOR, M/S. RAM BAHADUR THAKUR LTD., CLARK HOUSE
8, WODA HOUSE ROAD, COLABA
MUMBAI-400039.**

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5. M/S. RAM BAHADUR THAKUR PRIAVE LIMITED
CLARK HOUSE, 8, WODA HOUSE ROAD
COLABA, MUMBAI-400039.
6. JAYARAJ.V.S, AGED 56 YEARS
S/O. SHANMUGHAN, HOUSE NO. 27, PAMBANAR ESTATE
PEERMADE.P.O., IDUKKI DISTRICT, CONVENER OF PEERMADE
THOZHILALI UNION(CITU) PEERMADE. PIN-685602.
7. JAGAN.M., AGED 55 YEARS
S/O. MUTHU, HOUSE NO. 31, PAMBANAR ESTATE
PEERMADE.P.O., IDUKKI DISTRICT CONVER
HIGH RANGE PLANTATION EMPLOYEES UNION (INTUC)
PEERMADE-685602.
8. CHANDRAN.A., AGED 54 YEARS
S/O. ANNAMALA, HOUSE NO. 31, PAMBANAR ESTATE
PEERMADE.P.O., IDUKKI DISTRICT, CONVER
HIGH RANGE PLANTATION WORKERS UNION (INTUC) PEERMADE
IDUKKI DISTRICT-685602.
- R1-3 BY SPECIAL GOVERNMENT PLEADER SMT.SUSHEELA R.BHAT
R4 BY ADVS. SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.JOSEPH GEORGE(MULLAKKARIYIL)
SRI.ARUN KRISHNA DHAN
R6,R7,R8 BY ADV. SRI.N.JAMES KOSHY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1. TRUE COPY OF THE INTERIM ORDER DATED 19-8-2010 IN WPC NO. 26308/2010. OF THIS HON'BLE COURT (WITH TYPED COPY)
- P2. TRUE COPY OF THE ORDER DATED 10-8-2011 IN WPC NO. 26308/2010 OF THIS HON'BLE COURT
- P3. TRUE COPY OF THE REPRESENTATION SOUGHT TO BE CONSIDERED BY THE DISTRICT COLLECTOR, IDUKKI IN WPC NO. 26308/2010.
- P4. TRUE COPY OF THE PLAINT IN OS NO. 127/2010 BEFORE THE MUNSIFFS COURT, PEERMADE.
- P5. TRUE COPY OF THE INTERIM ORDER OF INJUNCTION IN IA NO. 583/2010 IN OS NO. 127/2010 DATED 10-3-2011 OF THE MUNSIFFS COURT, PEERMADE.
- P6. TRUE COPY OF THE ORDER PASSED BY THE SUB COURT, KATTAPPANA IN CMA NO. 15/2011 DATED 2-6-2012.
- P7. TRUE COPY OF THE JUDGMENT IN OP(C) NO. 2152/12 DATED 6-7-2012 BEFORE THIS HON'BLE COURT.
- P8. TRUE COPY OF THE ORDER IN IA NO. 418/2011 IN OS NO. 127/2010 DATED 12-4-2011 OF THE MUNSIFFS COURT, PEERMADE.
- P9. TRUE COPY OF THE REPORT SUBMITTED BY THE POLICE INSPECTOR, PEERMADE IN OS NO. 200/2011 BEFORE THE SUB COURT, KATTAPPANA DATED 7-3-2012.
- P10. TRTRUE COPY OF THE PLAINT IN OS NO. 93/2011 BEFORE THE SUB COURT, KATTAPPANA.
- P11. TRUE COPY OF THE ORDER DATED 2-6-2012 IN I.A. NO. 325/11 IN OS NO. 93/2011 OF THE SUB COURT, KATTAPPANA.
- P12. TRUE COPY OF THE JUDGMENT DATED 24-7-2012 IN FAO NO. 216/2012 OF THIS HON'BLE COURT.
- P13. TRUE COPY OF THE REPRESENTATION DATED 27-11-12 SUBMITTED BY THE RESPONDENTS 5 TO 7 BEFORE THE DISTRICT COLLECTOR.
- P14. TRUE COPY OF THE JUDGMENT DATED 22-3-13 IN WPC NO. 6840/2013 OF THIS HON'BLE COURT.
- P15. TRUE COPY OF THE APPLICATION SUBMITTED BY THE COUNSEL FOR THE PETITIONERS BEFORE THE 2ND RESPONDENT DATED 19-6-2013.

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- P16. TRUE COPY OF THE JUDGMENT DATED 26-6-2013 IN RP NO. 481/2013 OF THIS HON'BLE COURT.
- P17. TRUE COPY OF THE ORDER NO. C6-16641/13 DATED 19-6-2013 APPROVED BY THE DISTRICT COLLECTOR.
- P18. TRUE COPY OF JUDGMENT IN WPC.NO.22583/11 DATED 23/8/11 OF THIS HON'BLE COURT.
- P19. TRUE COPY OF ORDER DATED 10/3/11 IN EP.NO.75/2008 IN OS.37/2006 OF MUNSIFF COURT, PEERUMEDU

RESPONDENT(S)' EXHIBITS

- R6(A). TRUE COPY OF THE ATTACHMENT ORDER NO.KR/KTM/267/RECOVERY/2001-02 DATED 21/8/2001 ISSUED BY THE RECOVERY OFFICER EMPLOYEES PROVIDENT FUND ORGANIZATION, SUB-REGIONAL OFFICE, CHALAKKZHI BUILDING, CMS COLLEGE ROAD, KOTTAYAM-686001 TO DIRECTOR, PAMBANAR ESTATE, PEERMADE.
- R6(B). TRUE COPY OF THE LETTER NO.KR/KTM/RECOVERY/ATTACHMENT/RBT/2001 DATED 4/9/2001 ISSUED BY THE RECOVERY OFFICER EMPLOYEES PROVIDENT FUND ORGANIZATION, SUB-REGIONAL OFFICE, CHALAKKZHI BUILDING, CMS COLLEGE ROAD, KOTTAYAM-686001 TO SUB REGISTRAR/VILLAGE OFFICER, PEERMADE
- R6(C). TRUE COPY OF THE ATTACHMENT ORDER NO.KR/KTM/267/RECOVER/ENF.1 (6)/2005-DATED 10/8/2005 ISSUED BY THE RECOVERY OFFICER EMPLOYEES PROVIDENT FUND ORGANIZATION, SUB-REGIONAL OFFICE, CHALAKKZHI BUILDING, CMS COLLEGE ROAD, KOTTAYAM-686001 TO THE DIRECTOR, PAMBANAR ESTATE, RBT LTD.PEERMADE, IDUKKI
- R6(D). TRUE COPY OF THE LETTER NO.KR/KTM/RBT/RECOVERY/ ATTACHMENT/RBT/ENF.(6)2005 DATED 10/8/2005 ISSUED BY THE RECOVERY OFFICER EMPLOYEES PROVIDENT FUND ORGANIZATION, SUB-REGIONAL OFFICE, CHALAKKZHI BUILDING, CMS COLLEGE ROAD, KOTTAYAM-686001 TO SUB REGISTRAR/VILLAGE OFFICER, PEERMADE
- R6(E). TRUE COPY OF THE ORDER DATED 11/11/96 IN CP.NO.56/96 OF THE COMPANY LAW BOARD, PRINCIPAL BENCH, NEW DELHI.
- R6(F): TRUE COPY OF JUDGMENT DATED 10/8/2007 IN OS.37/2006 OF THE MUNSIFF'S COURT PEERMADE.
- R6(G). TRUE COPY OF THE RELEVANT PAGES OF THE PETITION DATED 29/5/11 SUBMITTED BY THE WORKERS OF THE PAMBANAR ESTATE TO THE REVENUE DIVISIONAL OFFICER, DEVIKULAM.

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- R6(H). TRUE COPY OF THE PETITION DATED 6/6/12 SUBMITTED TO THE 2ND RESPONDENT BY THE RESPONDENTS NOS.6,7, AND 8 AND OTHER UNIONS LEADERS.**
- R6(I). TRUE COPY OF THE ORDER NO.LB(B)12/12005/11(1) DATED 1/3/12 ISSUED FROM THE OFFICE OF LAND BOARD, THIRUVANANTHAPURAM TO R2**
- R6(J). TRUE COPY OF THE ORDER NO.10654/N1/08/RD DATED 24/3/2008 ISSUED BY PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA TO SECRETARY LAND BOARD, THIRUVANANTHAPURAM**
- R6(K). TRUE COPY OF PETITION DATED 27/11/12 SUBMITTED BY RESPONDENTS NOS.6,7 & 8 AND OTHER UNION LEADERS TO R2**
- R6(L). TRUE COPY OF JUDGMENT DATED 22/3/13 IN WPC.6840/13 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

/ TRUE COPY /

P.S. TO JUDGE

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A.M. Shaffique, J.

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W.P (C) No. 18674 of 2013

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Dated this, the 23rd day of February, 2015

J U D G M E N T

The petitioner challenges Ext. P17 order by which the District Collector exercising appellate jurisdiction under the Transfer of Registry Rules has formed an opinion that transfer of property in favour of the petitioners is illegal on account of two reasons. One is that the property was exempted as plantation and therefore the property cannot be sold in a piecemeal manner. Secondly, the conversion of the property would amount to violation of the provisions of Kerala Land Utilization Order, 1967 (for short KLU Order).

2. It is inter alia contended that at the time when the property was purchased by the petitioners from M/s. Ram Bahadur Thakur Private Ltd., the sale was for valid consideration and there was no order passed under Section 120A of the Kerala Land Reforms Act preventing the owner of the property from effecting sale. It is submitted that respondents 6 to 8 herein had submitted representations to the revenue authorities for cancellation of mutation in favour of the petitioners. Since no orders were passed, they approached this Court and this Court had directed the District Collector to consider the same and pass appropriate orders. It is pursuant to the same, Ext. P17 order came to be passed.

3. It is argued that respondents 6 to 8 have in fact taken a contention that the property could not have been sold by the owner of the property as there was prohibitory order issued by the Provident Fund Department as well as by the Company Law Board. It is argued that by virtue of the judgment in W.P (C) No. 22583/2011, a learned Judge had clearly found that sale of property by the Provident Fund Department was bad in law as the sale was conducted after 3 years from the date on which order of attachment was passed.

4. Further, the learned counsel for the petitioners relies upon the fact that as matters stand today, prima facie, it is evident that the petitioners had valid title over the property and the prohibitory orders issued by the Provident Fund Department cannot affect interest of the petitioners. That apart, the liability to the P.F. Department had been settled by sale of other items of property and therefore this property, presently, does not have any encumbrance as far as P.F. Department is concerned.

5. Counter affidavit has been filed by the 2nd respondent supporting the stand taken by the District

Collector and indicating that being a Tea estate, it ought to have been retained as Tea plantation itself as the land was exempted under Section 81(c) of the Kerala Land Reforms Act. If the property is converted proceedings can be initiated by the Taluk Land Board, under Section 87 of the Land Reforms Act. That apart, Section 120A gives absolute power to the District Collector to ensure that the provisions of Land Reforms Act is not defeated. It is submitted that the District Collector was justified in cancelling mutation in favour of the petitioners.

6. Counter affidavit has been filed by respondents 6 to 8 contending that they being employees of the company had challenged the sale in favour of the petitioners by submitting application before the competent authorities. It is mentioned that at the time when the sale was effected, prohibitory orders were issued by the P.F. Department as well as Company Law Board. In a suit, O.S. No. 37/2006, there was an interim injunction restraining alienation of the property by the company. Under such circumstances, they have taken up a contention that the very assignment of property in favour of the

petitioners is void and cannot be enforced. It is also submitted that three other persons including the company had filed a suit as O.S. No. 93/2011 before the Sub Court, Kattapana for a declaration that the sale deeds by which the petitioners claim title and interest over the property is null and void. Under such circumstances, it is contended that the District Collector was justified in passing the impugned order.

7. Heard the learned senior counsel Sri. S. Sreekumar appearing for the petitioners, learned Special Government Pleader Smt. Susheela Bhatt and Sri. James Koshy, the learned counsel appearing for respondents 6 to 8.

8. It is argued by the learned counsel for the petitioners that the prohibitory orders issued by the P.F. Department cannot have any effect on the assignment of the property in their favour as it can only bind the Department. That apart, when the liability has been cleared long back, prohibitory order presently has no effect on the sale deeds. More over, even if there was an attachment, nothing prevented the company from effecting sale of property and at best, it could have been said that sale was subject to the result

of the attachment.

9. On the other hand, it is argued by the learned Government Pleader that the whole intention of assignment made by the company in favour of the petitioners was for conversion of plantation on account of which it was open for the revenue authorities to take appropriate measures to ensure that the exemption granted under the Land Reforms Act is not violated in any manner. Therefore, it is argued that the District Collector was justified in taking the view that the petitioners are not entitled for the exemption under Section 81(c) of the Kerala Land Reforms Act.

10. It is argued by the learned counsel appearing on behalf of respondents 6 to 8 that in so far as a suit is pending challenging the validity of the sale deed in favour of the petitioners, there is no reason why the order passed by the District Collector has to be set aside. If at all, the petitioners' claim is finally found to be genuine, it shall always be open for the revenue authorities to make necessary correction in the mutation entries.

11. Having regard to the aforesaid submissions, the first question to be considered is the validity of the

order with reference to the reasons stated therein.

12. In Ext. P17, the District Collector had formed an opinion that with reference to ceiling case, certain matters are pending before the High Court as C.R.P. Nos. 400, 409 and 417 of 2012. That apart, under Section 81 of the Act, these lands were exempted as tea plantation and when it was sold in bits, it amounts to violation of the provisions of the Land Reforms Act and the District Collector can take action under the KLU Order. Therefore, taking into consideration the overall situation including the power available under Section 120A of the Kerala Land Reforms Act, the mutation in favour of the petitioners stands cancelled.

13. As far as the power of the owner of a property, which is exempted under the provisions of the Land Reforms Act to assign the land is concerned, I do not think that there is any prohibition under the Land Reforms Act or any other statutory provision. Any property which is exempted can be assigned and the only condition would be that the assignee will have to submit necessary declaration under the Kerala Land Reforms Act before the Taluk Land Board if the assignment is in excess of ceiling area and it has to be

ensured that the land still remains as exempted under Section 81(c). Therefore, merely for the reason that there is assignment of land, it cannot be concluded that there is violation of Section 81 of the Act. Any violation arises only when there is attempt to convert land from exempted category to non-exempted category. As far as the provisions under the KLU Order is concerned, it relates to conversion of land cultivated with food crop for any other purpose. Such provision of law which enables the statutory authorities to take appropriate action for violation shall not be a reason for cancelling mutation or effecting mutation. Mutation entries are made under the Transfer of Registry Rules, when it is found that a person has purchased the property under a valid title deed. When there is assignment on an application submitted by the assignee along with the assignor, after conducting appropriate enquiry, the Tahsildar is bound to effect mutation. Probably, in an instance where a lis is pending, depending on the factual situation, the transfer of registry can be kept in abeyance till a decision is taken by the civil court or the statutory authorities as the case may be. In an instance where assignment has already taken place,

which is genuine and can be relied upon, nothing prevents the authority to effect mutation and the possible violation of Section 81 of the Land Reforms Act or the provisions of KLU Order cannot have any application.

14. The facts being so, under normal circumstances, I should have set aside Ext. P17. But, it is brought to the notice of this Court that there had been several prohibitory orders issued by the Provident Fund Department and the Company Law Board in the matter relating to assignment of the property by the company during the relevant time. That apart, a suit is pending before the Sub Court, Kattappana as O.S. No. 93/2011. The suit is filed by three plaintiffs, viz. Poabs Group Enterprises (P) Ltd., Ram Bahadur Thakkur Company Ltd., and Manoj Mohan Sharma. The suit is filed against the petitioners herein and the prayer is for treating the document as null and void. Under such circumstances, as long as the suit is pending, I do not think that setting aside Ext. P17 will render any assistance to the petitioners.

15. As far as mutation entries are concerned, it is basically for fiscal purpose and of course a person who

has valid title is entitled to have mutation of the property in his name. In the present case, there is a suit pending, which is liable to be considered in accordance with the procedure prescribed.

16. Learned counsel for the petitioners would submit that there is no reason for cancellation of mutation and if at all any changes are to be made in the mutation entries, it could have waited till finality of the suit. That apart, it is contended that cancellation of mutation will affect their interest in defending the suit as well. I do not think so. It is trite law that mutation entries are made and tax paid, only for fiscal purposes and cannot decide the title of the parties. Of course, it has its own evidentiary value subject to other parameters being proved. However, I do not think that as matters stand now, there is any necessity to interfere with Ext. P17. The request of the petitioners whether mutation entry requires correction or not, can wait till a final decision is taken in the suit O.S. No. 93/2011 pending before the Sub Court, Kattappana.

17. In the above circumstances, this writ petition is disposed of as under:

(a) The petitioners are permitted to approach

the authorities under the Transfer of Registry Rules, after disposal of the suit O.S. No. 93/2011 pending before the Sub Court, Kattappana, and depending upon the findings in the suit, appropriate entries shall be corrected or made in the revenue records.

(b) It is made clear that the decision in Ext. P17 shall not be binding on the civil court for consideration of the contentions urged by either of the parties.

(c) The findings in Ext. P17 is set aside to the extent indicated above. However, this shall not preclude the revenue authorities or Taluk Land Board to take appropriate proceedings in accordance with law if there is any violation of the provisions of Kerala Land Reforms Act.

Sd/-

A.M. Shaffique, Judge.

Tds/