

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 24197 of 2010 (Y)

PETITIONER(S) :

MARTIN E., AGED 46 YEARS,
SON OF IGNATIUS, RESIDING AT HOUSE NO.7,
CO-OPERATIVE COLONY,
POLAYATHODE, KOLLAM.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF HOUSING SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE VADDY CO-OPERATIVE SOCIETY NO.1532,
VADDY, KOLLAM, 13, REPRESENTED BY ITS SECRETARY.

R2 BY ADV. SRI.B.SURESH KUMAR

R1 BY GOVERNMENT PLEADER SRI.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- P1- TRUE COPY OF THE AGREEMENT DT.26.9.59 EXECUTED BETWEEN FIRST AND SECOND RESPONDENTS
- P2- TRUE COPY OF THE AGREEMENT DT.1.6.56 EXECUTED BY THE PETITIONER'S FATHER WITH THE SECOND RESPONDENT.
- P3- TRUE COPY OF THE WILL NO.32/98 OF ERAVIPURAM SRO EXECUTED BY THE PETITIONER'S MOTHER IN FAVOUR OF THE PETITIONER.
- P4- TRUE COPY OF THE INTERIM ORDER DT.23.3.04 IN WPC.7114/04 PASSED BY THIS COURT
- P5- TRUE COPY OF THE INTERIM ORDER DT.3.6.05 IN WPC.11651/05
- P6- TRUE COPY OF THE PLAN PRODUCED AS Ext.P5 BEFORE THIS COURT IN WPC.11651/05
- P7- TRUE COPY OF THE JUDGMENT DT.30.8.05 IN WPC.7114/04 OF THIS COURT.
- P8- TRUE COPY OF THE DECREE DT.24.3.07 IN OS.376/06 BEFORE THE MUNSIFF'S COURT, KOLLAM
- P9- TRUE COPY OF THE PETITION DT.17.10.05 IN ARC NO.32/05 FILED BEFORE THE CO-OPERATIVE ARBITRATION COURT, THIRUVANANTHAPURAM.
- P10- TRUE COPY OF THE JUDGMENT DT.4.3.09 IN WPC.7040/09 PASSED BY THIS COURT.
- P11- TRUE COPY OF THE SALE DEED NO.1534/09 BEFORE THE ERAVIPURAM SRO.
- P12- TRUE COPY OF THE AWARD DT.25.11.08 IN ARC.32/05 PASSED BY THE CO-OPERATIVE ARBITRATION COURT, THIRUVANANTHAPURAM.
- P13(A)- TRUE COPY OF THE REPORT DT.19.7.04 OF THE VILLAGE OFFICER, MUNDAKKAL
- P13(B)- TRUE COPY OF THE LETTER NO.C83349/04 DT.27.7.04 ISSUED BY THE ADDL.TAHSILDAR, KOLLAM
- P13(C)- TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER DT.17.3.04
- P14- TRUE COPY OF THE ORDER DT.28.4.10 IN IA.46/10 IN AP.10/09
- P15- TRUE COPY OF THE ORDER DT.19.2.04 IN THE PETITIONER'S REPRESENTATION DT.17.2.04 SUBMITTED BEFORE THE DISTRICT COLLECTOR, KOLLAM
- P16- TRUE COPY OF THE JUDGMENT DT.28.4.10 IN AP.10/09 PASSED BY THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM

RESPONDENTS' EXHIBITS: NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.24197 of 2010

Dated this the 15th day of December, 2015.

JUDGMENT

The petitioner is the plaintiff in A.R.C. No.32/2005 on the files of the Co-operative Arbitration Court, Thiruvananthapuram as well as the appellant in A.P. No.10/2009, on the files of the Kerala Co-operative Tribunal, Thiruvananthapuram. This Writ Petition is filed challenging Ext.Pl6 judgment, passed by the Co-Operative Tribunal in A.P. No.10/2009. The 1st respondent has constructed 18 houses in one Acre of land comprised in Sy. No.245/37 of Eravipuram Village at Polayathodu, for a total estimate of Rs.41,213.45, as a part of the scheme for construction of houses to homeless poor in various parts of the State during 1950 and the buildings were handed over to the defendant society for allotment to its eligible members on the strength of an agreement dated 26.09.1959. Accordingly, Plot No.7 was allotted to

one 'Ignatius', father of the plaintiff, who was a member of the defendant society, on the strength of an agreement dated 01.06.1956. It has stipulated in the agreement that in case of his demise, the plot would devolve upon his wife and thereafter to the petitioner, being his eldest son. Ignatius died on 29.07.1990, the wife Margaret executed a Will No.32/1998 dated 21.04.1998 of the S.R.O. Eravipuram, bequeathing her right over the plot in favour of the petitioner. She also died on 06.03.2001 and the Will came into effect. While so, the petitioner filed O.S. No.314 of 2001, before the Munsiff's Court, Kollam, on the strength of the Will and obtained a decree dated 08.10.2002 in his favour, directing the other legal heirs of the deceased Ignatius and Margaret to convey their right in favour of the petitioner, on receipt of the amount quantified by the Munsiff's Court in the decree. However, now the petitioner is in possession of the said land, having an extent of 5 cents.

2. But, it is the case of the petitioner that he is not only in possession of 5 cents of land numbered as

plot No.7, but also in possession of an excess land, which is numbered as plot No.19 in Ext.P6 sketch. Further, the case of the petitioner is that all the other allottees were given excess land also which was in their possession. But, in the case of the petitioner, even though he was in possession of excess land having an extent of 3 cents, the said plot has not been allotted to him and thereby he is discriminated by the denial of excess land. Aggrieved by the denial of excess land, having an extent of 3 cents lying adjacent to his property, he approached the Arbitration Court seeking a direction to allot the said excess land. The Arbitration Court rejected the claim by Ext.Pl2 Award dated 25.11.2008. Though the petitioner had preferred A.P.No.10/2009 before the Kerala Co-operative Tribunal, the said Tribunal also affirmed the Award passed by the Arbitration Court and dismissed the appeal by Ext.Pl6 judgment. The legality and propriety of the findings in Ext.Pl6 judgment are under challenge in this writ petition.

3. In the counter affidavit filed before this Court

the 2nd respondent stated that Plot No.19 is not a part of Plot No.7 and the petitioner cannot get anything more than what is provided under Exts.P2 & P3. In those documents Plot No.7 alone is referred to and he cannot put up any claim over Plot No.19. What was given to other similar plot owners is excess land available within their plot and since no excess land is available within Plot No.7, he cannot set up any claim over Plot No.19. The recital in paragraph 2 of Ext.P2 clearly shows that 5 cents of land and the house alone was taken in possession by the petitioner's father. When the petitioner's father has been allotted with Plot No.7 and the buildings constructed therein only and the petitioner cannot make any claim over any other land other than Plot No.7.

4. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent.

5. The learned counsel for the petitioner advanced arguments challenging the findings in Ext.P12 and Ext.P16; whereas, the learned counsel for the respondents advanced arguments justifying the

findings whereby the claim of excess land raised by the petitioner is dismissed.

6. Going by Exts.P12 & P16, it is seen that the petitioner has already availed of statutory remedies provided under the Co-operative Societies Act. This Court, sitting in exercise of jurisdiction under Article 226 of the Constitution of India, is not a court of appeal, sitting over the decision taken by the statutory Authorities under the Co-operative Societies Act. Put it differently, the scope and extent of jurisdiction under Article 226 of the Constitution of India are very limited and confined to arbitrariness, discrimination or malafides, if any, in denying the claim for excess land, having an extent of 3 cents, which is numbered as Plot No.19. It stands undisputed that the petitioner has got the right which his father had under Exts.P2 & P3. Under Ext.P2, the father of the petitioner was allotted with Plot No.7 having an extent of 5 cents only. After the death of the father the said property devolved upon the mother and the mother executed a Will in favour of the

petitioner and thereby the property devolved upon the petitioner after the death of the mother by name Margaret on condition that the petitioner should pay some amount to other legal heirs of the deceased parents. The ARC No.32/05 was filed with a prayer to direct the 2nd respondent society, to execute sale deed with respect to the property demarcated as Plot No.19 in Ext.P5 plan, produced in W.P(C) No.11651/05 before this Court, on market price fixed by the society, in its decision taken for the sale of excess land adjacent to the original allotment to other allottees.

7. Now, this relief stands rejected concurrently by the Arbitration Court as well as the Appellate Tribunal. The Arbitration Court has considered the question on evidence, whether the petitioner has any right to claim excess land, as of right, in addition to Plot No.7, which devolved upon him, as legal heir of the deceased original allottee, and answered negatively and the same was upheld by the Tribunal also in appeal. It is the case of the petitioner before this Court that all the other allottees are allotted with excess land;

but, the petitioner alone is discriminated. But, in the counter affidavit the 2nd respondent contended that the petitioner has no right to claim anything more than what was conveyed under Exts.P2 and P3 to his father, from whom the petitioner derives his title over Plot No.7. Put it differently, the petitioner cannot get anything more than what was provided under Exts.P2 and P3. In Exts.P2 and Ext.P3, Plot No.7 having an extent of 5 cents alone was referred to and conveyed to his father. So, legally, the petitioner has no right to claim any right over Plot No.19, 'as of right'. Merely on the reason that other persons are also allotted with some excess land lying adjacent to their property the petitioner cannot claim allotment of Plot No.19, which is at present lying as a separate plot, adjacent to public road, within boundary walls. Whether the property can be allotted to the petitioner or not is a matter left within the domain of the 2nd respondent society, and the petitioner, who stepped into the shoes of his father, cannot claim, as of right, for the same.

8. Going by the averments in the writ petition the petitioner has not averred any kind of malafides against the 2nd respondent in denying the excess land. When the petitioner has no right to claim excess land as of right, the denial of the same cannot be said to be arbitrary. Thus, in the absence of any kind of arbitrariness or malafides or discrimination this Court cannot issue a direction to the 2nd respondent society to allot excess land, which is marked as Plot No.19, to the petitioner.

9. At the same time, going by Ext.Pl6 order passed by the Tribunal there is a reference to Ext.A5 Minutes and as per Ext.A5 dt.18.10.2003 it has resolved to convey the excess land to Plot No.7 on payment of fair market price, A6 series would reveal that the land of Plot No.7 was also conveyed to respective allottee on payment of Rs.25,000/- per cent. Thus, there is a decision to convey excess land adjoining the plots to the respective allottees on payment of fair market price. If that be so, even though the petitioner cannot claim Plot No.19 as of right, it is made clear that the

petitioner must be given an opportunity to make offer if the 2nd respondent society decides to convey or sell the said property to any allottees or strangers. If the offer made by the petitioner is the highest offer, it must be given to the petitioner.

This writ petition is disposed of.

Sd/—

K. HARILAL, JUDGE

dst/okb.