

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 39951 of 2003 (F)

PETITIONER(S):

KANONNAN PUTHIYAVEETIL USHAKUMARI,
D/O. NARAYANAN NAIR, AGED 38 YEARS,
PADIYOOR AMSOM, KAYILOOR DESOM,
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADVS.SRI.V.C.JAMES &
SRI.SERGI JOSEPH THOMAS.

RESPONDENT(S):

1. THE TAHSILDAR,
TALIPARAMBA, KANNUR DISTRICT.
2. THE DISTRICT COLLECTOR,
KANNUR.
3. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
4. P.V. GANGADHARAN,
KIYILOOR AMSOM, DESOM,
PADIYOOR VILLAGE.

BY SENIOR GOVERNMENT PLEADER SMT. M.K.RAJASREE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1- THE TRUE COPY OF THE ASSIGNMENT DEED DATED 29/10/1975
TO THE 4TH RESPONDENT.
- EXHIBIT P2- THE TRUE COPY OF THE SALE DEED NO.1419/1981 DATED
20/05/1981 OF S.R.O., THRIKKUR.
- EXHIBIT P3- THE TRUE COPY OF THE SALE DEED NO.1417/81 DATED
21/05/1981.
- EXHIBIT P4- THE TRUE COPY OF THE SALE DEED NO.1524/1985 DATED
08/05/1985 OF S.R.O. IRIKKUR.
- EXHIBIT P5- THE TRUE COPY OF THE PROCEEDINGS NO.B44540/89 DATED
31/05/1994 OF THE DISTRICT COLLECTOR, KANNUR.
- EXHIBIT P6- THE TRUE COPY OF COMMUNICATION NO. 42525/N3/94/REV.
DATED 26/07/03.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.M. Shaffique, J.

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W.P (C) No. 39951 of 2003

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Dated this, the 9th day of March, 2015.

J U D G M E N T

Petitioner challenges Exts. P5 and P6 orders passed by the District Collector and Government respectively with reference to proceedings taken for resumption of land under the Kerala Land Reforms (Ceiling) Rules, 1970 (for short 'the Rules').

2. The short facts involved in the writ petition would disclose that the petitioner purchased 16 ares of land from one K. Padmanabhan Nambiar as per Registered Deed No. 1524/1985, which is produced as Ext. P4. In the mean time, the District Collector initiated proceedings for cancellation of sale deed No. B7-6104/75 dated 24.10.1975 inter alia observing that the assignor had transferred the property to third party before the expiry of 12 years from the date of assignment, which is contrary to Rule 29 of the Rules. Pursuant to finalization of the proceedings, Ext. P5 order dated 31.5.1994 came to be passed. The petitioner took up the matter before the Government requesting for re-consideration, which again came to be rejected as per Ext. P6 dated 26.7.2003.

3. The petitioner contends that she is a bona fide purchaser for value and therefore the property being in her possession, no steps should be taken and the order of

resumption is bad in law.

4. A perusal of Ext. P5 would indicate that as per Rule 29(1) of the Rules, lands assigned under Section 96 shall not be alienable for a period of 12 years from the date of assignment. Apparently, there is violation of the Rules and the same came to be cancelled as per proceedings of the District Collector, after issuing notice to the parties concerned. Thereafter, proceedings were taken to resume the said land. Challenging the aforesaid order, O.P.N. 8081/1991 came to be filed in which there was a direction to re-consider the same. The petitioner therefore filed an application before the District Collector on 7.10.1992, which was disposed of confirming the view taken earlier.

5. Having regard to the aforesaid factual finding that assignment had been made by the person to whom the land was assigned before 12 years prior to the date of assignment, apparently, sale deed was bad in law. Under such circumstances, I do not think that any valid grounds have been raised to set aside Exts. P5 and P6.

6. Rule 29(1) of the Rules reads as under:

“29. Conditions and restrictions regarding assignment:- (1) Lands assigned under Section 96 shall be heritable but shall not, subject to the

provisions of sub-rules (2) to (5), be alienable for a period of 12 years from the date of assignment or for the period during which the change created under sub-section (3) of Section 97 subsists, whichever is later:

Provided that Government shall have power to waive the condition regarding alienation for the reasons to be recorded in writing in deserving cases.

xx xx xx"

In so far as there is clear violation of the Rules, the revenue authorities were justified in issuing Ext. P5 order.

Hence, there being no merit in the writ petition, the same is dismissed.

Sd/-

A.M. Shaffique, Judge.

Tds/