

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 29307 of 2009 (G)

PETITIONER:

THIRUMATHAL, W/O. VELUSWAMY REDDIAR,
DHODUGATTI, PALOOR P.O., MANNARKKAD
TALUK, PALAKKAD DISTRICT.

BY ADVS. SRI. N. N. SUGUNAPALAN (SR.)
SRI. S. SUJIN
SMT. NITA. N. S.

RESPONDENTS:

1. PONNAN, S/O. LATE KRISHNAN, DHODUGATTI,
PALOOR P.O., MANNARKKAD TALUK, PALAKKAD DISTRICT.
2. KOZHIPETTY, S/O. LATE KRISHNAN,
DHODUGATTI, PALOOR P.O., MANNARKKAD TALUK
PALAKKAD DISTRICT.
3. THE VILLAGE OFFICER, PADAVAYAL,
MANNARKKAD TALUK, PALAKKAD DISTRICT.
4. THE TAHSILDAR, MANNARKKAD TALUK.
5. THE REVENUE DIVISIONAL OFFICER,
OTTAPPALAM.
6. THE DISTRICT COLLECTOR, PALAKKAD.
7. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM

R3 TO R7 BY SENIOR GOVERNMENT PLEADER SRI. K. C. VINCENT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18.12.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29307 of 2009

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : TRUE COPY OF THE DOCUMENT NO.819/86 OF SRO, MANNARKKAD.
- P2 : TRUE COPY OF THE NOTICE DATED 1.10.2009 ISSUED BY THE 5TH
RESPONDENT.
- P3 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER
BEFORE THE 5TH RESPONDENT IN OCTOBER, 2009.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). No.29307 of 2009

Dated this the 18th day of December, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Ext.P2 notice dated 1.10.2009 issued by the 5th respondent.

2. Facts for the disposal of the writ petition are as follows:

3. Petitioner has purchased 2 acres of land lying in Sy.No.280/2 in Padavayal Village, Mannarkkad Taluk, Palakkad District from one late Krishnan, father of respondents 1 and 2 by executing document No.819/86 of SRO, Mannarkkad dated 14.2.1986, evident from Ext.P1. After execution of the said document, proceedings were initiated against the petitioner under the provisions of the Kerala Schedule Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (hereinafter referred to as "the Act" for short) as Krishnan was claimed to be Scheduled Tribe. Sub Collector, Ottappalam by order dated 1.9.1987 directed the petitioner to restore 4 acres of land in Sy.No.280/2. The said order was challenged by the petitioner in appeal before the District Collector, Palakkad

and by order dated 29.06.1989, the District Collector reduced the extent to be restored as 2 acres. However, those orders were kept in abeyance by the Government as there was stay granted by this Court in O.P.No.16319 of 1996 filed by the petitioner's husband Veluswamy against the deceased Krishnan and the action initiated for recovering transferred properties and to restore possession to tribal transferors were not enforced under the provisions of the Act.

4. In the meanwhile, a new Act was introduced as stated in the year 1999 repealing 1975 Act declaring that notwithstanding the repealing of the said Act, all orders issued by the competent authority or the 5th respondent, so far as they are not inconsistent with the provisions of the new Act shall be deemed to have been made under the corresponding provisions of the Act and shall continue to be in force, accordingly unless and until superseded by anything done or any action taken under the Act. It is also contended by the petitioner that under the 1999 Act, Section 4 declares that notwithstanding anything contrary contained in any other law or in any contract, custom or usage or in any judgment, any transfer effected by a member of the Scheduled Tribe, any transfer of land possessed, enjoyed or

owned by him on or after the commencement of this Act to a person other than a member of Scheduled Tribe without the previous consent in writing of the competent authorities, shall be invalid. Section 5 of the Act is pressed into service and it is contended that if the earlier transaction was concerning only 2 acres, it will be valid for all purposes upto 2 hectares and in that circumstances the transfer effected as per Ext.P1 is valid. Therefore, petitioner contends that in that view of that matter, the property obtained by the petitioner as per Ext.P1 is valid under law. It is under that circumstances, petitioner challenges Ext.P2 notice contending that the same is an illegal notice in view of the protection made under Section 5 of the Act. Any how the petitioner has filed a representation before the 5th respondent, evident from Ext.P3 and this writ petition is filed on the apprehension that 5th respondent has already directed the Village Officer, Padavayal, the 3rd respondent herein to proceed with the action proposed in Ext.P2.

5. Seventh respondent has filed a counter affidavit refuting the allegations and claims made in the writ petition and basically contending that the claims raised by the petitioner in the writ petition is hit by Sections 4 and 5 of the Act and by virtue of the

said provisions of the Act, it is contended by the Learned Senior Government Pleader that, petitioner is not entitled to make any claim against Ext.P1 transfer effected. So also it is contended that since a prohibition is created under the Act against the transfer of any property held by a member of Scheduled Tribe, Ext.P1 cannot be sustained under law. Therefore, it is contended that the writ petition cannot be sustained in any manner. Further more learned Government Pleader also contended that the petitioner has challenged only Ext.P2 which is only a consequential notice and in view of the orders passed by the competent authority, referred to in Ext.P2 dated 1.9.1987 and 29.6.1989, the challenge against the show cause notice alone will not survive. It is also contended that orders are passed by the authorities concerned pursuant to an earlier proceeding and Ext.P2 notice is in fact a notice to surrender the property in accordance with the orders referred thereunder.

6. Heard learned counsel for the petitioner and the Learned Senior Government Pleader. Perused the pleadings and the records made available. On an evaluation of the facts and circumstances of the case, I find that the restriction imposed under Section 4 by which a member of Scheduled Tribe is

prohibited from transferring land to any other person other than a member of a Scheduled Tribe. Section 4 creates an embargo on any third person from purchasing a property from a member of a Scheduled Tribe without obtaining previous consent in writing of the competent authority. The said section also provides that if any property is purchased by any person other than a member of Scheduled Tribe, the transfer will be invalid. That apart Section 5 will enable a transfer invalid under certain circumstances. In order to evaluate the situation, I think it is only appropriate that Section 5 of the Act is quoted hereunder:

“Certain transfers to be invalid:- (1)
Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any Court, any transfer of land possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the 1st day of January, 1960, and before the commencement of this Act shall be deemed to be invalid.

Provided that nothing in this section shall render invalid any transfer of land possessed enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe effected during the aforesaid period and the extent of which does not exceed two hectares.”

7. On a reading of Section 5, it is categoric and clear that, any transfer of land possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe effected on or after 1st day of January, 1960 and before the commencement of this Act shall be deemed to be invalid. The proviso further reads that nothing in this section shall render invalid any transfer of land possessed enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe effected during the aforesaid period and the extent of which does not exceed two hectares. It is true that the extent under Ext.P1 is concerned, it is less than the area prescribed under the proviso. But Ext.P1 is executed not within the time frame prescribed under Section 5. Therefore, the transfer effected pursuant to Ext.P1 can only be treated as an invalid transfer in view of the specific provision contained thereunder. Moreover, I find force in the contention of the Learned Senior Government Pleader that the petitioner has challenged only the notice requiring him to surrender the land pursuant to the orders 2 and 3 referred to in the said notice.

In that view of the matter also, I am of the considered

opinion that the challenge made by the petitioner against Ext.P2 notice requiring him to surrender land cannot alone be sustained under law. Resultantly, writ petition fails and accordingly the same is dismissed.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
18.12.2015