

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 29304 of 2012 (K)

PETITIONER(S) :

**THOMASKUTTY,
DEEPA SADANAM,
PADANAYARKULANGARA NORTH,
KARUNAGAPPALLY, KOLLAM-690 518.**

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY, DEPT. OF REVENUE,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. DISTRICT COLLECTOR,
KOLLAM-691 001.**
- 3. THE TAHSILDAR,
TALUK OFFICE, KARUNAGAPALLY VILLAGE, KOLLAM-690 544.**
- 4. REVENUE DIVISIONAL OFFICER,
KARUNAGAPALLY, KOLLAM-690 544.**

BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-03-2015, THE COURT ON 20-03-2015 DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE LETTER DATED 06.09.1982 ISSUED BY THE TAHSILDAR TO PETITIONER'S MOTHER.
- EXHIBIT P2:** TRUE COPY OF THE LETTER DATED 30.06.1999 BEFORE THE REVENUE MINISTER.
- EXHIBIT P3:** TRUE COPY OF THE APPLICATION FOR ASSIGNMENT OF LAND DATED 19.07.1999 BEFORE THE TALUK BOARD.
- EXHIBIT P4:** TRUE COPY OF THE LETTER DATED 20.03.2006 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER NO.B2-12403/99.
- EXHIBIT P5:** TRUE COPY OF THE JUDGMENT DATED 15.03.2007 IN W.P.(C).NO.8733/2007.
- EXHIBIT P6:** TRUE COPY OF THE G.O(RT) NO:3756/2007/RD DATED 07.09.2007.
- EXHIBIT P7:** TRUE COPY OF THE JUDGMENT DATED 27.06.2011 IN O.P(LA) 254/2010 ON THE FILES OF THE DISTRICT COURT, KOLLAM.
- EXHIBIT P8:** TRUE COPY OF THE PROCEEDINGS DATED 15.03.2010 IN L.A.1-19/2007 ISSUED BY 3RD RESPONDENT.
- EXHIBIT P9:** TRUE COPY OF THE LETTER DATED 14.10.2011 TO THE UNDER SECRETARY TO THE REVENUE DEPARTMENT.
- EXHIBIT P10:** TRUE COPY OF THE ORDER DATED 02.11.2011 NO.28642/U2/09/RD .

RESPONDENT(S)' EXHIBITS

- EXHIBIT R3(A):** TRUE COPY OF THE VALUATION CARRIED OUT BY THE SECOND RESPONDENT.

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.29304 of 2012

Dated this the 20th day of March, 2015

JUDGMENT

Ext.P8 is under challenge.

2. The petitioner is the legal representative of late Chinnamma who was employed as a last grade servant in the Health Department under the State. In the year 1970, she was allotted a house with two rooms in 4.5 cents of land under the Subsidised Rental Scheme in Karunagappally Village.

3. The petitioner alleges that she along with his mother had been living in the house from 1972 onwards. According to the petitioner, the employee was entitled to have the house and property assigned under the Subsidised Rental Scheme and therefore, the petitioner's mother applied for such assignment. The petitioner points out that for more than two decades, the application was not processed and finally by Ext.P5 judgment, this Court directed to consider the application of the petitioner. After further delay, the third respondent by Ext.P8 report

determined the value of the property with the building thereon at ₹8.4 lakhs. The property was offered to be assigned to the petitioner in the event of deposit of the said amount. According to the petitioner, the said amount is highly exorbitant and unconscionable. The petitioner alleges that as per Rule-6 of the Land Assignment Rules, the value of the land that could be assigned to landless people is only ₹200/- per cent. The petitioner also pointed out that even otherwise he has offered to pay ₹2 lakhs for assignment of the property in his name as per Ext.P9, but the same could not evoke any positive response. It is with this background the petitioner has come up before this Court.

4. In the counter affidavit filed by the respondents, it was contended as follows:

It is stated that the petitioner's mother Chinnamma who was a second grade attender was allotted an extent of 5 cents of land and building therein during 1971 as per the Rules under Subsidised Rental Housing Scheme for the weaker section of the community issued by Health &

Labour (G) Department vide G.O.(P) No.674/64/HLD dated 17.9.1964. Chinnamma demitted her office in the year 1980. Pursuant to Ext.P3 application for assignment before the third respondent, necessary reports were sent to the second respondent as orders from the Government was required to process the application for assignment. Thereafter, based on the application filed by the petitioner's mother, Ext.P4 reply was sent by the third respondent stating that orders from the Government are required in the matter and that she will be informed as and when such orders are received.

It is also stated that thereafter the petitioner's mother Chinnamma filed WPC No.8733/07 seeking a time bound direction against the Government. This Court vide Ext.P5 judgment directed the Government to take a decision in the matter within 6 months from the date of receipt of a copy of the judgment. Chinnamma died on 13.7.2007. Government heard the petitioner on 16.7.2007. Various provisions of Subsidised Rental Housing Scheme for the Weaker Section for the community was considered

by the Government. Even though it was held that Chinnamma ought not have continued in the premises after retirement and that she is not entitled to get the land on assignment, she is eligible to get the land and building on registry, if she pays the value as per Rule 20 of the Rules under Subsidised Rental Housing Scheme for the Weaker section of the community. The Government has taken this decision vide Ext.P6 considering the fact that Chinnamma was a second grade Attender (wrongly noted as Last Grade servant in Ext.P6) continuously occupying the building and land for a long period of time. It was also specifically mentioned in Ext.P6 that the legal heirs of Chinnamma have to apply for assignment as the original applicant, Chinnamma passed away in the meanwhile. The Government directed the third respondent to take into account the amount to be paid and to process the application in accordance with the the Rules under the Subsidised Rental Housing Scheme for the Weaker Section of the Community issued vide G.O.(P) No.674/64/HLD dated 17.9.1964 and the statutes in force.

The Government further directed the second respondent to find out persons who are similarly situated and take steps to assign land if they are willing to pay the land value along with the value of improvements or else evict them from the land for unauthorised occupation.

It is contended by the petitioner that thereafter the petitioner moved an application for assignment along with the copy of the Will dated 26.5.2005 executed by Chinnamma, who had bequeathed the rights in the aforesaid land and building to the petitioner. Since Ext.P6 order prescribed the legal heirs to apply for assignment, the third respondent issued notice to other legal heirs of deceased Smt.Chinnamma. Smt.Chinnamma's son and petitioner's brother, one David approached the third respondent with a copy of Will dated 26.1.2007 executed by Chinnamma wherein it is stated that the Will dated 26.5.2005 executed in favour of the petitioner is cancelled and that the aforesaid land and building is bequeathed to Sri.David. In the meanwhile, the petitioner moved the District Court, Kollam for letters of administration of the

Will dated 26.5.2005. Vide Ext.P7 judgment, letters of administration was ordered and the Court directed the petitioner to remit the requisite court fee after producing valuation by the District Collector. Sri.David, brother of the petitioner was *ex-parte* before the District Court, Kollam. The 2nd respondent herein valued the property at ₹18,53,250/- per Are by adding 25% to the fare value fixed by the Government for the adjacent property. The petitioner has not produced the letters of administration before the third respondent till date after paying the requisite court fee; it is contended.

The third respondent on receipt of Ext.P6 order made valuation of the property by taking into consideration the valuation shown in available Sale Deeds in respect of the property that are lying near to the property in question. The valuation report was sent to the District Collector, the 2nd respondent. The 2nd respondent returned the report to the third respondent for producing copies of Sale deeds referred to for fixing the land value and for other reasons. The 2nd respondent called the third respondent to submit a

fresh proposal after complying with the requirements. By this time, three years have lapsed in respect of sale deeds which was taken as Bench mark for fixing the land value. Therefore, fresh valuation was done and in that process, sale deeds in respect of the property which are lying near to the property in question could be identified. Based on the valuation shown in the above sale deeds and by adding 30% to the above, the valuation of the land was fixed. The valuation of the building was fixed with the aid of PWD officials. As there was wide difference in the valuation fixed at the first instance and the second instance, the third respondent recommended that an inspection be carried by the 2nd respondent before acting upon Ext.P8 report of the third respondent. Thereafter, the 2nd respondent herein valued the property at ₹18,53,250/- per Are by adding 25% to the fare value fixed by the Government for the adjacent property. True copy of the valuation carried out by the second respondent is produced as Ext.R3(A).

It is stated that the third respondent is not aware of

the construction alleged to be made by the petitioner in the property. Neither the petitioner nor Smt.Chinnamma has obtained any consent or permission from the third respondent for making any such alleged construction. The third respondent is not aware of any consequent action taken pursuant to Ext.P10 note countersigned by the Secretary concerned.

5. It is stated that the Land Assignment Rules has no application to the assignment that is proposed vide Ext.P6 order. The rights of the petitioner and his predecessor, Smt.Chinnamma stems out from the rules under subsidised rental housing scheme for the weaker section of the community. Ext.P6 order specifically stated that the petitioner has to pay the land value in accordance with Rule 20. The order further states that the application has to be processed under subsidised rental housing scheme for the weaker section of the community. In the above circumstances, the petitioner cannot claim the benefit of Land Assignment Rules, which is intended for landless persons. It is understood that the petitioner owns 3.43

cents of land in Karunagappally Village as per T.P.No.11905. Moreover, his wife owns another 10.49 cents and building therein in Karunagappally Village covered by T.P.No.7215. Therefore, the petitioner cannot get the benefit of Land Assignment Rules. Moreover, the petitioner has not challenged Ext.P6 order till date. The third respondent has valued the property as per Rule 20 of Subsidised Rental Housing Scheme for the weaker section of the community as directed by Ext.P6 order.

6. Even though the petitioner or his predecessor Chinnamma has no right whatsoever to continue in the premises after the year 1980, the Government has shown its benevolence by passing Ext.P6 order enabling the petitioner to enjoy the land and building after paying the land value in accordance with Rule 20 of Subsidised Rental Housing scheme for the weaker section of the community. In Ext.P6 order, the Government has clearly held that Chinnamma has lost her claim over the lease hold on her retirement. Since, she was continuously occupying the land and building, the Government took a

lenient view and passed Ext.P6 order. Even though the extent of land at the time of original allotment was 2.02 Ares, the area now available as per actual possession is only 1.57 Ares; it is contended.

7. Arguments have been heard.

8. Admittedly, the land and building was allotted to the petitioner's mother under the subsidised rental housing scheme for the weaker sections of the community. It is an admitted fact that the petitioner's mother Chinnamma was continuously occupying the land and building. The occupant could have purchased the plot and building under a hire purchase agreement as per the then existing value. However, that was not done. The Government also did not take any action to evict Chinnamma or the petitioner. Now as per Ext.P8, the value has been fixed by the respondent. According to the petitioner, the value is exorbitant.

9. The learned counsel for the petitioner would argue that any assignment of the property belonging to the Government can be only under the Land Assignment

Rules and as per Rule-6, the price that could be realised is only ₹200/- per cent.

10. The learned Senior Government Pleader, per contra, would submit that the Land Assignment Rules has no application to the assignment that is proposed vide Ext.P6 order. According to the learned Senior Government Pleader, the right of the petitioner and his predecessor stems out of the rules under the subsidised rental housing scheme for the weaker section of the community and in Ext.P6 order, it was specifically ordered that the petitioner has to pay the land value in accordance with Rule 20. It is also stated that the petitioner owns 3.4 cents of land in Karunagappally village as per Thandaper No.11905 and his wife owns another 10.49 cents and building therein in Karunagappally village covered by T.P.No.7215. Therefore, the petitioner cannot claim the benefit of Land Assignment Rules.

11. However, it is an admitted fact that the petitioner's mother was continuing in the building even after her retirement. Had the petitioner's mother been

permitted to purchase the property under the hire purchase agreement, the same could have been at the then existing rate. Chinnamma did not choose to make an application for purchase as there was no threat of eviction. The present demand made in Ext.P8 notice is exorbitant under any event. It is also relevant to note that even the respondents have fixed different values to the property.

12. In this context, the learned counsel for the petitioner has invited my attention to Ext.P10, which is the copy of the minutes in file No.28642/U2/09/RD of Revenue (U) Department which the petitioner has obtained under the Right to Information act. Evidently, the minute was that of the then Revenue Minister. The minister has opined that a humanitarian approach is necessary in this issue and therefore, it could be examined whether the property be assigned to the petitioner realising 25% of the amount now fixed by the revenue authorities. By Ext.P9, the petitioner has expressed his willingness to take the property by paying ₹2 lakhs. That would be approximately

equal to 25% of the amount now fixed by the revenue authorities. Taking into account the opinion expressed in Ext.P10 minutes and also taking into account the fact that the value of the property would have been far below at the time of retirement of the petitioner's mother than that have been fixed in Ext.P8, this Court is of the view that the matter requires re-consideration by the State.

Therefore, this writ petition is disposed of directing the respondents to re-consider the issue in the light of Exts.P9 and P10, after affording the petitioner an opportunity of being heard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE