

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 36029 of 2007 (L)

PETITIONER(S) :

AYSHA HOSIERY FACTORY PVT.LTD.
POST PALAPARAMBA, TELLICHERRY TALUK, KANNUR
REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADVS.SRI.U.K.RAMAKRISHNAN (SR.)
SMT.P.VIJAYAMMA

RESPONDENT(S) :

1. TALUK LAND BOARD
TELLICHERRY

2. THE DISTRICT COLLECTOR, KANNUR.

3. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE
GOVERNMENT, SECRETARIAT, TRIVANDRUM.

RRESPONDENTS (BY ORDER) BY ADV. SPECIAL GOVT.PLEADER (LAND
REFORMS)

R BY SPECIAL G.P. LAND REFORMS
R BY GOVERNMENT PLEADER SMT.SUSEELA BHATT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 36029/2007

PETITIONER'S EXTs:

EXT.P1: TRUE COPY OF THE PROCEEDINGS OF THE TALUK LAND BOARD,
TELLICHERRY DT.10.7.1975

EXT.P2: -DO- JUDGMENT OF THE HON'BLE HIGH COURT DT.25.2.1976 IN CRP
1288/1975

EXT.P3: -DO- OF THIS HON'BLE COURT IN O.P.2372/1979

EXT.P4: -DO- NOTICE DT.25.7.1995 ISSUED BY THE DISTRICT COLLECTOR

WZR.P5: -DO- WRITTEN OBJECTION OF THE PETITIONER DT.29.9.1995

EXT.P6: -DO- NOTICE DT.29.12.1998

EXT.P6A: -DO- DRAFT STATEMENT DT.29.12.98 ISSUED BY THE FIRST
RESPONDENT

EXT.P7: -DO- OF THE JUDGMENT OF THIS HON'BLE COURT DT.18.12.2006 IN
O.P.NO: 7699/99

EXT.P8: -DO- COUNTER STATEMENT DT.24.5.2007

EXT.P9: -DO- OF THE ORDER OF THE SECOND RESPONDENT DT.28.5.2007

EXT.P10: -DO- OF THE NOTIFICATION DT.19.6.2012

EXT.P10A: -DO- OF THE KERALA LAND REFORMS (AMENDMENT) ACT 6 OF 2012
(RELEVANT PAGE)

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO. 36029 OF 2007

Dated this the 3rd February, 2015.

JUDGMENT

The petitioner, a private limited company has filed this writ petition challenging Ext.P9 proceedings issued by the second respondent under Section 81(1)(k) of the Kerala Land Reforms Act, 1963 (the 'Act' for short). As per the impugned order, it has been held that an extent of 171.85 acres originally exempted under Section 81(1)(k) of the Act was liable to be proceeded against as excess land under the provisions of the Act. The short facts of the case are the following.

2. The petitioner had filed a statement to the first respondent under Section 85(2) of the Act since the company was holding a total extent of 358.19 acres of land. On the basis of the said statement, the first respondent passed Ext.P1

order dated 10.7.1975. As per Ext.P1 exemption was granted under Section 81(1)(c) of the Act in respect of an extent of 171.34 acres. The petitioner was also granted the benefit of the ceiling area of 15 standard acres in accordance with the provisions of the Act. The balance extent of 171.85 acres was directed to be surrendered as excess land. The order Ext.P1 was passed in spite of the contention of the petitioner that, the extent of land ordered to be surrendered as per Ext.P1 was liable to be exempted under Section 81(1)(k) of the Act.

3. Aggrieved by Ext.P1, the petitioner preferred CRP 1288/1975 before this Court, challenging the same. As per Ext.P2 order dated 25.2.1976 this Court held that the petitioner was entitled to the benefit of exemption under Section 81(1)(k) of the Act in respect of the extent of 171.85 acres that was treated as excess land. Therefore, Ext.P1 proceedings of the first respondent in so far as it treated the extent of 171.85 acres as excess land liable to be surrendered was set aside by this Court.

4. While so, in the year 1979 the second respondent

issued a notice to the petitioner under Section 81(1)(k) of the Act proposing to cancel the exemption that was granted. The said notice was challenged by the petitioner in O.P.2372/1979. As per Ext.P3 judgment dated 21.11.1980 the said order was quashed. However, Ext.P3 reserved the liberty of the second respondent to pass a fresh order under Section 81(1)(k) of the Act, if circumstances warranted the issue of any such order. Later on, the second respondent issued another notice dated 25.7.1995 under Section 81(1)(k) of the Act, which is Ext.P4. Ext.P4 purported to relate to the entire 358.19 acres of land held by the petitioner. Therefore, the petitioner submitted Ext.P5 objections to Ext.P4. However, the second respondent referred the matter to the first respondent and the first respondent issued Ext.P6 notice on 29.12.1998 reopening the ceiling case No: TLB1219/73/TLY. Thus, the entire case in respect to the total extent of land held by the petitioner was reopened. Ext.P6(a) is the draft statement of land to be surrendered by the first respondent. The petitioner challenged Exts.P6 and P6(a)

before this Court in O.P.7699/99. As per Ext.P7 judgment the said writ petition was allowed. The proceedings of the first respondent, Exts.P6 and P6(a) were quashed and the second respondent was directed to pass fresh orders in the matter after hearing the petitioner and considering the objections. Thereafter, the matter was heard by the second respondent. The petitioner submitted Ext.P8 additional objections also. However, by Ext.P9 order the second respondent has directed the first respondent to proceed further in the ceiling case relating to the petitioner. The petitioner has filed this writ petition aggrieved by Ext.P9. This writ petition was admitted and an interim stay was granted on 10.12.2007, which continues to be in force. Therefore, no further proceedings have been initiated pursuant to Ext.P9.

5. According to the learned Senior Counsel Shri.U.K.Ramakrishnan Ext.P2 judgment in CRP 1288/1975 has become final. Consequently, the exemption granted to the petitioner in respect of 171.85 acres under Section 81(1)(k) of

the Act has also become final. Though action was initiated under the proviso to the said provision, the said proceedings have successively been set aside by this Court in Exts.P3 and P7. As per Ext.P4, action was initiated not merely against the land in respect of which exemption was granted under Section 81(1)(k) of the Act but against the entire property held by the petitioner as per Ext.P1 order. The judgment of this Court Ext.P7 has quashed the said proceedings. It has also been declared that the extent of 171.34 acres of land with respect to which exemption had been granted under Section 81(1)(c) of the Act could not be reopened. With respect to the proceedings initiated under the proviso to Section 81(1)(k) of the Act the second respondent was directed to consider the objections of the petitioner and to pass fresh orders. However, Ext.P9 has been issued without considering the objections submitted by the petitioner. It is contended that the entire extent of 171.85 acres are planted with cashew trees. It is evident from Ext.P1 that the major portion of the said property was planted with cashew trees even at the time

of issue of Ext.P1. However, at that time since there was no provision exempting cashew plantation from the provisions of the Act, no exemption was granted. However, by Ext.P10 the said exemption has been re-introduced. Therefore, the petitioner is entitled to the benefit of Ext.P10 also. According to the learned Senior Counsel the said aspect is also one that requires to be considered by the second respondent. Reliance is placed on the decision of the Apex Court in *State of Kerala v. S.G.Savothama Prabhu* [1999(2) KLT 113(SC)] to point out that lands originally exempted from the provisions of the Act, on ceasing of such exemption are to be treated as acquisitions made after the appointed date. The learned Senior Counsel therefore contends that, Ext.P9 is only to be set aside.

6. Adv.Smt.Suseela Bhat, Special Govt. Pleader (Revenue) appears for the respondent. According to the learned Special Govt. Pleader, an exemption granted under the provisions of the Act would not entitle the holder of the land to put the land to any use as deemed fit by him. Reliance is placed on Section 87(1) of the Act to point out that, the said provision

empowers the authorities to initiate action wherever it is found that an exempted category of land has ceased to belong to the said category by being converted to other uses. Therefore, according to the learned counsel there is sufficient power in the respondents to initiate action irrespective of the category of exemption that has been granted to a land owner, wherever it is seen that the person has ceased to be entitled to the benefit thereof. According to the learned Special Govt. Pleader Ext.P9 has been issued pursuant to the direction contained in Ext.P7 judgment of this Court. The same has been issued after hearing the petitioner and considering the objections submitted. Therefore, there are absolutely no grounds to interfere with the same.

7. Heard. As per Ext.P4 notice issued by the second respondent proceedings had been initiated in respect of the entire extent of 358.19 acres of land held by the petitioner. As per Exts.P6 and P6(a), on the request of the second respondent, the first respondent had reopened the original ceiling case of the petitioner and had also prepared a draft

statement of lands to be surrendered. It was the said proceedings that was under challenge before this Court in O.P.7699/99. The judgment in the said writ petition is Ext.P7. Exts.P6 and P6(a) were marked as Exts.P6 and P6(a) in the said proceedings also. After considering the contentions of the respective parties, this Court has concluded the issue in the following words:-

“Exts.P6 and P6(a) are liable to be quashed and they will stand quashed. There will be a declaration that there cannot be any proposal to acquire 171.34 acres of land which has been exempted already and covered by Ext.P1 order and Exts.P2 and P3 judgments of this Court. The 2nd respondent District Collector is directed to pass fresh orders, taking into account Ext.P5 written objections submitted by the petitioner to Ext.P4 notice. This will be done by the District Collector, after hearing the petitioner, at the earliest and at any rate within three months from the date of production of a copy of this judgment.

The original petition is allowed as above. No costs.”

8. Thus, as per Ext.P7:

i) Exts.P6 and P6(a) have been quashed.

ii) It has been declared that there cannot be any proposal to acquire 171.34 acres of land which has been exempted and covered by Ext.P1 order and the previous judgments of this Court.

iii) The District Collector has been directed to pass fresh orders taking into account the objections of the petitioner.

The above judgment has become final and binding inter parties. It was pursuant to Ext.P7 judgment that, Ext.P9 has been issued. Ext.P7 judgment has been referred to in Ext.P9 proceedings also. The objections of the petitioner is reference No:2 in Ext.P9. The only reason stated for rejecting the contentions of the petitioner is that, the company did not produce any material to prove that it had taken steps to utilise the land for the purposes for which it was originally set apart. It is worth noticing at the same time that, in the earlier paragraph while summarizing the objections of the petitioner the second respondent himself has recorded the contention of

the petitioner to be that the land is essential for growing trees for meeting the fuel needs of the company. However, the said contention has not been considered by Ext.P9. Therefore, it has to be held that Ext.P9 has not been issued in compliance with the direction of this Court in Ext.P7 judgment.

9. Apart from the above, a perusal of Ext.P1 shows that even at the time of issue of the said order substantial portions of the land exempted under Section 81(1)(k) were already cashew garden. The said material was before the second respondent. Apart from the above, the effect of Ext.P10 which is the Kerala Land Reforms (Second Amendment) Act, 2005 (Act 6 of 2012) is also an aspect that requires to be considered by the second respondent before issuing any order under the proviso to Section 81(1)(k) of the Act. Therefore, it is only appropriate that the entire matter is reconsidered by the District Collector.

In view of the above, the following orders are issued:

- i) The impugned order Ext.P9 is quashed.
- ii) The second respondent is directed to consider Exts.P5

and P8 objections of the petitioner, as also Ext.P10 (the provisions of Kerala Land Reforms (Second Amendment) Act, 2005) and to pass appropriate orders in the matter after affording an opportunity of being heard to the petitioner also.

iii) Orders in accordance with the above direction shall be issued as expeditiously as possible and at any rate within a period of six months of the date of receipt of a copy of this judgment.

Sd/-
K. SURENDRA MOHAN
Judge

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/True copy/

