

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 33543 of 2008 (R)

PETITIONERS :

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1. V.P.MOITHUTTY HAJI, S/O.V.P.K.MADARI
HAJI, VALIYAPPEDIKAKKAL HOUSE, ARAKUPARAMBU P.O.
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.
 2. K.V.AYISHA, W/O.V.P.MOITHUTTY HAJI,
VALIYAPPEDIKAKKAL HOUSE, ARAKUPARAMBU P.O.
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.
 3. V.P.SAMEERA, D/O.V.P.MOITHUTTY HAJI,
VALIYAPPEDIKAKKAL HOUSE, ARAKUPARAMBU P.O.
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.
 4. V.P.SHAMEEM, D/O.V.P.MOITHUTTY HAJI,
'FATHIMA'CHEVAYOOR P.O.KOZHIKODE DISTRICT.

* ADDL.PETITIONERS 5 TO 8 IMPEADED

ADDL. 5. MOHAMMED IRSHAD, SON OF V.P.MOHAMMEDKUTTY HAJI
VALIYAPEDIKAKKAL HOUSE, NATTUKAL (PO), OTTAPPALAM
PALAKKAD DISTRICT.

ADDL. 6. MOHAMMED FAHEED, SON OF V.P.MOHAMMEDKUTTY HAJI
VALIYAPEDIKAKKAL HOUSE, NATTUKAL (PO), OTTAPPALAM
PALAKKAD DISTRICT.

ADDL. 7. KAMMAPPA FYZEE, SON OF V.P.MOHAMMEDKUTTY HAJI
VALIYAPEDIKAKKAL HOUSE, NATTUKAL (PO), OTTAPPALAM
PALAKKAD DISTRICT.

ADDL. 8. BABY SHAHEEN, DAUGHTER OF V.P.MOITHUTTY HAJI
VALIYAPEDIKAKKAL HOUSE, ARAKUPARAMBU (P.O)
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.

* ADDL.P5 TO P8 ARE IMPEADED AS PER ORDER DATED 19.12.2014 IN IA 1586/14.

BY ADV. SRI.R.RAJESH KORMATH

RESPONDENTS :

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1. THE TALUK LAND BOARD, PERINTALMANNA
PERINTHALMANNA, MALAPPURAM DISTRICT.
 2. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

R1 & 2 BY SPL.GOVERNMENT PLEADER SMT.SUSHEELA R BHATT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 33543 of 2008 (R)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 : COPY OF THE ORDER DATED 30.8.1976 IN S.R.NO.471/73 ON THE FILE OF THE
TALUK LAND BOARD, PERINTALMANNA

EXT.P2 : COPY OF THE ORDER DATED 12.5.92 IN S.R.NO.471 OF 1973 ON THE FILE OF THE
TALUK LAND BOARD, PERINTALMANNA

EXT.P3 : COPY OF THE NOTICE DATED 22.9.2008 IN CEILING CASE NO.2/08 ON THE FILE
OF THE TALUK LAND BOARD, PERINTALMANNA

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

PA TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.33543 of 2008

Dated this the 20th day of February, 2015

J U D G M E N T

The petitioners have filed this writ petition challenging Ext.P3 notice issued by the 1st respondent proposing to initiate fresh proceedings against them under Section 85(7) of the Kerala Land Reforms Act, 1963 (hereinafter referred to as 'the Act' for short). According to Sri.Rajesh R Kormath, the learned counsel for the petitioner, ceiling proceedings had been initiated against the 1st petitioner (since deceased) on 30.08.1976. It was found that, he had no land in excess of the ceiling limit. Thereafter, as per Ext.P2, the 1st respondent proposed to reopen the case under Section 85(9A) of the Act. The matter was again considered and it was found that, the case was not necessary to be reopened. Ext.P2 proceedings are dated 12.05.1992. It is long thereafter, on 22.09.2008 that Ext.P3 was issued.

2. According to the learned counsel for the petitioners, Section 85(9) does not confer power on the 1st respondent to initiate any proceedings as proposed. Therefore, it is contended that, Ext.P3 is liable to be set aside.

3. A counter affidavit has been filed on behalf of the 1st respondent in the writ petition. Smt.Susheela R Bhatt, Special Government Pleader (Revenue) appears for the respondents. It is

stated that, the provision of law shown in Ext.P3 is wrong and that the proper provision is Section 87(1) of the Act. It is contended that, the proceedings initiated are in order and in accordance with law.

4. Heard. As already noticed above, ceiling proceedings had been initiated against the 1st petitioner as per Ext.P1 on 30.08.1976. It was found that, he did not own land in excess of the ceiling limit. Therefore, the 1st respondent had dropped further action in the matter. Later on, by Ext.P2 dated 12.05.1992, the matter was sought to be reopened under Section 85(9A) of the Act. The petitioners entered appearance and contested the proceedings. After a further examination of the matter, it was held by the 1st respondent that, the case need not be reopened. It is long thereafter, on 22.09.2008 that the said proceedings Ext.P3 had been initiated. I notice that, even assuming that the proceedings are sought to be initiated under Section 87(1), the said proceedings are not maintainable. This is for the reason that, in the case of the family of the 1st petitioner, the 1st respondent had initiated proceedings that were dropped by Ext.P1. The said proceedings had become final. It was only because of the enactment of Section 85(9A) that came into force on 30.05.1989 that the 1st respondent was clothed with the authority to reopen the said case. Ext.P2 is seen to have been initiated on 12.05.1992 within a period of three years from 30.05.1989. The said proceedings also ended in favour of the 1st petitioner. There is no provision under the

Land Reforms Act to reopen the matter again, for the reason that, the time limit stipulated by Sub Section 9 of Section 85 has also expired. Therefore, it has to be held that Ext.P3 is unsustainable.

This writ petition is accordingly allowed. Ext.P3 is set aside.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV