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WP(C) No.1235 of 2013

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.M.MANOJ

WEDNESDAY, THE 12TH DAY OF FEBRUARY 2025/23RD MAGHA, 1946

WP(C) NO. 1235 OF 2013

PETITIONER:

ROY SEBASTIAN, AGED 37 YEARS
KOCHUPURACKAL HOUSE, KANJIKUZHI P.O.,
IDUKKI DISTRICT.

BY ADVS.
SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENTS:

- 1 SUB COLLECTOR, IDUKKI, IDUKKI-685 603.
- 2 THE DISTRICT COLLECTOR, IDUKKI-685 603.
- 3 TAHSILDAR, THODUPUZHA -685 584
- 4 VILLAGE OFFICER, KANJIKUZHI-685 606.
- 5 REVENUE DIVISIONAL OFFICER, IDUKKI-685 603.
- 6 MARY KURUVILA,D/O.KURUVILA,
THALAKKANAM, KANJIKUZH.
- 7 JANCY KURUVILA, D/O.KURUVILA,
THALAKKANAM, KANJIKUZH.
- 8 THE IDUKKI-KANJIKUZHI SERVICE



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CO-OPERATIVE BANK LTD. NO.1-90,
KANJIKUZHAY-685 606.

BY ADVS.
SHAIJAN JOSEPH
SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

OTHER PRESENT:

R1 - SRI.S.RENJITH, SPECIAL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 12.02.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**CR****JUDGMENT**Dated this the 12th day of February, 2025

The writ petition is preferred challenging Ext.P5 order of the 1st respondent - the Sub Collector, which revised the order of the 5th respondent as per Ext.P4, exercising the powers conferred under Section 6(3) of the Kerala Scheduled Tribe (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (for short 'the Act,1975').

2. The petitioner herein is the owner of ten cents of property in Sy.No.161/1 (Re.Sy.No.204/4) in Block No.46 of Kanjikuzhi Village as per sale deed No.1753/2008 SRO Arakulam dated 29.08.2008. The petitioner obtained the said property from one Baiju M.B., who obtained property from the 6th respondent as per Ext.P3 dated 23.07.1996.

3. The issue arises when the sister of the 6th respondent, Jancy Kuruvila, the 7th respondent herein approached the 1st respondent under Section 4 and Section 6(3) of the Act, 1975 challenging Ext.P4 order whereby



permission has been granted by the 5th respondent to the 6th respondent for alienating ten cents of land belonging to her in order to settle the liability with the Kanjikuzhi Cooperative Bank under Rule 31 of the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Rules (for short 'the Rules'). The case projected by the 7th respondent before the 1st respondent is to restore the possession and enjoyment to an extent of total 01.23.90 Hectars of land comprised in Sy. No.204/3 and 204/4 of Kanjikuzhi Village in Thodupuzha Taluk. Such contention was raised in the premise that Sri.Jose Panamthanam, the original purchaser of the land from the 6th respondent willfully grabbed ten cents of land making a document when her sister was not in a position to enter into a contract, and then by way of transfer, the present Thandaper holder, i.e., the petitioner herein had purchased the land in question.

4. After hearing the parties and conducting a detailed enquiry through the Village Officer, Kanjikuzhi, a site inspection was conducted by the 1st respondent on 09.11.2012. The petitioner herein was given an opportunity



to adduce evidence. Accordingly, he has produced Ext.P1 whereby he obtained ten cents of land. In support of the document, he has produced Ext.P4 order whereby permission was granted to the 6th respondent under Rule 31 of the Rules to alienate the property. The 1st respondent ultimately found that Ext.P4 order cannot sustain as Rule 31 was omitted as per GO(P) No.794/89/RD dated 12.12.1989 thereby the transfer of land and deed itself are illegal and liable to be cancelled.

5. The Sub Collector has gone to the history of the case and found that the father of respondents 6 and 7 Sri.Joseph Kuruvila Eluvumkal obtained patta for the land in Re.Sy.No.204/3 and 204/4 in Block No.46 of Kanjikuzhi Village. He was in possession of the said land till his death. It was also found, his youngest daughter Jancy, the 7th respondent herein did not get any land as per the deeds though she is a traditional occupant of one acre of land. Respondents 6 and 7 are the absolute owners of the whole extent of land occupied by their father. The 1st respondent went on with a finding that the 6th respondent was mentally



challenged and has undergone treatment at Nirmala Bhavan Charitable Society, Nilambur, Malappuram. She was not in a position to get into any contracts as per Section 12 of the Indian Contract Act, 1872. The 6th respondent Mary initially transferred ten cents to Sri.Jose Panamthanam as per sale deed No.1920/96. Later he transferred it to Mr.Baiju M.B - the predecessor-in-interest of the petitioner, and lastly to the petitioner, who is in possession of the land along with the building in it currently. The 1st respondent also found that the order of Revenue Divisional Officer cannot stand, hence, all the transfers were illegal and was liable to be cancelled as per the Act and gave directions to the Village Officer to restore the land admeasuring ten cents in Sy.No.204/4 in Block No.46 of Kanjikuzhi Village from the petitioner.

6. The petitioner raised three challenges against Ext.P5, which are: (i) The primary challenge raised against Ext.P5 is with respect to the authority of the Sub Collector to revise the order of Revenue Divisional Officer, who is holding equal powers under the Act, 1975. (ii) Secondly, the assessment of mental capacity of the 6th respondent by the



Sub Collector without resorting to any medical evidence would go to show that the 6th respondent was not fit to enter into any contracts as per Section 12 of Indian Contract Act, 1872, being a mentally challenged person at the time of entering into an agreement in 1996 to the Sale Deed No.1920/96. (iii) Thirdly, the reason assigned for unsettling Ext.P4 order is only on the ground that Rule 31 of the Rules is omitted with effect from 27.02.1990 (date of publication of Government Order in Kerala Gazette). The said reason is not sustainable since the very intention of omitting the rule is inconsistent with Section 4 which is the base on which Rule 31 can sustain as available in the explanatory note to GO(P) No.794/89/RD dated 12.12.1989.

7. The learned counsel for the petitioner contended that being a *functious officio*, the 1st respondent cannot revise the order of the 5th respondent, who is holding equal powers under the Act. Thereby the setting aside of Ext.P4 by Ext.P5 is beyond his jurisdiction. The 1st respondent has no authority to entertain the application preferred by the 7th respondent under Section 6(3) of the Act, 1975 since, that



Act was repealed and new Act, 1999 has come into force with effect from 24.01.1986. Moreover, the 7th respondent has challenged Exts.P3 and P4 after more than 15 years and thereby the challenge is barred by limitation.

8. The learned counsel for the petitioner also contended that only restriction on transfer of land possessed, enjoyed or owned by a member of Scheduled Tribe on or after the commencement of this Act, to a person other than a member of Scheduled Tribe, has to obtain previous consent of the competent authority in writing. In this case, the 6th respondent herself approached the 5th respondent and obtained an order as per Ext.P4 as contemplated under Section 4 of the Act. The source of power is provided by the Act and the procedure and the manner in which an Act is to be performed is given by the Rules to the Act. Thereby, mere omission of Rule 31 does not affect the powers vested by Section 4. Therefore, there is no infirmity with respect to Ext.P4 though Rule 31 is omitted. The sole issue revolves around the ten cents of land whereas the intention of the Legislature while enacting the new enactment as per Act,



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1999 is to protect small and marginal non tribal transferees. Section 5 of the Act brings in invalidation of certain transfers. The transfer effected by the 6th respondent in favour of the predecessor-in-interest of the petitioner will not come under the purview of Section 5.

9. Per contra, the learned counsel for the 7th respondent challenged the very maintainability of the writ petition seeking a prayer of writ of certiorari. The reason assigned by the learned counsel for the 7th respondent is that as per Section 7 (3) and (5) of the Act, there was an appellate remedy available to the petitioner. Without resorting to the alternative remedy, he straight away approached this Court by preferring writ petition under Article 226 of the Constitution of India.

10. In support of his contentions, the learned counsel for the 7th respondent brought my attention to the reported decisions in **M/s. Radha Krishan Industries v. State of Himachal Pradesh and others** [AIR 2021 SC 2114], **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others**, [1998 (8) SCC 1], **Abraham**



Mathai v. State of Kerala and others, [2024 (7) KHC 493] whereby the learned counsel for the 7th respondent stresses on the ratio laid down by the Apex Court in **Whirlpool Corporation's** case (supra) which was followed in the other matters referred above. Following the dictum laid down in **Whirlpool Corporation's** case supra, the Apex Court in **Harbanslal Sahnia v. Indian Oil Corporation Ltd.** [(2003) 2 SCC 107] held as follows:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1].



The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

(emphasis supplied)

11. Controverting the contentions by the counsel for the petitioner with respect to the jurisdiction of the 1st respondent in reverting the order passed by the 5th respondent, the learned Special Government Pleader submitted that in cases where it was found that an order is obtained by playing fraud on the authority, even on a quasi-judicial authority, is entitled to recall on finding that the same was obtained by playing fraud on it. In support of his contentions, the learned Special Government Pleader brought my attention to the reported decision in **Easwaranunni T. and others v. State of Kerala and Others** [2020 KHC 142]. However, the learned Special Government Pleader could not point out while obtaining the order by the 6th



respondent she has played some fraud and obtained an order in her favour from the 5th respondent.

12. In reply to the contentions by the learned counsel for the respondents it is submitted by the learned Counsel for the petitioner that he was not entitled to avail any alternative remedy as contended by the counsel for the 7th respondent since the appellate remedy as contemplated under Section 6 of the Act is available to the member of Scheduled Tribe who was denied the benefit of Section 7 of the Act. He has also contended on the strength of reported decision in **Commissioner of Income Tax and Others v. Chhabil Dass Agarwal** [2014 (1) SCC 603] and in **Utkal Highways Engineers and Contractors v. Chief General Manager** [2025 KHC 7048] wherein it is specifically held by the Apex Court that:

“It is the settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate



efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226."

13. Similarly, in **Utkal Highways Engineers'** case supra it was held that:

"throwing a writ petition on ground of availability of alternative remedy after ten years, particularly, when parties have exchanged their affidavits, is not the correct course unless there are disputed questions of fact which by their very nature cannot be adjudicated upon without recording formal evidence."

14. It is also contended by the learned counsel for the petitioner that the power exercised by the 1st respondent is obviously beyond the jurisdiction because as contended by the learned Special Government Pleader the quasi judicial authority who exercised powers under the provisions of the Act had passed Ext.P4 order on the request made by the 6th respondent to meet her exigency. Nowhere the 1st respondent found fault with the 6th respondent that she had played a fraud on the 5th respondent to obtain an order in her favour. Moreover, the 1st respondent, while exercising its



jurisdiction, only considered the omitted provisions under the Rules, i.e., Rule 31. At the same time, it is not bothered to enter into the legislative intention which is available in the explanatory note itself in the Government Order which is relied on by him wherein it is specifically found that the Rule omitted is inconsistent with the provisions of the Act and that cannot prevail over the provisions of the Act. Such explanation given by the legislature is on the basis that Section 4 of the Act stipulates that previous consent of the competent authority shall be obtained for transfer of immovable property by members of Scheduled Tribe. Whereas for persons other than a member of Scheduled Tribe, the Act does not specify or lay down such circumstance. Therefore, any restriction which is imposed by the Rule will uphold the discretionary power of the competent authority. Therefore, ignoring the existing provisions of law, i.e., Section 4, the District Collector invoked his power only on the basis of an omitted Rule.

15. The other finding by the 1st respondent with respect to the mental health of the 6th respondent is an



unfounded one since he has not expressed anything with respect to the documents which he relied on to establish that the 6th respondent was incapacitated by her mental incapability to enter into a contract under the provisions of the Indian Contract Act. The 7th respondent, who had raised the complaint before the 1st respondent, has produced documents as Exts.R7 (a) to (h) in order to establish that the 6th respondent was mentally challenged. However, none of the documents would show that the 6th respondent was mentally challenged during 1996 since those documents pertain to the year 2011 onwards. Under such circumstances, the finding of the 1st respondent with respect to the mental health of the 6th respondent is obviously beyond its jurisdiction.

16. I have heard Sri.S.Vinod Bhat, the learned counsel for the petitioner, Sri.Shaijan Joseph, the learned counsel for the 7th respondent and S.Ranjith, the learned Special Government Pleader for respondents 1 to 5.

17. Having considered the submissions made across the Bar and perusing the records, it appears that on an



application submitted by the 6th respondent and on the strength of the certificate issued by the 8th respondent - the Co-operative Society after due enquiry as per Reference No.2 in Ext.P4, the 5th respondent exercised its jurisdiction under Section 4 of the Act. The only error occurred from his part is with respect to relying on Rule 31 which was omitted prior to 22.07.1996 i.e., on 27.02.1990. On the strength of the said order, the 6th respondent had cleared her dues towards the 8th respondent Society. Though contra arguments are raised with respect to misappropriation by the members of the Society, no substantial evidence was brought before this Court. Thereafter, two transactions were effected. Last transaction was between the petitioner and one Mr. Baiju M.B., who obtained the property from one Jose Panamthanam, who was firstly assigned by the 6th respondent as per sale deed No.1920/96.

18. For the first time the dispute was raised by the 7th respondent by preferring a complaint before the 1st respondent; but the date of such complaint is not mentioned in the impugned order. The order itself states that originally



the father of the 6th and 7th respondents obtained patta for land in Re.Sy.No.204/3 and 204/4 in Block No.46 of Kanhikuzhi Village. After the death of mother and father, the entire property was obtained by the 6th respondent as per document Nos.1333/90 and 1868/91. Though the 7th respondent was residing with them, being the traditional occupant of 1 acre of land, she was assigned 1 acre of land by the father. Ext.R7(e) report submitted by the Sub Collector Perinthalmanna, is an unpleasant report regarding the 7th respondent, who stated to be the cause of alleged mental illness of the 6th respondent. Relying on such a challenge to the mental health now she is trying to utilise the same to obtain the remaining property owned by the 6th respondent. She alleges the grabbing of land by others from a member of Scheduled Tribe. That itself shows that the hands of the 7th respondent was not clean while approaching the 1st respondent.

19. Without properly appreciating the facts and without adducing the evidences, the 1st respondent entered into a finding with respect to the mental health of the 6th



respondent. That is nothing but beyond the exercise of its jurisdiction being a quasi judicial authority. Moreover, being a quasi judicial authority, the 1st respondent is functionis officio; and he cannot exercise the jurisdiction of the Civil Court to review the order of an authority on the same status that of the review authority. Though he is taking shelter under Sec.6(3) of the Act, that was an error occurred from his part since the Act applicable at the time of passing the order was Section 7 as per the Act, 1999. That itself shows the non application of mind.

20. The other part is with respect to taking shelter on Rule 31 to unsettle Ext.P4, which was omitted by GO(P)No.794/89/RD dated 12.12.1989, that was given effect from 27.02.1990. However, the 1st respondent could not comprehend the intention of the legislation while omitting Rule 31 from the Rules. It is pertinent to note that only because the said provision is inconsistent with the provisions of the Act, that was omitted by the Government. The explanatory note to the GO specifies that the parent Act only stipulates that previous consent of the competent authority



shall be obtained for transfer of immovable property by members of Scheduled Tribes to a person other than a member of Scheduled Tribe. The Act does not specify or lay down the circumstances under which such consent shall be accorded. Therefore the rule cannot restrict the Act. Here in the case on hand, the permission was obtained for clearing the dues to the Co-operative Society by alienating the property on the application preferred by the 6th respondent. Since Rule 31 specifies such provision, merely the omission of Rule 31 does not prevent the powers vested under Section 4 which does not restrict any particular purpose. Thereby it appears that the 1st respondent failed to exercise its power in all respect by reviewing the order passed by a competent authority on the same rank. Such power is not vested with such authority unless such orders are obtained by playing fraud as held in **Easwaranunni's** case supra.

21. Going by the provisions of Section 6, it appears that the right to appeal is provided to a person especially under sub section (5), the appeal power is given to order under sub section (3) or sub section (2) of Section 5. The



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case of the petitioner will not come within the purview of such sections and no appellate remedy was available to the petitioner as asserted by the counsel for the 7th respondent. Moreover the writ petition was pending before this Court for more than 12 years. At this juncture, maintainability of the same cannot be tested. Hence, nothing wrong in entertaining a writ petition under Article 226 as held in **Commissioner of Income Tax's** case supra and **Utkal Highways Engineers'** case supra.

In such circumstances, taking into consideration the afore discussions, I do not find any reason to sustain Ext.P5 order. Hence, Ext.P5 is set aside and the writ petition stands allowed.

sd/-

**P.M.MANOJ
JUDGE**

das



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APPENDIX OF WP(C) 1235/2013

PETITIONER'S EXHIBITS

EXHIBIT P1	COPY OF SALE DEED NO.1753/2008 DATED 29.8.2008
EXHIBIT P2	COPY OF CERTIFICATE OF ENCUMBRANCE DATED 15.02.2010 ISSUED BY SRO, ARAKULAM
EXHIBIT P3	COPY OF SALE DEED NO.1920/1996 DATED 23.07.1996
EXHIBIT P4	COPY OF PERMISSION GRANTED BY THE RESPONDENT NO.B3-2015/96 DATED 22-7-1996
EXHIBIT P5	COPY OF ORDER NO.A2-5870/11 DATED 01.01.2013 OF THE 1ST RESPONDENT
EXHIBIT P6	COPY OF CERTIFICATE NO.493/12 DATED 03.01.2013 ISSUED BY THE 8TH RESPONDENT
EXHIBIT P7	COPY OF BASIC TAX RECEIPT NO.2641628 DATED 7.4.2012 ISSUED BY KANJIKUZH Y VILLAGE

RESPONDENT EXHIBITS

Exhibit R7(a)	TRUE COPY OF THE DOCUMENT FROM SUB COLLECTOR IDUKKI SEEKING ASSISTANCE FROM SUB COLLECTOR PERINTHALMANNA DATED 25/09/2012
Exhibit R7(b)	TRUE COPY OF THIS PETITION SEEKING EASEMENT RIGHT DATED 29/02/2012
Exhibit R7(c)	TRUE COPY OF ORDER ON OS. 26/2012 DATED 18/08/2014 OF MUNSIF COURT IDUKKI
Exhibit R7(d)	TRUE COPY OF PETITION FILED BY NIRMAL BAVAN CHARITABLE SOCIETY PRESIDENT MR. RAJU GEORGE DATED 22/01/2012
Exhibit R7(e)	TRUE COPY OF THE REPORT PREPARED AND SUBMITTED TO THE SUB COLLECTOR PERINTHALMANNA DATED 27/11/2012



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- Exhibit R7(f)** TRUE COPY OF THE ORDER RESTORING THE LAND FROM ABHAYAGHOSH TO THE RESPONDENT NO.7 DATED 01/01/2013
- Exhibit R7(g)** TRUE COPY OF THE ORDER RESTORING THE LAND FROM SIBI TO THE RESPONDENT NO.7 DATED 01/01/2013
- Exhibit R7(h)** TRUE COPY OF THE PETITION FOR RECOGNISING LAND TRANSACTIONS AND GETTING DOCUMENTS WITH REGARD TO THE PROPERTY OBTAINED THROUGH RTI ACT DATED 04/05/2013
- Exhibit R7(i)** TRUE COPY OF PETITION SUBMITTED BY THE RESPONDENT NO.6 BEFORE THE DISTRICT COLLECTOR OBTAINED THROUGH RTI ACT DATED 10/05/2013
- Exhibit R7(j)** TRUE COPY OF THE PETITION FILED BEFORE THE DISTRICT PROTECTION OFFICER, IDUKKI DATED 27/11/2015
- Exhibit R7(k)** TRUE COPY OF THE REPLY OF THE DISTRICT PROTECTION OFFICER, MALAPPURAM DATED 14/06/2016
- Exhibit R7(l)** TRUE COPY OF THE POWER OF ATTORNEY CREATED BY RAJU GEORGE ON BEHALF OF RESPONDENT NO.6
- Exhibit R7(m)** TRUE COPY OF THE JUDGMENT DATED 8/3/2018 IN OS.NO. 72/2016 OF MUNSIFF COURT IDUKKI