

Poomari Vs. State of Kerala

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Poomari

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 WP(C).No. 16382 of 2013 (W)

----- PETITIONER: ----- POOMARI, W/O. LAKSHMANAN, HOUSE NO.IX/1918 A, IKKA NAGAR, MUNNAR P.O., IDUKKI DISTRICT. BY ADVS.SRI.K.B.ARUNKUMAR, SRI.T.U.ZIYAD, SMT.RAMEENA.P.K. RESPONDENTS: ----- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.

2. THE DISTRICT COLLECTOR, COLLECTORATE, KUYIMALA, IDUKKI DISTRICT-685 603.

3. THE REVENUE DIVISIONAL OFFICER, OFFICE OF THE REVENUE DIVISIONAL OFFICER, DEVIKULAM, IDUKKI DISTRICT, PIN-685 613.

4. THE TAHSILDAR, DEVIKULAM TALUK, DEVIKULAM, IDUKKI DISTRICT-685 613.

5. THE VILLAGE OFFICER, KANNAN DEVAN HILLS VILLAGE, MUNNAR, IDUKKI DISTRICT-685 612.

6. THE MUNNAR GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, MUNNAR, IDUKKI DISTRICT-685 612.

7. THE SECRETARY, THE MUNNAR GRAMA PANCHAYATH, MUNNAR IDUKKI DISTRICT-685 612. R1 TO R5 BY SR. GOVERNMENT PLEADER SRI. K.C. VINCENT, R6 & R7 BY ADV. SRI.JOICE GEORGE,S.C. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Prv. W.P.(C).NO.16382/2013-W: APPENDIX PETITIONER'S EXHIBITS: P1 : COPY OF THE BUILDING TAX RECEIPT ISSUED BY THE 6TH RESPONDENT. P2 : COPY OF THE OWNERSHIP CERTIFICATE ISSUED BY THE 6TH RESPONDENT. P3 : COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT. P4 : COPY OF THE REPLY OF THE 6TH RESPONDENT. P5 : COPY OF THE ORDER DTD.28.2.2007 IN W.P.(C). NO.6661/2007. RESPONDENTS' ANNEXURES: ANNEXURE R4.A: COPY OF THE JUDGMENT DTD. 04/03/2013 IN W.P.(C).NO.3516/2013. ANNEXURE R4.B: COPY OF THE PURAMBOKE REGISTER OF K.D.H. VILLAGE WHICH SHOWS THE LAND AS P.W.D. LAND. //TRUE COPY// P.A. TO JUDGE. Prv. P.R. RAMACHANDRA MENON, J.

..... W.P.(C)No. 16382 OF
201..... Dated this the 31st July, 2013

JUDGMENT

The petitioner has approached this Court with the following prayers: "i) issue a writ of mandamus or any other appropriate writ order or direction commanding the respondents not to dispossess the petitioner from her 4 cents of landed property comprised in Sy.No.62/9 of Kanan Devan Hills Village of Devikulam Taluk during the pendency of the proceedings pursuant to the application of the petitioner for the assignment of land. ii) issue a writ of mandamus or any other appropriate writ

order or direction commanding the 2nd respondent to regularise the possession and title of the property of the petitioner by issuing further orders in the matter of regularisation/assignment either as per the Rules framed under the Kerala Land Assignment Act or as per the Kanan Devan Hills (Resumption of Land) Act 1971; and iii) such other order or direction deems fit and proper for this Hon'ble Court in facts and circumstances of the case." 2. The learned Counsel for the petitioner submits that W.P.(C)No. 16382 OF 201.2 the petitioner is in possession of 4 cents of the property comprised in Sy.No. 62/9 of Kanan Devan Hills Village of Devikulam Taluk for quite long and that the petitioner is entitled to have the land assigned in favour of her. Ext.P1 is the Building Tax Receipt and Ext.P2 is the Ownership certificate issued by the 6th respondent. It is pointed out that, pursuant to the application for assignment of land preferred by the petitioner, the 4th respondent had issued Ext.P3 notice inviting objections, if any. Pursuant to publication of Ext. P3 notice, the 5th respondent Village Officer, vide Ext.P4 communication informed the former that no objection was received till date, i.e. 19.01.2002. The learned Counsel also points out that under similar circumstance, a similarly situated person had approached this Court by filing W.P.(C) 6661 of 2007, wherein Ext.P5 interim stay was granted from evicting the petitioner therein. The petitioner is constrained to approach this Court because of the threat of eviction and seeks for similar relief as granted vide Ext.P5 order.

3. The 4th respondent has filed a statement with regard to W.P.(C)No. 16382 OF 201.3 the actual facts and figures. The relevant portion is extracted below: "The present attempt of the petitioner is not bonafide and based on fraudulent claims over Government land which is not assignable. The land now presently encroached is PWD land, which cannot be assigned at all. A true copy of the Puramboke Register of KDH Village which shows the land as PWD land is produced herewith and may be marked as Annexure R4(b). The petitioner is liable to be evicted from the land, since PWD land is non assignable. " 4. It is also brought to the notice of this Court that, the petitioner, joining hands with a third person had approached this Court earlier, by filing Writ Petition No. 3516 of 2013, seeking for permission to effect repairs to their building and for some other reliefs. After hearing both the sides, this Court observed that, by virtue of the mandate of the verdict produced as Ext.R1 (b) in the said case, the repairs, if at all any, can be

pursued only after getting concurrence of the Revenue Department. It was accordingly, that the writ petition was disposed of, as per W.P.(C)No. 16382 OF 201.4 Annexure- R4(a) verdict dated 04.03.2013 , observing that the petitioners were at liberty to apply for and obtain 'NOC' from the Revenue Department and thereafter, to move the concerned Local authority for permission to effect the repairs.

5. The learned Spl. Government Pleader appearing for the Revenue Department submits that since the petitioner did not get any favourable orders vide Annexure R4(a), the petitioner has approached this Court by filing this writ petition. It is also stated that the 4th respondent has asserted that the property is a 'PWD land' and as such, it is not a 'Puramboke land', so as to have it assigned to the petitioner .

6. In the above circumstance, the prayer of the petitioner to cause the property assigned to the petitioner, is not liable to be entertained by this Court. It is also relevant to note that the writ petition wherein Ext. P5 interim order was passed, intercepting dispossession, came to be finalised as per judgment dated 27.07.2007, observing that further proceedings could be pursued, based on the outcome of the enquiry conducted. For the convenience of reference, the said judgment is extracted W.P.(C)No. 16382 OF 201.5 below : "The petitioner apprehends eviction from the property occupied by him. The learned Government Pleader appearing for the respondents submits that an enquiry as per G.O.No.754/07/RD dated 17.2.2007 is in progress and further proceedings would only be in accordance with the result of that enquiry and that the petitioner would not be evicted from the property except in accordance with due process of law. This is recorded and the writ petition is closed." 7. After hearing both the sides, this Court finds that there is absolutely no merit or bonafides in the writ petition and the same is dismissed, however making it clear that the petitioner can be sought to be evicted only in accordance with the relevant provisions of law, after conducting necessary enquiry and finalising the proceedings, as ordered in W.P.(C) No. 6661 of 2007. P.R.RAMACHANDRA MENON JUDGE Ik