

Jithesh Vs. State of Kerala

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Court : Kerala

Decided On : Oct-03-2013

Judge : Honourable Mr.Justice K.M.Joseph

Appellant : Jithesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.M.JOSEPH & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 3D DAY OF OCTOBER 2013 11TH ASWINA, 1935 WP(C).No. 2636 of 2013 (D)
----- PETITIONER : ----- JITHESH, S/O KRISHNAN NAMBOOTHIRI, AGED 32 YEARS, NARIKKUNI EDAMANA ILLOM, P.O. PERUVALLUR, VIA KONDOTTY, MALAPPURAM DISTRICT. BY ADVS. SRI.SAJU.S.A SRI.K.C.KIRAN SMT.P.A.SHEEJA SMT.MEENA.A.
RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. DEPUTY SUPERINTENDENT OF POLICE, MALAPPURAM-676 506.

3. CIRCLE INSPECTOR OF POLICE, TIRURANGADI-676 306.

4. SUB INSPECTOR OF POLICE, THENHIPALAM-673 636.

5. E. SUBRAMANIAN,S/O. PERANTHANKUTTY, EDAPPURATH HOUSE, POST PERUVALLUR, VIA KONDOTTY, MALAPPURAM DISTRICT, PIN:673 628.

6. KADUNGALATH KUNHUKUTTAN, S/O KRISHNAN, POST PERUVALLUR, VIA KONDOTTY, MALAPPURAM DISTRICT, PIN:673 628.

7. MOHAMMED, PUTHURKAD HOUSE, P.O. PERUVALLUR, VIA KONDOTTY, MALAPPURAM DISTRICT, PIN:673 628. *ADDL.R8 IS IMPEADED *R8: SUPERINTENDENT OF POLICE, MALAPPURAM-676 506 *IS IMPEADED AS ADDL.R8 AS PER

ORDER

DATED123/13 IN IA.NO.2336/13 R1 TO R4,R8 BY STATE ATTORNEY SRI.P.VIJAYARAGHAVAN BY GOVERNMENT PLEADER SRI.MOHAMMED SHAH R5 TO R7 BY ADV. SRI.N.MANOJ KUMAR SMT.JAYASREE MANOJ SMT.SREELA MENON THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2608-2013 , ALONG WITH WPC.NO. 2637 OF2013 THE COURT ON0310-2013 DELIVERED THE FOLLOWING: sts WP(C)NO.2636/2013 APPENDIX PETITIONER(S) EXHIBITS EXHIBIT P1: TRUE COPY OF THE CERTIFICATE OF PURCHASE ISSUED BY THE LAND TRIBUNAL, VENGARA IN SM2181978 DATED254.1978. EXHIBIT P2: TRUE COPY OF REGISTERED ASSIGNMENT DEED DATED2311.95. EXHIBIT P3: TRUE COPY OF THE

ORDER

IN C.R.P.NO.3266/1981 DATED152.1984. EXHIBIT P3(a): THE TRUE COPY OF THE

ORDER

OF THE TALUK LAND BOARD, KOZHIKODE IN TLB (K) 362/77 DATED291.1986. EXHIBIT P4: TRUE COPY OF THE COMPLAINT BEFORE THE2D RESPONDENT DATED091.2013. EXHIBIT P5: THE TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER DATED251.2013. EXHIBIT P6: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "DESHABHIMANI" DAILY DATED1001/2013 EXHIBIT P7: THE TRUE COPY FO THE NEWSPAPER REPORT PUBLISHED IN "MADHYAMAM" DAILY

DATED1201/2013 EXHIBIT P8: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "DESHABHIMANI" DAILY DATED1201/2013 EXHIBIT P9: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "MALAYALA MANORAMA" DAILY DATED1201/2013 EXHIBIT P10: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "MATHRUBHUMI" DAILY DATED1301/2013 EXHIBIT P11: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "DESHABHIMANI" DAILY DATED1401/2013 EXHIBIT P12: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "MADHYAMAM" DAILY DATED1501/2013 EXHIBIT P13: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "DESHABHIMANI" DAILY DATED1701/2013 EXHIBIT P14: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "DESHABHIMANI" DAILY DATED1901/2013 EXHIBIT P15: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "MALAYALA MANORAMA" DAILY DATED2101/2013 EXHIBIT P16: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "DESHABHIMANI" DAILY DATED2501/2013 EXHIBIT P17: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "MADHYAMAM" DAILY DATED2501/2013 EXHIBIT P18: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "MALAYALA MANORAMA" DAILY DATED2601/2013
sts 2/- -2- WP(C)NO.2636/2013 EXHIBIT P19: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "DESHABHIMANI" DAILY DATED0302/2013 EXHIBIT P20: THE TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "MALAYALA MANORAMA" DAILY DATED0302/2013 EXHIBIT P21: THE TRUE COPY OF THE RESOLUTION OF THE PERUVALLUR GRAMA PANCHAYATH DATED2301/2013 EXHIBIT P22 THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE LOCAL SUB INSPECTOR DATED0202/2013 RESPONDENTS' EXHIBITS : EXHIBIT R5(A): TRUE COPY OF THE

ORDER

DATED1803/2006 OF THE TALUK LAND BOARD THIRURANGADY EXHIBIT R5(B): TRUE COPY OF THE

JUDGMENT

DATED 12/07/2007 OF THIS HON'BLE COURT IN C.R.P.NO.601 OF 06 EXHIBIT R5(C): TRUE COPY OF THE LETTER RECEIVED FROM THE PUBLIC INFORMATION OFFICER AND VILLAGE OFFICER, PERUVALLUR DATED 05/02/2013 /TRUE COPY/ P.A.TO.JUDGE sts K.M.JOSEPH & K.RAMAKRISHNAN, JJ.

----- Writ Petition (C) Nos.2636 & 2637 of 2013 ----- Dated this, the 3rd day of October 2013 Judgment Ramakrishnan, J.

The petitioner in WP(C) No.2636/13 has approached this Court, seeking the following reliefs : a) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents 1 to 4 to give necessary and adequate police protection and assistance to the petitioner for keeping possession and peaceful enjoyment of 1.48.95 acres of land belonging to him in RS No.193/2 of Peruvallur amsom of Malappuram District without any obstruction from respondents 5 to 7 and their men. b) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 2nd respondent to take immediate and effective action on Exts.P4 and P5 complaints. WPC NOS.2636 & 2637/13 2

2. Following are the reliefs sought for by the petitioner in WP(C) No.2637/13: a) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents 1 to 4 to give necessary and adequate police protection and assistance to the petitioner for keeping possession and peaceful enjoyment of 2.86.5 acres of land belonging to him in RS No.193/2 of Peruvallur amsom of Malappuram District without any obstruction from respondents 4 to 6 and their men. b) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 2nd respondent to take immediate and effective action on Exts.P4 and P5 complaints.

3. Since the question to be decided and the reliefs claimed in both these cases are the same, they are being heard and disposed of by a common judgment. WPC NOS.2636 & 2637/13 3 WP(C) No.2636/13 4. The case of the petitioner in this Writ Petition is that he is a resident of Tirurangadi Taluk in Malappuram District and he is possession and enjoyment of 1.48.95 acres of land in RS No.193/2 of

Peruvallur Amsom, which he obtained as per Ext.P2 document dated 23.11.1995. The said property originally belonged to his father late Krishnan Namboothiri and this property along with other properties, was in the possession of a tenant by name Raman Namboothiri, who had fixity of tenure over the same and purchased the right of the landlord under Section 72 of the Kerala Land Reforms Act (hereinafter referred to as the Act) as per Ext.P1 purchase certificate issued in SM proceedings No.218/1978 dated 25.04.1978 and from the said Raman Namboothiri, the petitioner obtained the same, as per Ext.P2 document mentioned above. A ceiling case was initiated in respect of the properties belonging to the statutory family of late Krishnan Namboothiri, the father of WPC NOS.2636 & 2637/13 4 the petitioner as TLB(K) 362/77 on the file of the Land Board, Kozhikode. This property was included in the above ceiling case. The claim of tenancy of Raman Namboothiri was raised in that ceiling case. Though the claim was earlier not accepted by the Land Board, in the revision filed by the declarant as CRP No.3266/1981 against the order of the Land Board, this Court accepted the claim and directed deletion of that property from the account of the declarant as per Ext.P3 order. After remand from this Court, the Land Board found that the family does not have properties more than the ceiling limit and accordingly, the ceiling proceedings were dropped as per Ext.P3(a) order of the Land Board. The property is not an excess land and the same has been excluded from the ceiling case of the father of the petitioner, and the petitioner had purchased the same from the tenant. The Government has no right over the same. In connection with the agitation organised by the Communist Party of India (Marxist) and the Kerala State WPC NOS.2636 & 2637/13 5 Karshaka Thozhilali Union, to take possession of the excess land unauthorisedly in occupation of land holders on 11.01.2003, some persons under the leadership of respondents 5 to 7 came to the property of the petitioner and started constructing sheds. The petitioner told them that he is not in unauthorised occupation, but they did not heed to the same. Knowing about the proposed agitation, the petitioner filed Ext.P4 complaint on 9.1.2013 before the second respondent seeking protection, but respondents 2 to 4 did not take any action on that complaint. While that complaint was pending, the persons who unauthorisedly trespassed into the property under the leadership of respondents 5 to 7 who are the local leaders of Communist Party of India (Marxist) and the

Kerala State Karshaka Thozhilali Union, put up temporary sheds and started occupying the same. When the petitioner approached them and requested them to refrain from doing the illegal acts, they said that they will demolish the sheds constructed WPC NOS.2636 & 2637/13 6 within four or five days since their plan is to call off the agitation after a few days. Though the petitioner approached respondents 2 to 4 to give protection to his property, they also advised him not to take any further steps in the matter because the sheds will be demolished within four or five days. On 16.1.2013, the agitation was called off. The sheds put up all over Kerala by the agitators were demolished and the agitators vacated the premises. Since respondents 5 to 7 and their men remained in the property even after 16.1.10213, the petitioner approached respondents 2 to 4 to take immediate action to remove the encroachment, but they told that they can take necessary action after the State School Youth Festival was over, which was going on at Malappuram and at that time, there was no sufficient police force available in the police station for removing the encroachment and he was asked to wait till 20.1.2013 on which date, the Youth Festival will be over. Since even after that, no action was taken by the police WPC NOS.2636 & 2637/13 7 authorities, he filed Ext.P5 complaint on 25.1.2013. But the respondents 2 to 4 have not taken any action to remove the encroachment. Respondents 5 to 7 and their men have no manner of right to remain in the property. The act of respondents 5 to 7 and their men is against law. So, the petitioner has no other remedy except to approach this Court, seeking the reliefs claimed in the petition. WP(C) No.2637/13 5. The petitioner in this Writ Petition is a resident of Naderi Amsom in Koyilandy Taluk of Kozhikode District and he is in possession and enjoyment of 2.86.5 acres of land in RS No.193/2 of Peruvallur amsom in Tirurangadi Taluk of Malappuram District, which he obtained as per Ext.P2 assignment deed dated 21.8.1984. The said property along with other properties, originally belonged to late Krishnan Namboothiri, the father of wife of the petitioner late Parvathi Antharjanam. This property was in the possession of a tenant by name E.P.Narayanan WPC NOS.2636 & 2637/13 8 Namboothiri, who had fixity of tenure over the same and he purchased the right of the landlord under Section 72 of the Act as per Ext.P1 purchase certificate issued as per orders in SM Proceedings No.219/1978 dated 09.11.1978 of the Land Tribunal, Vengara and it is from the said Narayanan

Namboothiri, that the petitioner had purchased this property. Ceiling case was initiated against the properties belonging to the statutory family of late Krishnan Namboothiri, the father-in-law of the petitioner as CR No.522/73 in favour of the Taluk Land Board, Tirurangadi, and a portion of the property in RS No.193/2 of Peruvallur amsom was included in the above ceiling case. The above said survey number has got larger extent of properties. The said ceiling case is now pending consideration of the Taluk Land Board. Originally, there was an order in ceiling case on 18.3.2006, which was challenged by the declarant by filing CRP No.601/06 before this Court and this Court allowed the revision petition and set aside the order of the WPC NOS.2636 & 2637/13 9 Taluk Land Board and remanded the case for fresh adjudication by the Taluk Land Board. By the original order, the family was directed to surrender 218.52 acres of land as surplus land. After remand, the Land Board allowed the applications filed by certain claimants under Section 85(8) of the Act and the area for surrender was reduced to 155.9 acres. With respect to the claims raised in respect of those properties, the case is still pending before the Taluk Land Board and the Taluk Land Board has not taken any final decision on the same. True copy of the order of the Land Board, Tirurangadi in CRP No.522/1973 is produced as Ext.P3 in the Writ Petition. The petitioner is not included in the ceiling case. This portion of the property is not included in the ceiling case as well. Apart from the survey number, no other identification with respect to the property is given in the draft statement prepared by the authorities in the ceiling case. Even assuming that the said land is included in the ceiling case, no final order has been passed in the WPC NOS.2636 & 2637/13 10 ceiling case for surrender of the above said land. Under Section 86 of the Act, only when a final order is passed by the Taluk Land Board and only after Government takes possession of the land so directed to be surrendered, the declarant loses title over the same and the property vests in the Government. Till then, it cannot be said that it has become a Government land. Even if it is found that the family of the declarant has got more property than the ceiling area, the option to determine the identity of the land to be surrendered is with the declarant. In the case of the petitioner also, on the basis of the agitation organized by the Communist Party of India (Marxist) and the Kerala State Karshaka Thozhilali Union, certain persons under the leadership of respondents 4 to 6 trespassed into

the property and put up some temporary sheds. Though the petitioner approached the respondents 4 to 6 and the persons acting under them and wanted them to remove the sheds as he is not holding excess land, they did not heed WPC NOS.2636 & 2637/13 11 to the same. Though he filed Ext.P4 complaint on 9.1.2013, regarding the proposed agitation, the police did not take any action. When the petitioner approached respondents 4 to 6, they told that they will be removing the sheds within four or five days as by the time the agitation will be called off. Though the agitation was called off on 16.1.2013, the persons who illegally trespassed into the property and put temporary sheds did not vacate the premises, the petitioner approached the police authorities, and they told him that there was no sufficient police force available in the police station and advised him to wait till the School Youth Festival was over. But, even after the festival was over, they did not take any action and so he filed Ext.P5 complaint before the second respondent on 25.1.2013, but, no action was taken by them. Respondents 4 to 6 and their men have no right over the property. It is not possible for the petitioner to remove them without the assistance of police as it is an organized act done by respondents 4 to 6 and their men. WPC NOS.2636 & 2637/13 12 He has no other efficacious and alternate remedy to redress his grievance except to approach this Court for the reliefs claimed. Hence the Writ Petition.

6. Respondents 5 to 7 in WP(C) No.2636/13 have filed a counter affidavit through the 7th respondent, contending that the writ petition is not maintainable. The allegation that the petitioner is in possession and enjoyment of 1.48.95 acres of land in RS No.193/2 of Peruvallur amsom of Malappuram District, is not correct. The land covered by Ext.P1 in that case originally belonged to late Karikuni Edamana Krishnan Namboothiri, the grandfather of the petitioner in that case. He was having more than 250 acres of land comprised in 5 villages in Malappuram and Kozhikode Districts. It is understood that the petitioner's father claims to be the owner of the property by virtue of a partition deed said to have been executed in the year 1961. A ceiling case was initiated against the said Narikuni Edamana Krishnan Namboothiri as CR No.522/73 WPC NOS.2636 & 2637/13 13 on the file of the Taluk Land Board, Tirur. In fact, the said Krishnan Namboothiri had filed a return before the State Land Board, Thiruvananthapuram, which was forwarded to the Taluk Land Board, Tirurangadi for further action. In the return, the declarant

Krishnan Namboothiri had suppressed the actual extent of land in his possession. Complaints were filed before the Taluk Land Board regarding the same, stating that the entire land for which the declarant's family is having right has not been included in the draft statement. Enquiries were conducted into the complaint and after obtaining the report from the authorities, a revised draft statement was issued, according to which it was found that the family was in possession of 259.52 acres of land and the land proposed to be surrendered was provisionally fixed as 243.33 acres. After hearing the objections of the declarant and others, the Taluk Land Board, Tirurangadi, by Ext.R5(a) order, directed the declarant's family to surrender 218.52 acres of land showing the details of land accounted WPC NOS.2636 & 2637/13 14 in the declarant's account as Part A and property to be surrendered as Part B in Ext.R5(a) order. The allegation that the declarant challenged the above order by filing CRP No.601/06 is not correct. In fact, one Mohanan Namboothiri had challenged the order by filing CRP No.601/06 before this Court and this Court by Judgment dated 12.7.2007 set aside the order of the Land Board, holding that the revision petitioner was not heard before passing the order and remanded the matter for fresh disposal within six months. Copy of the said Judgment is produced as Ext.R5(b). It has not been complied with by the Land Board, Tirurangadi, so far. Initially, they had passed an interim order on 2.4.2009, deleting 10.9562 acres of land from the account of the declarant and the balance extent to be surrendered was fixed as 207.5638 acres. Thereafter, 8 more interim orders were passed on 3.7.2012 wherein it was found that the land to be surrendered by the declarant is 155.93594 acres. Even WPC NOS.2636 & 2637/13 15 though both the petitioners' grandfather as well as the father had excess land, they had not surrendered the same. The petitioners' family members have illegally sold several extent of land which has been vested with the Government by virtue of the provisions of the Act. None of them are having actual title to the said properties and even tax is not accepted in respect of those properties. From the land comprised in RS No.193/2, which has been included in the declarant's return, 18 cents of land was sold to one U.Subramanian, 10.5 cents to Edaparuthy Vishwan, 10.5 cents to Edapuruthy Subramanian, 9.5 cents to Melekodassery Sulekha and 20 cents to P.C.Abdul Gafoor. From the land comprised in RS No.186/5 which is also included in the declarant's return, 26

cents of land was sold to Mammathu, 10 cents to P.Haridasan, 25.6 cents to P.Unnikrishnan, 1.64 cents to Vasanthakumari, 0.88 cents to Poothaparamban Peralla and 14.10 cents to Poothaparamban Subramanian. From the land comprised WPC NOS.2636 & 2637/13 16 in RS No.197/1 which is also included in the declarant's returns, land has been sold to Assainar Haji. Similarly, large extent of land has been sold to several other people as well. Purchase certificates were obtained in the names of persons set up by the family members as cultivating tenants and assignments were made in favour of the family members through the power of attorney holder executed by the said tenants. It will be seen from Ext.P2 produced in WP(C)No.2636/13 that the property obtained by the petitioner is part of 8.10 acres of land comprised in RS No.193/2 of Peruvallur amsom and as per Ext.R5(a), an extent of 2.87 acres of land in that survey number was found to be excess and liable to be surrendered by the declarant. There is a trend in the recent years that large extent of agricultural land including wet land and water bodies are purchased beyond the ceiling limits described in the Act by big business groups and real estate rackets with an intention to convert the same for non-agricultural WPC NOS.2636 & 2637/13 17 purposes. Large scale conversion of wet land for constructing multi-storeyed buildings has resulted in serious environmental disasters including water level receding and acute drought even in monsoon season. Large extent of land surrendered and vested in the Government under the Act were not distributed to the landless people as envisaged under the Act. In the above backdrop, the Kerala Karshaka Sanghom, Kerala State Karshaka Thozhilali Union, Pattikajathi Kshema Samithi and the Adivasi Kshema Samiti had called for a State-wide agitation of landless agricultural workers and other landless poor in Kerala to distribute the land to landless people which was surrendered by persons in possession of excess land as per the provisions of the Act and against the inaction of the Government in not distributing the same. The agitation was intended demanding the Government to implement the Land Reforms Act in its letter and spirit. As part of the agitation, land vested in the Government in RS WPC NOS.2636 & 2637/13 18 No.193/2 and 193/4 of Peruvallur amsom was seized by landless people of the area who applied to the Government for assignment of land. About 250 families have constructed houses in the excess land belonging to the Government. There are several houses and huts in the said

property which were constructed even prior to the agitation mentioned above. The petitioner is not the owner of the property as it is vested in the Government and the respondents are not local leaders of any Party or Unions, who called for the State-wide agitation. These persons and their men have not constructed any shed in the property. The sheds constructed are not in the property covered by the documents claimed by the petitioner, but in the excess land, in those survey numbers vested in the Government. The petitioner is not entitled to claim any relief. They prayed for dismissal of the petition.

7. Respondents 4, 5 and 6 in WP(C)No.2637/13 have also filed a counter affidavit, raising more or less WPC NOS.2636 & 2637/13 19 similar contentions as those raised by the party respondents in WP(C) No.2636/13. They contended that the petitioners have no right over the property in question and they are not entitled to claim any relief as well. They have also produced Ext.R5(c) in that case which they obtained under the provisions of the Right to Information Act from the Public Information Officer and the Village Officer, stating that this property is included in the ceiling proceeding case and no tax has been paid in respect of the property. They have also submitted that the petitioner is not entitled to claim any right over the property, which is vested in the Government and so he is not entitled to get any of the reliefs claimed in the petition and prayed for dismissal of the petition.

8. In WP(C) No.2636/13, the petitioner has filed a reply affidavit, stating that the property involved in this petition has nothing to do with CR No.522/73 on the file of the Taluk Land Board, Tirurangadi and that case was WPC NOS.2636 & 2637/13 20 initiated with respect to the properties belonging to late N.V.Valiya Krishnan Namboothiri, the grandfather of the petitioner. This property did not belong to him, but it belonged to late Cheriya Krishnan Namboothiri, the father of the petitioner. The ceiling case initiated with respect to the properties belonging to him was numbered as TLB (K) 362/77 of the Taluk Land Board, Koyilandi as he was having properties in Tirurangadi Taluk and also in Koyilandi Taluk and this property was included in the ceiling case and the same was excluded from the ceiling account on the ground that this property is in the possession of the tenant and ultimately, the ceiling case was dropped finding that the family had no properties more than the ceiling limit. The allegation that the members of the family of late Valiya

Krishnan Namboothiri had effected illegal transactions with respect to their property is not correct. The property involved in this Writ Petition exclusively belongs to him and respondents 5 to 7 have no right in the property. The WPC NOS.2636 & 2637/13 21 petitioner has also produced Exts.P6 to P20 newspaper reports regarding the agitation called by the Kerala Karshaka Thozhilali Union and other political parties and Ext.P21 is the resolution of Peruvallur Grama Panchayat, stating that the illegal trespass into the property has to be removed and the District Administration and Government must take steps for that purpose and whenever excess land is surrendered by the declarants in the land ceiling cases and it is taken over by the Government, steps will be taken by the Government to distribute the land to the landless people and this resolution was passed unanimously by the panchayat. Ext.P22 is a representation submitted by the petitioner before the 4th respondent for police protection and he reiterated his claim made in the writ petition and sought for the reliefs claimed herein.

9. The petitioner in WP(C) No.2636/13 has also filed IA No.2336/13 for impleading the Superintendent of Police, Malappuram as the Additional 8th respondent and WPC NOS.2636 & 2637/13 22 the same was allowed as per order dated 12.3.2013 and the learned Government Pleader has taken notice for the said respondent as well.

10. In WP(C) No.2637/13, the petitioner has filed a reply affidavit, denying the allegations in the counter affidavit. He admitted that a ceiling case was initiated in respect of the properties belonging to late N.E.Krishnan Namboothiri and his statutory family as on 01.01.1970 and that was initially pending before the Taluk Land Board, Tirur. When Taluk Land Board, Tirurangadi Taluk was formed, proceedings were transferred to the Taluk Land Board, Tirurangadi for disposal. The declarant was under the honest impression that he will get notice from the Taluk Land Board, Tirur when the case was posted for hearing. But, the Taluk Land Board, Tirurangadi disposed of the ceiling case without issuing personal notice to the declarant and the notice was published only on the notice board of the office of the Taluk Land Board. So, the declarant could WPC NOS.2636 & 2637/13 23 not appear before the Taluk Land Board when the case was taken up. The Taluk Land Board disposed of the case after going through the records

available in the case file. It was under that circumstances that Ext.R5(a) produced by the party respondents was passed. There are various other orders passed by the Taluk Land Board in the same manner. All these orders were challenged before this Court and the same was set aside by this Court, which directed the Taluk Land Board to reconsider the matter afresh, as per Ext.R5(b) judgment. The allegation that it was a stranger who challenged Ext.R5(b) order, is not correct. By the time the said revision was filed, the declarant was no more and Mohanan Namboothiri, who is one of the sons of the declarant, filed a revision petition. He is also known as Purushothaman Namboothiri. In fact, the name originally given to him soon after his birth was Purushothaman Namboothiri and in certain records, his name is shown as Purushothaman Namboothiri, but, from childhood onwards, WPC NOS.2636 & 2637/13 24 he was known as Mohanan Namboothiri and in some records, his name is shown as Mohanan Namboothiri also.

11. Ext.P6 is the draft statement in CR No.522/73 issued during February 1988. Ext.P7 is the ration card issued to the family of Krishnan Namboothiri to show that Mohanan Namboothiri who filed the above revision is none other than the son of the declarant Krishnan Namboothiri and it was in the capacity as a member of the statutory family that he filed the said revision. The allegation that the declarant suppressed material facts from the Taluk Land Board is not correct. All the properties over which the family had jenm right were shown in the draft statement on the basis of revenue records. Many of those properties were in the possession of tenants and many other properties were put in possession of strangers long before the commencement of the Land Reforms Act. Detailed objections were filed in the ceiling case by the declarant. After remand, the matter is WPC NOS.2636 & 2637/13 25 still pending consideration of the Taluk Land Board and no final order was passed by the Taluk Land Board. Many of the claimants filed claim petitions under Section 85(8) of the Act before the Taluk Land Board praying that their property may be excluded from the ceiling case. Those petitions were disposed of by the Taluk Land Board and those orders were described as interim orders in the counter affidavit. It is not correct to say that the Taluk Land Board has finally decided that the family has to surrender 155 acres of land. The objections raised by the declarant and the claims put forward by many of the claimants are still to be considered by the Taluk Land Board. The validity of the alleged transfers are to be

enquired into and decided by the Taluk Land Board. The allegation that the family of the declarant has put up several persons, styling them as tenants of the properties, is not correct. Ext.P1 purchase certificate was issued by the Land Tribunal after conducting necessary enquiries under the Statute. The WPC NOS.2636 & 2637/13 26 allegation that the property covered by the certificate of purchase is shown as excess land in the draft statement is also not true. Respondents 4 to 6 are not persons entitled to reside in the guise of excess land to be surrendered by the family of the declarant and questioning the validity of the transactions made by the declarant. In almost all places, where agitations were conducted under the auspices of the Kerala State Karshaka Thozhilali Union, and the Communist Party of India (Marxist), persons who trespassed into the property vacated the property. Only in Peruvallur, they are still in the property. Ext.R5(c) has no significance and 2.87 acres of land included in Ext.R5(a) draft statement belongs the petitioner and the declarant in the family has no right in the property. He was not permitted to pay basic tax of the property only because of the pendency of the ceiling case. Respondents 4 to 6 or their men have no right to remain in the property. So, they prayed for allowing the petition. WPC NOS.2636 & 2637/13 27 12. The petitioner in W.P.(C) No.2637/2013 filed I.A. No. 2335/2013 to implead additional respondents 7 and 8, the same is allowed and Senior Government Pleader appeared on their behalf as well.

13. When the identity of the property was disputed by the contesting respondents and according them, they have put up the sheds in Government lands and not in the land claimed by the petitioners in both the cases, this Court had directed the Additional Tahsildar, Tirurangadi to measure the property claimed by the petitioners and find out whether any sheds put up by the encroachers are situated in the properties claimed by the petitioners and submit a report before this Court and the Additional Tahsildar submitted a report which was produced by the learned Government Pleader along with a memo dated 4.4.2013 along with a sketch prepared by the Additional Tahsildar, identifying the properties claimed by the petitioners in both these cases. WPC NOS.2636 & 2637/13 28 14. We heard Sri.T.Krishnanunni, the learned senior counsel for the petitioners in both the cases, Sri.Manojkumar, learned counsel for the party respondents and Sri.Muhammed Shah, learned Senior Government Pleader appearing for the State and other

functionaries functioning under the first respondent and also perused the records.

15. The learned counsel for the petitioners in both the cases submitted that the contesting party respondents have no manner of right over the property and they are not claiming any right as well. Admittedly, the property originally belong to the declarant in the ceiling case and as far as the property claimed by the petitioner in WP(C) No.2636/13 is concerned, the Taluk Land Board, Koyilandy found that the family had no excess land and dropped further proceedings. As regards the petitioner in WP(C) No.2637/13 is concerned, the ceiling case is still pending and earlier, the Taluk Land Board, Tirurangadi WPC NOS.2636 & 2637/13 29 without giving notice to interested parties, including the declarant, passed Ext.R5(a) impugned order and that was questioned by Mohanan Namboothiri, the son of the declarant and this Court by Ext.R5(b) order, set aside the same and remanded the matter to the Taluk Land Board Tirurangadi for fresh consideration. It is seen from the reports submitted by the learned Government Pleader that the Taluk Land Board passed an order directing the declarant to surrender 135 acres of land including 2.208 acres of land now claimed by both the petitioners in Survey NO.193/2 of Peruvallur Village and the same has been questioned by the declarant before this Court and this Court has stayed the proceedings of the Taluk Land Board, Tirurangadi. There is no dispute that the properties were in the possession of the petitioners in both the cases. Even assuming that the properties are included in the ceiling proceedings, that alone is not sufficient to come to the conclusion that the petitioners have lost their right in the WPC NOS.2636 & 2637/13 30 property. Further, till they are evicted from the property by the Government under the provisions of the Land Reforms Act, they are entitled to be in possession of the property as owners of the property and that cannot be questioned by the party respondents, who have no manner of right in the property in an organised manner. Under such circumstances, the petitioners have no other remedy except to approach this Court for removing the encroachment and granting protection to the petitioners to enjoy the property and so, he prayed for allowing the petition.

16. On the other hand, the learned counsel for the party respondents argued that the question regarding identity of the property, title to the property etc., cannot be

considered by this Court in the proceedings under Article 226 of the Constitution of India and the petitioners will have to be relegated to approach the civil court for getting their grievances redressed. Further, the report of the Additional WPC NOS.2636 & 2637/13 31 Tahsildar will go to show that the property on the basis of the documents produced by the petitioners cannot be identified and he had identified the property in a rough manner and it is not final. Further, the persons in possession of the property are landless persons and the petitioners have no manner of right in the property as the Taluk Land Board has already found that it is an excess land which is liable to be surrendered. So, according to him, this Court cannot invoke the power under Article 226 of the Constitution of India for this purpose. So, he prayed for dismissal of the petitions.

17. Learned Senior Government Pleader argued that the properties were not taken possession of by the Government so far and at the time of encroachment, the petitioners were in possession of the property. Though these properties were included in the ceiling case of the declarants, who are the predecessors of the petitioners in both the cases and the party respondents have no manner WPC NOS.2636 & 2637/13 32 of right and the persons, who encroached into the property and put up temporary sheds are also not having any right in the property.

18. Before going into the facts of the case, we may consider the legal aspects as to when police protection can be given, though in a case where civil right to property is involved. In the decision reported in *Harrisons Malayalam Ltd. v. State of Kerala* (2007 (4) KLT540, it has been held that "Forming organisation for the upliftment of the downtrodden and holding demonstration and public meetings are protected by the fundamental rights under Article 19(1) (a), (b) and (c) of the Constitution of India. Those Sub-Articles guarantee freedom of speech and expression, right to assemble peacefully without any fear and the right to form association or unions. But they cannot take law into their hands. Of course, modern jurists recognise the right to disobey the laws, which they think, are unjust and WPC NOS.2636 & 2637/13 33 unconstitutional. The right to take the said risk and the discretion to disobey law are recognised and referred to, in all modern books on jurisprudence. But, if a person disobeys the law, whatever be the motivation for the same, the law must take its own course". In the same decision, it

has been held that "police have a duty in the light of the provisions of the Code of Criminal Procedure and the Kerala Police Act, to maintain law and order and avert breach of peace. Threat to lives of citizens has also to be averted. If a large group of persons having no semblance of right over the property encroaches into it and commits mischief, the owner is entitled to get the help of the police to protect his property. In such circumstances, the filing of a civil suit is not an efficacious remedy. So, when the police are under such a duty and it is shown that they have failed to perform their duty in this regard, then normally, a writ in the nature of mandamus will be issued by the court". In the same decision, it has been further observed that WPC NOS.2636 & 2637/13 34 "The police are not supposed to yield to the pressure of the masses and abandon their duty to maintain law and order. Normally, courts should not explain the duty of police and leave it to the police to act on their own. But, in extreme cases, where there is palpable failure of duty from the part of the police, courts can and must step in and issue positive directions. Police should be given the freedom to decide how to act and when to act to discharge their duty. The District Magistrate has also got a duty in this regard, in the light of the relevant provisions in the Criminal Procedure Code and the Kerala Police Act. It is one of the primary duties of the Government to maintain law and order and protect the life and property of its citizens. It shall not appear that it is turning a blind eye towards lawlessness. Courts should not interfere with the operational freedom of the police". This court relied on the decisions reported in *Sanjay Sitaram Khemka v. State of Maharashtra* (2006) 5 SCC255, *Shahul Hameed v. WPC NOS.2636 & 2637/13* 35 *Narayana Pillai* (2000 (3) KLT536, *Midland Rubber & Produce Co. Ltd. v. Superintendent of Police* (1998 (2) KLT365, *Raghavan v. Superintendent of Police* (1998 (2) KLT732F.B) and *Vineet Narain v. Union of India* (1998) 1 SCC226 for coming to such a conclusion.

19. The same view has been followed by this court in the subsequent decision reported in *Sreyams Kumar M.V. v. State of Kerala* (ILR2010(2) Kerala 845) in which one of us was a party, in delivering the decision. In the said decision also, it has been held that if a person has been in possession of the land for a long period of time and that the question as to right, title and interest of such person is pending consideration before a Civil Court and when the encroachers have no vestige of right over the properties encroached upon, under the guise of operational freedom,

police cannot remain inactive, which would only perpetuate lawlessness and in both these decisions, directions had been given to the police to remove WPC NOS.2636 & 2637/13 36 encroachers in accordance with law. With these principles in mind, the cases on hand have to be considered.

20. It is clear from the dictum laid down in the above decisions that even if a civil remedy is available to a party in respect of property right, if the Court feels that driving the party to a civil court against an organised act will be ineffective, then, this Court has got the power under Article 226 of the Constitution of India to grant necessary police protection to protect the property of such affected person.

21. It may be mentioned here that the police has a duty not only to maintain law and order, but also to prevent law and order being violated. That can be possible, only if they act diligently before the disruption of law and order and the same is attempted to be disrupted by any person/(s).

22. In this case, it is seen from the allegations in the petitions that even when the so-called political party and other sister organisations, who are claiming to be WPC NOS.2636 & 2637/13 37 interested in the welfare of landless people announced an agitation by name so as to encroach into the property of others, who, according to them, were in unauthorised possession of excess land, which, the Government ought to have taken possession of and distributed to the landless, was published in the newspapers and announced trespass into those lands and distributing the same to the landless, in the notices of such agitations, the petitioners have filed complaints before the police to give protection to their property against the proposed illegal action of the above said political party and this was done, anticipating such acts, from these agitators. If police was diligent enough at that time itself, they could have avoided the illegal trespass into those lands and illegal occupation in those lands even after the strike was called off by the petitioners, who announced the strike. Further, it is also not advisable for WPC NOS.2636 & 2637/13 38 the political parties to take law into their own hands and implement the provisions of the statute by themselves instead of implementing the same through known process of law. Political parties, when they are out of power, easily blame the Government in power, for not implementing such schemes and

conduct agitations and do illegal acts by instigating innocent people, who involve in such illegal activities even when they were not powerless to reach relief when they were in power. That should not be encouraged as well. It is in this area that the police has got their duty to perform. They are not expected to budge for the illegal activities of the political parties, whatever be their colour and they should be strong enough to prevent such illegal activities at any cost. If such a strong action is taken by the police, no doubt, with the support of the Government, the safety of the life of the people and their right to enjoy their property in a peaceful manner can be protected. The inaction on the part of the police in not initiating appropriate WPC NOS.2636 & 2637/13 39 legal action when they received petitions from the petitioners had unfortunately driven them to this Court to remove the unlawful encroachment made by the illegal intruders under the guise of called by the political party out of power.

23. In both these cases, it is an admitted fact that the property in dispute is part of the property originally belonging to the declarant, who is the father of the petitioner in WP(C)No.2636/13 and the father-in-law of the petitioner in WP(C)No.2367/13 and both of them claimed that the property obtained by them were in the possession of tenants under the declarant and he had obtained purchase certificate from the land tribunal and they were in possession and enjoyment of the same and from that tenant, they had obtained the property for valid consideration as per Ext.P2 assignment deeds in both the cases. Ext.P1 in both the cases are the purchase certificates issued by the Land Tribunal in favour of the WPC NOS.2636 & 2637/13 40 immediate predecessors-in-interest of the petitioners respectively. It is also admitted by the learned Senior Government Pleader that the property in dispute has not been taken over by the Government as the ceiling proceedings are not completed. So, as far as from the point of view of the Government is concerned, the property has not been taken possession of and the dispute is pending before court in respect of the extent of land be surrendered by the declarant.

24. It is true that under Section 86 of the Kerala Land Reforms Act, once the excess land has been declared by the Land Board, the title in respect of that property will vest in the Government. But, at the same time, till the property is

taken over by the Government, the declarant is entitled to be in possession of the property and enjoy the same. It is true that the Kerala Land Reforms Act and the ceiling provisions under the Act are intended to take excess land from the possession of persons who are WPC NOS.2636 & 2637/13 41 holding land in excess of the ceiling limit and distribute the same to the landless by assessment as provided under the Act. Till such an assignment has been made, the persons who claim to be landless, will not get any right in that property.

25. In this case, it is clear from the averments in the counter statements of the party respondents that they have not been allotted any land by the Government under the provisions of the Kerala Land Reforms Act, but on the basis of the agitation called by the Kerala Karshaka Thozhilali Union and the Communist Party of India (Marxist), to pressurise the Government to implement the provisions of the Land Reforms Act and assign lands to the landless in order to implement the provisions of the Land Reforms Act in its letter and spirit, some of them have trespassed into the property and put up some temporary sheds. It is also, in a way, admitted that certain persons, who had so trespassed and put up temporary sheds, are WPC NOS.2636 & 2637/13 42 still in the property claimed by the petitioners. It is also in a way admitted that the agitation called by the above said union and political party was called off and encroachments made in certain parts of the State were removed by themselves. But, even after calling off the agitation, the persons, who trespassed into the properties claimed by the petitioners did not remove themselves from the property and they are still retaining possession of the property. It is also seen from the documents produced by the petitioners that in spite of representations made by the petitioners before the police authorities, they did not take any action to remove the encroachments and that prompted the petitioners to move this Court for police protection to remove the encroachers and protect the enjoyment of the property claimed by the petitioners.

26. The learned counsel for the party respondents would submit that there is nearly 8 acres of land in Survey No.193/2 of that village and the petitioners WPC NOS.2636 & 2637/13 43 are claiming only lesser extent, than the land available in that survey number and as such, without identifying the property, it is not possible to order police protection. He also indirectly contended that none of the

encroachers are in possession of the property claimed by the petitioners. So, in order to ascertain the same, this Court, in the exceptional circumstances in this case, directed the Additional Tahsildar, Tirurangadi to inspect and identify the property claimed by the petitioners and find out whether there are any sheds still in existence in the property claimed by the petitioners. Accordingly, the Additional Tahsildar, Tirurangadi submitted a report dated 25.3.2013 through the learned Government Pleader. He has identified the property claimed by the petitioner in WP(C) No.2636/13 as the property shaded in red colour and the property claimed by the petitioner in WP(C) No.2637/13 as the portion shaded in yellow colour and both these properties are in Survey No.193/2 and there are 35 temporary sheds covered with plastic materials, in the property claimed by WPC NOS.2636 & 2637/13 44 the petitioner in WP(C) No.2636/13 and 90 such sheds in the property claimed by the petitioner in WP(C) No.2637/13.

27. It is clear from the above that the persons who are in possession of the property have no right in the property and their possession is nothing but unauthorised and they are mere trespassers and they are not entitled to be in possession of the property intruding into the right of enjoyment of the property owner. In this case, admittedly, the petitioners are claiming right from the tenants, who had obtained purchase certificate through the Land Tribunal, whose right they have purchased as per an assignment deed, namely, Ext.P2 in both the Writ Petitions. It is also mentioned in the Writ Petition itself that since the land ceiling cases were pending, mutation could not be effected and land tax could not be paid and this fact was not disputed by the learned Senior Government Pleader as well. The fact that they are in possession of the property WPC NOS.2636 & 2637/13 45 and the property has not been taken possession of on the basis of the orders of the Taluk Land Board under the provisions of the Land Reforms Act, has been admitted by the learned Senior Government Pleader. The contesting party respondents in both the cases also have no case that the properties claimed by the petitioners have been taken over by the Government as excess land ordered to be surrendered by the declarants in both the cases. Further, in the case of Jithesh, the petitioner in WP(C) No.2636/13, he has produced documents to show that the declarant in that case, who is none other than his father, was exempted from surrendering any property and the land ceiling case initiated against him has

been dropped. But, according to the learned counsel for the party respondents, this land was also included in the land ceiling case pending before the Taluk Land Board, Tirurangadi initiated against the grandfather of the petitioner in the writ petition mentioned above. WPC NOS.2636 & 2637/13 46 28. Though the party respondents have a case that the document of title relied on by the petitioners in both the cases are sham documents and no title or possession has passed to these persons on the basis of the documents claimed by them and in fact, the declarant himself was in possession of the property under the colour of some sham and benami transactions, this is a matter to be considered by the Taluk Land Board and not by this Court, under Article 226 of the Constitution of India. Till that right is decided, the parties claiming right on the basis of the documents are entitled to be in possession of the property and that possession cannot be disturbed by an unlawful act of persons belonging to an organised group and disturb their possession, who have no right to be in possession of the same. If such an attitude is encouraged and allowed to prevail, then, it will affect the law and order situation and it will only perpetuate lawlessness in the society and that cannot be encouraged. Under such WPC NOS.2636 & 2637/13 47 circumstances, we feel that the unauthorised act of persons under the leadership of the party respondents, keeping possession of the property cannot be allowed to be continued and the same has to be removed so as to enable the petitioners to enjoy their properties till they are evicted by the Government under due process of law, if the property claimed by them was found to be excess land to be surrendered by the declarant in the ceiling cases.

29. The counsel for the party respondents relied on the decision reported in *Muralidharan. v. Swami Dharmananda Theertha Padar* (2006(2) KLT119SC) and *Moran Mar Baselios Marthoma Mathews II v. State of Kerala* (2007(3) KLT349(SC)), wherein it has been held that in a case where there is dispute regarding the right claimed by the parties, inter se and that has to be decided by the court under the general law, then, this court cannot invoke Article 226 of the Constitution and provide police protection in respect of such matters. But, in all those WPC NOS.2636 & 2637/13 48 cases, there was dispute between inter se parties and they claimed rival interest and right in the subject matter, which cannot be decided by the High Court in writ proceedings and that has to be decided on

the evidence and documents. But, that was not the case in hand. The party respondents in both the cases did not lay any claim in the property in dispute and admittedly, they have no right to possess the property as well. Their claim is only that they are entitled to get the properties allotted by the Government as excess land taken from persons who are holding land in excess of the ceiling area as provided under the Kerala Land Reforms Act. So, they cannot take law into their own hands and claim that they are entitled to be in possession without any legal right intruding into the right of others, which, they obtained by using political force in an illegal manner.

30. The same view has been reiterated in the decision reported in Thomas and another v. Karunakaran WPC NOS.2636 & 2637/13 49 Nair (ILR20103) Kerala 288) (this decision was rendered by a Bench, consisting of one among us).

31. In the decision reported in Muhammed Basheer v. State of Kerala (2002(1) KLT SN4(Case No.4), this Court has held that purchase certificate issued under Section 72K of the Kerala Land Reforms Act, is attributed with statutorily conclusiveness as regards title and possession. Such a certificate is conclusive proof of possession as well. Unless that certificate is set aside by a competent authority or by a court of law, the statutory conclusiveness in terms of Section 72K(2) has to be honoured and a person claiming on the basis of such certificate has to be taken as in possession of the properties. It is true that in the reply affidavit, they have not specifically denied the allegation in the counter affidavit that they are not in possession of the property. However, considering the circumstances mentioned above and also relying on the decision reported in Muhammed Basheer's WPC NOS.2636 & 2637/13 50 case (supra), that is not of much consequence as they can be deemed to be in possession of the property.

32. In this case also, both the petitioners are relying on the purchase certificates issued in favour of their predecessors-in-interest, whose right they have purchased by way of assignment deeds. So, they will have to be deemed to in possession of the property, unless that right is disturbed in the process known to law. So, the submission made by the counsel for the party respondents that this Court has no jurisdiction to entertain such disputes in the facts and circumstances of the case,

cannot be accepted and that is not sustainable as well. We may not be justified in acting on the basis suggested by the respondents that the documents are sham documents.

33. It is seen from documents produced by the petitioners that they had approached the police authorities and they did not act. The police is expected to prevent unlawful activities being done by persons encroaching into WPC NOS.2636 & 2637/13 51 the properties over which they have no right, under the cover of an organised act and when such a duty cast on them under law, if it is not exercised by them, then, this court has got a duty to issue commands to such authorities to do their duty in accordance with law and protect the interest of persons, who are affected by the unlawful activities of the persons, who have no right in the property. Under such circumstances and also considering the facts of the case, we feel that the situation as envisaged in Harrison Malayalam's case and Sreyams Kumar's case cited (supra) is available to the facts of the cases on hand as well and same directions have to be given to the authorities to protect the life and enjoyment of the property claimed by the petitioners in both the cases, till they are evicted from the property under due process of law. Accordingly, the Writ Petitions are allowed subject to the following directions: WPC NOS.2636 & 2637/13 52 34. Respondents 2 to 4 and additional 8th respondent in WP(C)No.2636/13 and respondents 2 and 3 and additional respondents 7 and 8 in WP(C) No.2637/13 are directed to take steps to remove the encroachers from the properties claimed by the petitioners in both the cases, in accordance with law and also give protection to the life and property of the petitioners as and when required, for keeping possession and peaceful enjoyment of the properties in accordance with law, as against respondents 5 to 7 and their men in WP(C) No.2636/13 and respondents 4 to 6 and their men in WP(C) No.2637/13, if the official respondents are satisfied with the genuineness of the allegations made by the petitioners. It is made clear that if it is found later that the property claimed by the petitioners is included in the excess land to be surrendered by the declarants in the land ceiling cases and the Government took over possession of the property, then, the protection given by this Court as per this order will stand WPC NOS.2636 & 2637/13 53 automatically withdrawn. The forums called upon to decide the ceiling matters will be free to decide the matter untrammelled by our

observations and this judgment. K.M.JOSEPH, JUDGE
K.RAMAKRISHNAN, JUDGE sta

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