

Antony George Vs. State of Kerala

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Court : Kerala

Decided On : Jan-01-2014

Judge : Honourable Mr. Justice Babu Mathew P.Joseph

Appellant : Antony George

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH WEDNESDAY, THE 11TH DAY OF JANUARY 2014 11TH POUSHA, 1935 WP(C).No. 12700 of 2008 (J) ----- PETITIONER: ANTONY GEORGE, S/O.CHACKO ANTONY, 'MAKKAL', ERUTHAWAPUZHA, PAMPAVALY KOTTAYAM DISTRICT. BY ADV. SRI.M.SREEKUMAR RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVT., REVENUE DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, KOTTAYAM.

3. THE TAHSILDAR, KANJIRAPPALLY TALUK, KANJIRAPPALLY. BY SENIOR GOVERNMENT PLEADER MR. P.M.SANEER THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WPC127002008 PETITIONER'S EXTS: P1: COPY OF THE PATTA NO. LA348179 ISSUED TO THE FATHER OF THE

PETITIONER. P2: COPY OOF THE NOTICE NO. LA348179/D1 DATED139.2007.
EXT.P3: COPY OF THE ARGUMENT NOTE DATED511.07 FILED BY THE
COUNSELLL FOR THE PETITIONER IN LA348179/D1 EXT.P4: COPY OF THE

ORDER

DT. 15.12.2007 NO. GO MS44207/REV./TVM. P5: COPY OF LETTER NO.
2339/A1/08/RD DT. 3.3.08. ks. TRUE COPY P.S. TO JUDGE BABU MATHEW P.
JOSEPH, J.

= = = = = WP.(C)No. 12700 of 2008 = = = = =
= = = = = Dated this the 1st day of January, 2014

JUDGMENT

This writ petition has been filed challenging Ext.P4 order dated 15-12-2007 passed
by the 1strespondent granting permission to take back 1.26.325 acres of excess
land assigned to the father of the petitioner.

2. Heard the learned counsel appearing for the petitioner and the learned Senior
Government Pleader appearing for the respondents.

3. Learned counsel for the petitioner submits that 5.26.325 acres of Government
land in survey No.379 of Erumely Village in Kanjirappally Taluk was assigned in
the names of the parents of the petitioner as per order dated WPC127002008 2
11.8.1980 of the Special Deputy Collector(LA), Kanjirappally, under the Land
Assignment Act. Out of the said 5.26.325 acres, 94 ares were assigned in favour
of the father of the petitioner and the remaining land was assigned in favour of his
mother. The petitioner's parents were cultivating that land at the time of that
assignment. Subsequently, the father of the petitioner expired. The legal heirs of
the father of the petitioner along with his mother had effected a partition of the
property in 2000 and by which different persons got shares in the said property.
Some of them, thereafter, transferred their shares to third parties. The petitioner
was allotted 94 ares of land as per the partition. Out of the said 94 ares, 28 cents
of land had been surrendered for the purpose of developing roads. While the
matters were thus going on, steps had been initiated for taking back 1.26.325
acres of land out of the total of 5.26.325 acres originally assigned in favour of the

parents of the petitioner on the ground that no family can WPC127002008 3 be allotted more than 4 acres of land as per the Land Assignment Rules, which culminated in passing Ext.P4 order directing to take back 1.26.325 acres of land. So many changes had been effected in the said 5.26.325 acres of land during the passage of time. Interests of legal heirs as well as third parties had been created. The Government, while passing Ext.P4 order, did not consider the relevant aspects which ought to have been considered before passing such an order. The relevant aspects which should have been considered by the authority cancelling the assignment as provided under Rule 8(3) of the Land Assignment Rules and its provisos had not been considered at all by the Government while issuing Ext.P4. In short, without considering the relevant provisions of the Rules and the relevant aspects, the Government had issued Ext.P4 directing to take back 1.26.325 acres of land after the elapse of long 27 years since the assignment of the lands. In such a circumstance, the Government has to consider WPC127002008 4 afresh the matter in the light of the relevant provisions contained in the Rules as well as the relevant facts. Therefore, the learned counsel prays for granting the petitioner an opportunity to approach the Government with a detailed representation raising all his contentions for considering the matter afresh by the Government. Having heard both the sides and considering the peculiar facts and circumstances, this Court is also of the view that the Government has to consider the matter afresh in the light of the legal provisions and the relevant facts. The further proceedings pursuant to Ext.P4 had been stayed by this Court pending disposal of this writ petition. That interim order is still in force. Therefore, the learned counsel also prays for quashing Ext.P4.

4. In the result, Ext.P4 is quashed. The petitioner is at liberty to submit a detailed representation raising all his contentions before the 1st respondent within a period of 30 days from today. If such a representation is received, the WPC127002008 5 1st respondent shall consider and dispose of the same on merits in the light of the provisions of law as well as the relevant facts within a period of four months from the date of receipt of that representation. The petitioner and other persons who are now occupying the said 5.26.325 acres of land shall be afforded an opportunity of being heard before disposing of that representation by the 1st respondent. Along with his representation, the petitioner shall submit a list of such persons to whom

notice should be issued by the 1st respondent. The petitioner shall also produce a copy of this judgment, along with his representation, before the 1st respondent. This writ petition is disposed of as above. Sd/- BABU MATHEW P. JOSEPH
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