

Joshy T.a Vs. State of Kerala

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Court : Kerala

Decided On : Jan-31-2014

Judge : Honourable Mr.Justice P.N.Ravindran

Appellant : Joshy T.a

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN FRIDAY,THE31T DAY OF JANUARY201411TH MAGHA, 1935 WP(C).No. 17378 of 2013 (V)

----- PETITIONER(S)/PETITIONER:

----- JOSHY T.A AGED60YEARS S/O.APPUNNI, THAYYIL HOUSE, PUTHUVYPU P O VYPIN BY ADVS.SRI.A.X.VARGHESE SRI.A.V.JOJO RESPONDENT(S)/RESPONDENTS:

----- 1. STATE OF KERALA REPRESENTED BY ITS SECRETARY,REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001 2. THE DISTRICT COLLECTOR, ERNAKULAM-682030 3. THE TAHSILDAR TALUK OFFICE, KOCHI-682001.

4. THE VILLAGE OFFIER, PUTHUVYPU VILLAGE OFFICE, VYPIN-682508 R1 - R4BY ADV. SRI.K.C.VINCENT, SR.GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON3101-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 17378

of 2013 (V) APPENDIX PETITIONER(S)' EXHIBITS -----
EXT.P1:-TRUE COPY OF THE APPLICATION DATED 28/3/2003 EXT.P2:-TRUE
COPY OF THE REPRESENTATION DATED 8/8/2008 EXT.P3:-TRUE COPY OF
THE REPORT DATED 23/9/2011 EXT.P3(A):-THE READABLE COPY OF THE
REPORT EXT.P4:-TRUE COPY OF THE NOTICE DATED 27/9/2011 EXT.P5:-
TRUE COPY OF THE CONSENT LETTER DATED NIL RESPONDENT(S)'
EXHIBITS ----- ANNEXURE R3(A) TRUE COPY OF
G.O.(MS)NO.280/2011/RD DATED 27.7.2011. R.AV //TRUE COPY// PATO JUDGE
P.N.RAVINDRAN, J.

===== W.P.(C)No.17378 of 2013 =====
Dated this the 31st day of January, 2014

JUDGMENT

The prayer in this writ petition is for an order directing the third respondent Tahsildar to assign 2.79 ares of land comprised in Re.Sy.No.16/2 of Puthuvype Village to the petitioner by accepting the market value within a time limit to be fixed by this Court. The case set out in the instant writ petition is that though the petitioner who is admittedly in possession of 6.67 ares of land corresponding to 16.480 cents (situate in R.Sy.No.16/19 of Puthuvype Village) applied for assignment of the adjacent land and the petitioner was found to be not eligible, the Tahsildar had offered to lease the land for beneficial enjoyment on the petitioner paying the market value and had issued Ext.P4 notice dated 27.9.2011 but in spite of lapse of several months notwithstanding the offer made by the petitioner to pay the market value, the land has not been assigned.

2. The third respondent has filed a statement dated 5.8.2013. The said statement is extracted below in full:- "1. The petitioner has submitted an application for assignment of an extent of 3.34 Ares of puramboke land in Resurvey No.16/2 in W.P.(C)No.17378 of 2013 2 Puthuvype village. The application has been registered as per I.A.175/03/S4 and sent to the Village Officer, Puthuvype for prepare sketch and mahazar. Then the Village Officer submitted sketch and mahazar for an extent of 02.79 Ares of land which is under his possession. It is also reported that the petitioner in this suit owned an extent of 06.67 Ares (16.480

cents) of land comprised in Re-survey No.16/19 of Puthuvype village and he resides with his family in that land, which is adjacent to the land in question. Moreover the annual family income of the petitioner is Rs.1,20,000/-. Since the petitioner has landed property in his own name and the land applied for assignment is adjacent to his own property, the assignment action could be carried out on beneficial enjoyment. The 3rd respondent issued a notice dated 27.9.2011 hearing No.L.A.175/2003/S4 to the petitioner to produce the willingness to pay the market value and the petitioner submit his consent letter No.03.10.2011. The procedures in this regard is ongoing Government has issued an order hearing No.G.O.(MS) No.280/2011/RD dated 27.7.2011. A copy of the above Government Order is produced herewith and marked as Annexure R3 (a). In this order it is clearly mentioned that, 'land assignment on patta (Registry)' will be only to the landless and for self housing. All assignment except those made to the landless as eligible under the Kerala Land Conservancy Act for personal housing will be on lease basis. Land cost in Kerala being unusually high there is more pressure on public land through encroachment. Hence the assignment procedures in favour of the petitioner can be taken on lease basis and not the beneficial enjoyment." 3. Shorn of details, the stand taken by the third respondent in the said statement is that in view of Ext.R3(a) Government order, the petitioner who is not a landless person is not entitled to obtain assignment of the land for beneficial enjoyment. It is also stated W.P.(C)No.17378 of 2013 3 that except landless persons assignment for personal housing will be on lease basis. The petitioner admittedly owns 6.67 ares of land corresponding to 14.80 cents. He cannot therefore be said to be a landless person. It cannot also be said that 16.480 cents of land is not adequate for putting up a residential building. In such circumstances, I am of the opinion that the petitioner cannot seek or be granted assignment of the land in question. The land in question which is admittedly Government land is meant to be given, to landless persons and not to fortunate one's like the petitioner who is in possession of a sizable parcel of land. The writ petition is in my opinion without merit. It fails and is accordingly dismissed with the observation that the respondents shall take steps to ensure that the petitioner does not encroach upon the land in respect of which he had applied for assignment and that it is protected and preserved as public land unless it is assigned on registry to a landless

individual. If the petitioner has trespassed upon the Government land, the respondents shall take appropriate steps under the Kerala Land Conservancy Act, 1957 to evict him therefrom forthwith. Sd/- P.N.RAVINDRAN JUDGE vpv

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