

Asharaf Vs. State of Kerala

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Court : Kerala

Decided On : Jan-24-2014

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : Asharaf

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI FRIDAY, THE 24TH DAY OF JANUARY 2014 4TH MAGHA, 1935 WP(C).No. 35088 of 2008 (B) ----- PETITIONER : ----- ASHARAF, CHARUVIL HOUSE, PONAKAM MURI, THEKKEKARA VILLAGE, MAVELIKARA THALUK. BY ADV. SMT.ASHA ELIZABETH MATHEW RESPONDENTS : ----- 1. STATE OF KERALA REP. BY ITS REVENUE PRINCIPAL SECRETARY, THIRUVANANTHAPURAM.P.O.

2. DISTRICT COLLECTOR, COLLECTORATE, ALAPPUZHA.

3. TAHSILDAR, TALUK OFFICE, MAVELIKKARA.

4. VILLAGE OFFICER, VILLAGE OFFICE, THEKKEKARA. R1 TO R4 BY GOVERNMENT PLEADER SRI. P. FAZIL ADV.COMMSR. BY ADV. SMT.ASHIRA MOHAMED ASHROF THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-01-2014, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: BP WP(C).No. 35088 of 2008 (B) APPENDIX PETITIONER'S EXHIBITS : P1: COPY OF THE REPORT DT121/2000 SUBMITTED BY THE R4. P2: COPY OF THE EYE SKETCH DT101/2000 PREPARED BY THE R4. P3: COPY OF THE POSSESSION CERTIFICATE ISSUED TO THE PETITIONER P4: COPY OF THE APPLICATION FOR ASSIGNMENT DT273/2007. P5: COPY OF THE REPORT NO. C7.24554/07 DT186/2008 OF THE R2. P6: COPY OF

JUDGMENT

DT276/97 IN OP NO. 17233/96 OF THIS HON'BLE COURT. P7: COPY OF THE REPLY DT2412/2008 ISSUED TO ME BY THE R3 UNDER THE RIGHT INFORMATION ACT. RESPONDENT'S EXHIBITS : NIL. ADVOCATE COMMISSIONER'S ANNEXURES : ANNEXURE A: ROUGH SKETCH SHOWING THE LIE OF THE PROPERTY COMPRISED IN RE-SURVEY NO.20/5, ITS ADJACENT HOLDING AND THE THODIYOOR ARATTUKADAVU THODU BY THE ADVOCATE COMMISSIONER. ANNEXURE B: A FIELD SKETCH OF THE PROPERTY COMPRISED IN RE-SURVEY NO. 20/5 SUPPLIED BY THE TALUK SURVEYOR. ANNEXURE C: ATTENDANCE SHEET OF THE PERSONS PRESENT AT THE TIME OF INSPECTION AT THE PROPERTY BY ADVOCATE COMMISSIONER. //TRUE COPY// P.A. TO JUDGE BP A.V. RAMAKRISHNA PILLAI, J.

----- W.P.(C) No. 35088 of 2008
----- Dated this the 24th day of January, 2014

JUDGMENT

Ext.P5 report is under challenge.

2. The petitioner alleges that since 1971, he has been residing in 2.63 Ares of Government land comprised in Re.Sy.No.20/5 of Thekkekkara Village in Mavelikkara Taluk. According to him, apart from him, a number of other landless persons have also been residing in such small extent of lands adjacent to the petitioner's holding and; the 1st respondent has never raised any objection against the petitioner's possession of his holding and the Government has never

considered the possession of the petitioner and the adjacent possessors of Government land as objectionable. His case is that the Government has already assigned some of the plots situated adjacent to the petitioner's holding to its possessors, which is evident from Ext.P2. His further case is that in the year W.P.(C) No. 35088 of 2008 ..2.. 2000, the 4th respondent had conducted an enquiry and on the basis of Ext.P1 report, the 3rd respondent had granted Ext.P3 possession certificate to the petitioner. Subsequently, the petitioner submitted Ext.P4 application for assignment dated 27.03.2007 before the 1st respondent, which was forwarded to the 2nd respondent. The 2nd respondent had submitted Ext.P5 report before the 1st respondent stating that since the petitioner's holding is 'Thodu Puramboke', assignment proceedings could not be continued in view of Ext.P6 judgment dated 27.06.1997 of this Court in OP No.17233/1996. The grievance of the petitioner is that he holds the property, which is about 10 meters away from the 'Thodu' and hence, it cannot be treated as a property on the side of a river or water source. It is further alleged that the persons similarly situated were assigned with 'Patta' by the Government.

3. Since the petitioner projects a case that similarly situated persons were assigned with land, this W.P.(C) No. 35088 of 2008 ..3.. Court is of the view that the matter requires a re-look by the Revenue Authority. Therefore, the writ petition is disposed of directing the 1st respondent to reconsider the issue after ascertaining whether similarly situated persons were assigned with any Government land and after affording the petitioner an opportunity of being heard. This exercise shall be completed by the 1st respondent within a period of three months from today. To facilitate an early disposal, the petitioner shall be at liberty to produce a copy of this judgment along with a copy of this writ petition before the 1st respondent within a period of one month from today. Sd/- A.V. RAMAKRISHNA PILLAI, JUDGE bka/-

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