

Rajesh Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1163320

Court : Kerala

Decided On : Aug-21-2014

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appellant : Rajesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE THURSDAY, THE 21ST DAY OF AUGUST 2014 30TH SRAVANA, 1936 WP(C).No. 21865 of 2014 (G) ----- PETITIONER: ----- RAJESH S/O.KARUNAKARAN NAIR, AMARAVATHY (RAJESH BHAVANAM)ELAMADU, KOTTARAKKARA KOLLAM 691539. BY ADVS.SRI.S.SANTHOSH KUMAR SMT.P.LISSY JOSE. RESPONDENTS: ----- 1. STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT REVENUE DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM 695001.

2. THE DISTRICT COLLECTOR KOLLAM 691013.

3. THE REVENUE DIVISIONAL OFFICER KOLLAM 691013.

4. THE TAHSILDAR TALUK OFFICE, KOTTARAKKARA 691506 5. THE VILLAGE OFFICER ELAMADU, KOTTARAKKARA, KOLLAM 691539. BY GOVERNMENT PLEADER: SRI JOSEPH GEORGE THIS WRIT PETITION (CIVIL) HAVING

COME UP FOR ADMISSION ON 2108-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 21865 of 2014 (G) 2 APPENDIX PETITIONER(S)' EXHIBITS : ----- EXHIBIT P1 COPY OF LAND TAX RECEIPT DATED 192/2013 ISSUED BY THE 5TH RESPONDENT EXHIBIT P2 COPY OF THE PAGE NO.1,2 & 3 OF DRAFT DATA BANK OF KRISHIBHAVAN, ELAMADU EXHIBIT P3 COPY OF

ORDER

DATED 283/2012 OF THE 3RD RESPONDENT EXHIBIT P4 COPY OF OBJECTION DATED 276/2012 OF THE PETITIONER BEFORE THE 3RD RESPONDENT EXHIBIT P5 COPY OF

JUDGMENT

DATED 123/2013 IN WPC 53052013 EXHIBIT P6 COPY OF ARGUMENT NOTES DATED 196/2013 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT EXHIBIT P7 COPY OF THE

ORDER

DATED 197/2014 OF THE 2ND RESPONDENT EXHIBIT P8 COPY OF THE REVISION PETITION DATED 68/2014 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT RESPONDENT(S)' EXHIBITS: NIL True Copy / P A to Judge A.MUHAMED MUSTAQUE, J.

===== W.P(C).No.21865 of 2014
===== Dated this the 21st day of August, 2014

JUDGMENT

Petitioner is the owner in possession of 12.20 Ares in Survey No.15/13-1 & 2 of Elamadu Village in Kottarakkara Taluk. Petitioner was served with proceedings stating that the petitioner attempted to reclaim the land and planted with rubber trees in the above property in violation of Act 28 of 2008. Petitioner approached this Court challenging proceedings initiated by the Revenue Divisional Officer. Thereafter, pursuant to the judgment in Ext.P5, this was considered by the District Collector and issued Ext.P7 order. It is found in Ext.P7 order, the planting of rubber trees is in violation of Act 28 of 2008. Challenging Ext.P7 order, petitioner

preferred Ext.P8 revision before the first respondent. Petitioner would submit that pending Ext.P8 proceedings, coercive steps are being taken against the petitioner based on Ext.P7 order.

2. Petitioner's case is that the above property is not a paddy or wet land as on the date of enactment of Act 28 of 2008 and also this was a reclaimed land much before the Act 28 of 2008. If the case of the petitioner is that, it will not come under W.P(C).No.21865 of 2014 2 Act 28 of 2008, he has to approach the Local Level Monitoring Committee to remove any erroneous entry in the Data Bank prepared under the Act 28 of 2008. According to the petitioner, since draft Data Bank is not finally notified, Act 28 of 2008 does not applicable in respect of the property.

3. I am of the view, only question is whether the property is a paddy or wet land or not, and notification is only a formal declaration after identifying the property. If the property as such is a paddy or wet land on the date of enactment of Act 28 of 2008, the petitioner cannot reclaim the above land not otherwise than in accordance with the provisions of Act 28 of 2008. In view of the above, remedy of the petitioner is to approach the Local Level Monitoring Committee to remove the entry regarding petitioner's property. If petitioner approach Local Level Monitoring Committee within two weeks from today, Local Level Monitoring Committee after conducting inspection and also affording an opportunity to the petitioner, pass appropriate orders within a further period of two months. Needless to say, Local Level Monitoring Committee has to make the inspection and find out whether this property would come under the W.P(C).No.21865 of 2014 3 meaning of paddy or wet land as on the date of enactment of Act 28 of 2008. Till final decision is taken in the matter by the Local Level Monitoring committee, parties shall maintain status quo. The order in Ext.P7 and any other proceeding thereon will be subject to the outcome of the decision by the Local Level Monitoring Committee. Writ petition is disposed of. Sd/- A.MUHAMED MUSTAQUE, JUDGE. Sbna/23/08/14