

Chellappan vs State of Kerala

Chellappan vs State of Kerala

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Court : Kerala

Decided On : Mar-20-2024

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : WP(C)/22109/2023

Appellant : Chellappan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
WEDNESDAY, THE 20TH DAY OF MARCH 2024 / 30TH PHALGUNA,
1945 WP(C) NO. 22109 OF 2023 PETITIONERS: 1 CHELLAPPAN
AGED 73 YEARS S/O VELAYUDHAN, RESIDING AT KALANGATT
HOUSE, POYYACHIRA, KAKANAD VILLAGE AND KARA, KAKKANAD
P.O, ERNAKULAM, PIN - 2 LALITHA AGED 63 YEARS W/O
CHELLAPPAN, RESIDING AT KALANGATTIL HOUSE, POYYACHIRA,
KAKANAD VILLAGE AND KARA, KAKKANAD P.O, ERNAKULAM, PIN -
682030 BY ADVS.P.M.MANOJ,S.RUSSEL, P.ANTO THOMAS
HAMZATH ALI V.K. RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 2 THE LAND REVENUE COMMISSIONER KERALA O/O THE COMMISSIONER OF LAND REVENUE, REVENUE COMPLEX, PUBLIC OFFICE BUILDINGS, MUSEUM ROAD, OPPOSITE ZOO, VIKHAS BHAVAN P.O., THIRUVANANTHAPURAM, PIN - 695033 3 THE DISTRICT COLLECTOR ERNAKULAM, COLLECTORATE, KAKKANAD, ERNAKULAM, PIN - 682030 4 THE TAHSILDAR KANAYANNUR TALUK, TALUK OFFICE, KANAYANNUR, ERNAKULAM, PIN - 682011 5 THE VILLAGE OFFICER KAKKANAD VILLAGE, VILLAGE OFFICE, KAKKANAD, ERNAKULAM, PIN - 682030 6 THRIKKAKARA MUNICIPALITY KAKKANAD P.O., ERNAKULAM, REPRESENTED BY ITS SECRETARY, PIN - 682030 BY ADVS.GOVERNMENT PLEADER DEEPA NARAYANAN S.JAMAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C). No.22109 of 2023 :2:

VIJU ABRAHAM, J.

-- -- -- -- -- W.P.(C) No.22109 of 2023 -- -- -- -- --
-- -- -- -- -- Dated this the 20th day of March, 2024

JUDGMENT

The above writ petition is filed challenging Ext.P10 and for a direction to permit the petitioner to alienate the property covered under Ext.P4 patta.

2. It is averred that the petitioners are the owners of 2.10

Ares of property comprised in re-survey No. 335/1 in Block No. 9 of Kakkanad Village and the petitioners have been in the enjoyment of the property for a long, which was inherited by the 1 st petitioner from his father and he had constructed a

residential building therein and is residing there with their children. As there was no valid title, the petitioners applied for assignment of the said land by submitting Ext.P1 application dated 28.02.2008. By Ext.P2 report, the assignment of land was recommended by the 5 th respondent, Village Officer, Kakkanad. It is contended that a perusal of Ext.P3 would reveal that the residential building constructed therein is in existence for more than 31 years. Later, the said property was assigned to the petitioners by Ext.P4 patta bearing No.11812 dated 12.01.2010. Petitioners submit that as per condition No.1 in the W.P.(C). No.22109 of 2023 :3: Appendix attached to Ext.P4 patta, no alienation shall be made for a period of 25 years from the date of registry. The said condition was imposed in Ext.P4 patta only on the basis of an amendment carried out to Rule 8(1) of the Kerala Land Assignment Rules, 1964 (hereinafter referred to as Rules 1964) by Ext.P5 Government

Order dated 24.01.2009 wherein Rule 8(1) was amended

incorporating the words but not alienable for a period of 25 years from the date of registry. Petitioners contend that at the time of submission of Ext.P1 application for registry, the unamended Rule 8(1) of the Rules 1964 was that lands granted on registry shall be heritable and alienable. Petitioners contend that the amended Rules will be applicable only in cases of registry after 24.01.2009 and in the case in hand, the date of registry was 28.02.2008 and therefore, the condition imposed as per the amended Rules is not applicable in the case of the petitioners in as much as date of issuance of patta is not the deciding factor and only the date of the registry and the extant law on that day is applicable. Petitioners submit that they are senior citizens and are suffering from various illnesses due to old age and have three daughters and petitioners intend to sell the property to meet the day-to-day expenses but due to condition No.1 in the Appendix annexed to Ext.P4, they are W.P.(C). No.22109 of 2023 :4: unable to alienate the property or to mortgage the same for meeting their financial requirements. Thereupon, the petitioners submitted Ext.P6 application before the 3rd respondent permitting them to sell the property covered under Ext.P4 which was rejected by the 3rd respondent as per Ext.P7 holding that there is no provision in the Act or the Rules, nor in the assignment order nor in the patta for sale of the property. Aggrieved by Ext.P7,

Ext.P8 representation was preferred before the 2nd respondent. This Court by Ext.P9 judgment directed the respondent to consider the same and thereafter the same was rejected as per Ext.P10 order. The petitioners rely on the judgment in Shekkabba Beary v. State of Kerala[2021 (5) KHC 545] in support of their contention wherein it was held that the date of registry was in the year 1974 though the purchase certificate was issued in the year 2016 and that date of purchase certificate is of no consequence at all and directed the respondents therein to reconsider the application submitted by the petitioners therein after verifying the date of registry with respect to the property falls beyond the period of 25 years.

3. The question to be considered is as to whether the date of

registry is the date of application as contended by the petitioner W.P.(C). No.22109 of 2023 :5: and if so, definitely the case of the petitioner will not be hit by amendment to Rule 8(1) of The Kerala Land Assignment Rules, 1964 and the stipulation regarding non-alienability of the property for 25 years will not apply. Section 8 of the Kerala Government Land Assignment Act, 1960 mandates that all provisions, restrictions, conditions and limitations contained in any patta evidencing assignment of government land shall be valid. Though the application was earlier, the law as stood at the time of consideration of the application was Ext P5 amendment to Rule 8 (1).

4. Rule 2(c) of the Kerala Land Assignment Rules, 1964

defines assignment as transfer of land by way of registry. Rule 4 also stipulates that government land may be assigned on registry. This Court in State of Kerala v. Narayan Nair[1981 KHC 154], considered the question as to whether when can a land be said to have been assigned on registry and held that it is only some proceedings, order or act of the appropriate authority which can amount to an act of assignment. Paragraph 7 of the said

judgment reads as follows:

7. We are now concerned with the decision on the question as to when land can be said to have been "assigned on registry". It is not disputed that only when land has been W.P.(C). No.22109 of 2023 :6:

assigned on registry prior to 7-7-1979 that the proviso (b) to S.84(1A) of the Act is attracted. I have already referred in detail to the rules in regard to excess lands taken over by the State. The process of assignment of land consists of various stages. The Land Board has to prepare a list of eligible persons in the light of the provisions of the Act and the Rules. Those persons will have to be duly informed about it and the matter will also have to be notified evidently for the information of the other persons who may be interested. It is open to the offeree either to reject or to accept the offer. If he desires to accept the offer, he has to pay or deposit the full purchase price indicated in the offer or to pay or deposit the first instalment within the time originally allowed or subsequently extended by the Land Board. Evidently such payment or deposit will amount to acceptance of the offer. If we look at the matter from the point of view of the principles of Law of Contracts, since there has been an offer and acceptance, one could say that there is a completed agreement. That may be something like an agreement to assign the land specified in the offer. But a mere agreement or contract to assign land as a result of the deposit or payment of the purchase price cannot be said to amount to an assignment of land on registry. In

order that one can say that a particular land has been

assigned on registry, there must be some act amounting to assignment by competent authority. In the normal course. assignment is made by the assignment deed duly executed; even if the execution of the assignment deed is to be treated a mere administrative act not having any bearing on the completion of the act of assignment, nevertheless, there

W.P.(C). No.22109 of 2023 :7:

must be something on record to show that the concerned authority "has assigned" the land. It cannot be said that the offer made by the Land Board amounts to an act of assignment; nor can it be said that the payment or deposit of the purchase price in full or the first instalment thereof within the time prescribed amounts to an act of assignment. It is only some proceeding, order or act of the appropriate authority which can amount to an act of "assignment".

The Division Bench of this Court in Varkey Abraham v. Secretary to Government, 2007 (3) KLT 702 has held that an amended rule would apply to any assignment after amendment, irrespective of

date of application. This court in paragraph 9 of the judgment held

as follows:

9. Rule 5 provides for the maximum extent of land that could be assigned on registry for purposes of personal cultivation, house sites and beneficial enjoyment of adjoining registered holdings. Clause (b) of Rule 5 (1) provides as follows: "(b) in the case of lands held on lease, whether current or time expired or by way of encroachment not considered objectionable, the lessee or the encroacher as the case may be will be eligible for assignment of not more than 50 cents of land, whether wet or dry, in the plains, and one acre of land, whether wet or dry in hilly tracts. Land, if any,

held in excess of this area shall be surrendered

Clauses (b) of Rule 5 was substituted by the amendment W.P.(C). No.22109 of 2023 :8:

which came into force on 3-3-2005. Prior to amendment, clause (b) provided for assignment of larger extents, namely, not more than one acre in the plains and not more than one acre of wet land or three acres of dry land in hilly tracts, if there are no improvements in the land, and where there are improvements effected on the land by the occupant, not more than two acres in the plains and not more than two acres of wet land or four acres of dry land in hilly tracts. It is stated by the petitioner that the land in question is not in hilly tracts. Therefore, the maximum extent that could be assigned, before the amendment of the Rules in 2005, is one acre or two acres, depending on the question whether the petitioner has effected valuable improvements in the land. The amended Rules would apply to any assignment after the amendment, irrespective of the date of application and therefore, the maximum extent that could be assigned to the petitioner, if he is entitled to get assignment, is not more than fifty cents of land.

Therefore, the restriction imposed as per Ext.P5 amendment to Rule 8 of the Rules 1964 on a land granted on registry will apply in this case also in as much as Ext.P5 is the Rule that was prevailing as on the date of assignment of land on registry.

5. Yet another aspect to be noted is that though at the time of

issuance of Ext.P4 patta, there is a restriction regarding alienation of property for 25 years, it is seen that by a subsequent amendment to Rule 8(1A), the restriction for alienation for 25 years has been W.P.(C). No.22109 of 2023 :9: substituted for 12 years as amended by G.O.(P)No.60/2017/RD dated 17.08.2017. Therefore, for a land assigned on registry after 2017, the restriction is only 12 years. The stand of the Government in fixing such time period regarding alienation as discernible from Shekkabba Bearys case cited supra is that it is for the benefit of the persons like the petitioner so that they are not lured by confutative interest in parting with the property for meagre amounts. Since the Government themselves have amended the said provision and reduced the time limit for alienation to 12 years, I am of the view that the benefit of the amendment should be extended to the

petitioners also. The petitioners were granted assignment on registry as per Ext.P4 dated 12.01.2010, then the restriction regarding nonalienation will end in 2022. This Court in Gladwin P.A. and another v. Tahsildar, Kanayannur Taluk and another[2023 SCC OnLine Ker 8976] has held that the condition regarding non-alienation of the assigned property should be read in consonance with the amendment to the Rules as per the Government Order dating 17.08.2017, restricting alienation of the property only for a period of 12 years from the date of assignment of the registry. In view of the above, the writ petition is disposed of setting W.P.(C). No.22109 of 2023 : 10 : aside Ext.P10 and directing that condition No.1 in Ext.P4 patta shall be read in consonance with Rule 8(1A) of the Rules 1964 as amended by G.O.(P)No.60/2017/RD dated 17.08.2017. In other words, the restriction regarding non-alienability of the property covered by Ext.P4 patta shall only be for a period of 12 years from the date of Ext.P4, i.e. 12.10.2010. The writ petition is disposed of as above. Sd/- VIJU ABRAHAM JUDGE sm/ W.P.(C). No.22109 of 2023 : 11 : APPENDIX OF WP(C) 22109/2023 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE APPLICATION IN APPENDIX-IV FORWARDED ON 28.02.2008 BY TAHSILDAR TO THE VILLAGE OFFICER KAKKANAD ON 28.02.2008 Exhibit P2 A TRUE COPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER KAKKANAD TO THE TAHSILDAR KANAYANNUR ON 25.04.2008 Exhibit P3 A TRUE COPY OF THE BUILDING AGE CERTIFICATE ISSUED BY 6TH RESPONDENT, THRIKKAKARA MUNICIPALITY, HAVING FILE NO. Exhibit P4 A TRUE COPY OF THE ABOVE SAID PATTAs BEARING NO. 11812 DATED 12.01.2010 ISSUED BY THE 4TH RESPONDENT Exhibit P5 A TRUE COPY OF THE GO(P) 49/2009/RD DATED 24.01.2009 Exhibit P6 A TRUE COPY OF THE APPLICATION PREFERRED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT DATED 07.02.2022 Exhibit P7 A TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 25.03.2022 BEARING FILE NO. 1537/2022/L1 Exhibit P8 A TRUE COPY OF THE REPRESENTATION PREFERRED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT DATED 22.05.2022 Exhibit P9 A TRUE COPY OF THE JUDGMENT DATED 26.07.2022 IN WP(C) NO. 24094 OF 2022 Exhibit P10 A TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT HAVING NO. LR/5840/2022-LR

(J7) DATED 04.01.2023 Exhibit P11 A TRUE COPY OF THE JUDGMENT DATED 18.01.2023 IN WRIT PETITION NO. 1622/2023

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