Alias vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1303883

Court : Kerala

Decided On : Apr-03-2024

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/30569/2014

Appellant : ALIAS

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. WEDNESDAY, THE 3RD DAY OF APRIL 2024 / 14TH CHAITHRA, 1946 PETITIONER: ALIAS, AGED 51 YEARS, S/O.MATHAI, MANNALIKKUDY HOUSE, VATTAKKATTUPADY, IRINGOLE KARA, PERUMBAVOOR VILLAGE. BY ADVS. SRI.V.RAJENDRAN (PERUMBAVOOR) SRI.GEORGE VARGHESE KIZHAKKAMBALAM RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY, REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 DISTRICT COLLECTOR, ERNAKULAM, CIVIL STATION, KAKKANAD-682 030. 3 REVENUE DIVISIONAL OFFICER, MUVATTUPUZHA. 686 661. 4 TAHSILDAR

KUNNATHUNADU TALUK, TALUK OFFICE, PERUMBAVOOR-683 542. SRI.VENUGOPAL V, GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is the absolute owner in occupation of an extent of 35.55 ares of land comprised in Re-Sy.Nos.76/1-1 and

was obtained by the petitioner under Ext.P1 document, registered as Sale Deed No.4156/98 of Perumbavoor SRO. The property is described in Ext.P1 as nilam. According to the petitioner, even at the time of purchase of the property by the petitioner, the land had been converted and there were large number of aged coconut trees and other trees and improvements on the property. The petitioner constructed a temporary building upon the land after obtaining permission from the Rayamangalam Grama Panchayat and the said building was numbered as XII/498 A of the said Panchayat. The petitioner thereafter constructed a residential building after obtaining financial assistance from the Union Bank of India. The said residential building of the petitioner was allotted number XII/498 C of Rayamangalam Grama Panchayat. The petitioner is stated to be residing in the said residential house along with his family. The petitioner has produced Ext.P6 series of photographs indicating the present nature and lie of the property, which would indicate that it does not have any features of paddy land. The

petitioner filed Ext.P8 application before the Tahsildar, Kunnathunad Taluk and also marked a copy thereof to the Revenue Divisional Officer, Muvattupuzha, Additional Tahsildar, Perumbavoor and Village Officer, Perumbavoor seeking to redress the grievance of the petitioner regarding the description of the land in the Revenue Records as nilam. The said application of the petitioner has been rejected by Ext.P9 order of the Revenue Divisional Officer, Muvattupuzha stating that there is no legal provision for considering the application of the petitioner.

2. Sri.V.Rajendran, the learned counsel appearing for the

petitioner submits that by now it is settled that any application in the nature of Ext.P8 filed prior to the introduction of Section 27A of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (hereinafter referred to as the 2008 Act) in respect of unnotified lands has to be considered as an application filed under Clause 6(2) of the Kerala Land Utilisation Order. It is also clear from various judgments rendered by this Court that in respect of such applications, the fees as contemplated by the provisions of sub-

section (3) of Section 27A of the 2008 Act cannot be levied. Specific reference is made in this regard to paragraphs 10 and 11 of the judgment of a Division Bench of this Court in Sameera C.H v. Revenue Divisional Officer [2023 KHC OnLine 10444], where it has been held as follows:-

> 10. Therefore, there can be no doubt with respect to the application of the said provision on and with effect from the date of introduction of the said provision into Act, 2008. Admittedly, the writ petitioners land was not included in the data bank constituted as per Act, 2008, consequent to which he was not liable to file any application before the authorities constituted under Act,

2008. True, if it is an unnotified land as per the

> provisions of Act, 2008, after the introduction of S.27A, an application will have to be filed before the Revenue Divisional Officer seeking permission for utilisation of such lands for residential or commercial or other purposes. But, sub-ss.(1) and (2) of S.27A quoted above makes it abundantly clear that S.27A has only prospective effect from 30.12.2017. There is no dispute that the application of the writ petitioner was prior to the introduction of S.27A to Act, 2008. Sub-s.(13) of S.27A makes the situation more explicit and clear in the context, which read thus: Any application received for the change of nature of unnotified land from the date of commencement of the Kerala Conservation of Paddy Land and Wet Land (Amendment) Act, 2018 shall be considered and disposed of

only in accordance with the provisions of the Act.

11. Therefore, needless to say, any application

received for the change of nature of unnotified land from the date of commencement of Amendment Act, 2018 shall be considered and disposed of only in accordance with the provisions of the Act. That apart, the legislature was certain, while introducing S.27A that the application submitted on or after the the cut off date of 30.12.2017 alone need be considered in accordance with the provisions of S.27A of the Act, 2008 as amended by Act,

2018. Yet another predominant contention advanced by

the learned Senior Government Pleader is relying upon S.27C, which deals with changes in record, and it reads thus: 27C. Changes in records.-- (1) Notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any Court, Tribunal or any Authority, wherever a part of a survey number or subdivision is permitted to be converted under Sections 8, 9, 10 or 27A of this Act, a new subdivision shall be created for the extent for which such orders for conversion are issued.

(2) Where the paddy land or unnotified land is

duly converted as per the provisions of this Act, the Tahsildar shall reassess the land tax under Section 6A of the Kerala Land Tax Act, 1961 (13 of 1961) and make necessary entries in the revenue records relating to such lands.

(3) Where such changes are recorded in revenue records, the number and date of the

order and the authority granting sanction, the

survey number of the lands for which sanction has been accorded, extent of the land in each survey number for which sanction has been accorded and the revised land tax shall be clearly recorded ensuring that the old entries are legible.

(4) Tahsildar shall conduct periodical inspection to ensure that changes in revenue records are in accordance with subsection (3).

(5) No attempt shall be made to alter or change or modify the revenue records relating to the paddy land or wetland or unnotified land otherwise than in accordance with sub- section (3).

3. The learned Government Pleader does not dispute the

legal position that any application for change of user of land prior to the introduction of Section 27A of the 2008 Act has to be considered in terms of the provisions contained in Clause 6(2) of the Kerala Land Utilisation Order. It is also not disputed that the land of the petitioner was described in the data bank prepared under the provisions of the 2008 Act as converted land. However, it is submitted that in the facts and circumstances of this case, it can be seen from Ext.P8 application filed by the petitioner that the application was only for correction of the Revenue Records and not for change of user of the land. It is submitted that in such circumstances, the petitioner can only be permitted to file a fresh application in accordance with the provisions of Section 27A of the 2008 Act. It is fairly admitted that Ext.P9 order of the Revenue Divisional Officer does not appear to be in accordance with the law.

4. Having heard the learned counsel appearing for the

petitioner and the learned Government Pleader and having regard to the facts and circumstances of the case, I am of the opinion that Ext.P9 order is liable to be quashed. The finding of the Revenue Divisional Officer that there is no provision to consider the request of the petitioner and the request of the petitioner cannot be granted does not appear to be in consonance with the law laid down by this Court in Sameera C.H (supra) and other decisions referred to in that judgment. It is not disputed before me that the land of the petitioner was unnotified land and was described as converted land even in the data bank prepared under the provisions of the 2008 Act. Though technically the learned Government Pleader may be right in contending that the request in Ext.P8 was only for correction of Revenue Records, I find from Ext.P8 that there was also a prayer for redressing the grievance of the petitioner, which can be treated as an application for change of user of land and therefore, Ext.P8 can also be considered as an

application under Clause 6(2) of the Kerala Land Utilisation Order

for change of user of the land. Moreover, a learned Single Judge of this Court in Basil v. Local Level Monitoring Committee, Kizhakkambalam [2024 (1) KHC 28] has taken the view that the inclusion of converted land in the data bank prepared under the provisions of the 2008 Act may not be sustainable. It is also clear from the judgment of this Court in Palakkad Real Estate Private Limited Company v. Revenue Divisional Officer, Palakkad [2024 KHC OnLine 10100] that after obtaining the necessary orders from the Revenue Divisional Officer under Clause 6(2) of the Kerala Land Utilisation Order, the petitioner will have to file an application under Section 6A of the Kerala Land Tax Act, 1961 before the competent authority for change of description of property in the Basic Tax Register.

In the light of the above findings, this writ petition is allowed.

Ext.P9 is quashed. The 3rd respondent is directed to treat Ext.P8 application as an application filed by the petitioner under Clause 6(2) of the Kerala Land Utilisation Order and to pass fresh orders on the said application, after affording an opportunity of hearing to the petitioner, also keeping in mind the law declared by this Court in Sameera C.H (supra). It is made clear that since Ext.P8 was filed prior to the introduction of Section 27A of the 2008 Act, the same shall for all purposes be treated as an application for change of user filed prior to introduction of Section 27A of the 2008 Act.

Sd/- GOPINATH P. JUDGE DK APPENDIX OF WP(C) 30569/2014 PETITIONER EXHIBITS EXHIBIT P1- TRUE COPY OF SALE DEED NO.4156/98 DATED 19.9.98 OF PERUMBAVOOR SUB REGISTRY OFFICE. EXHIBIT P2- TRUE

COPY OF CERTIFICATE NO.C-10/2003 DATED 22.10.03 ISSUED FROM RAYAMANGALAM GRAMA PANCHAYAT. EXHIBIT P3- TRUE COPY OF RECEIPT ISSUED FROM RAYAMANGALAM GRAMA PANCHAYAT EVIDENCING PAYMENT OF PROPERTY TAX BEARING NO.18375 DATED 1.6.2005. EXHIBIT P4- TRUE COPY OF RESIDENTIAL CERTIFICATE

ISSUED FROM THE PANCHAYAT BEARING NO.CEXHIBIT P5- TRUE COPY OF ORDER NO.G1-19574/05 DATED 7.1.06 ISSUED BY 4TH RESPONDENT ASSESSING BUILDING TAX TO THE BUILDING OF THE PETITIONER.

EXHIBIT P6- 4 PHOTOGRAPHS SHOWING THE LYE AND NATURE OF PROPERTY AND BUILDING. EXHIBIT P7- TRUE COPY OF RECEIPT BEARING NO.4397235 ISSUED FROM PERUMBAVOOR VILLAGE OFFICE FOR THE PERIOD 2014-15 DATED 22.5.214. EXHIBIT P8- TRUE COPY OF PETITION FILED BY THE PETITIONER DATED 23.5.14 BEFORE THE 4TH RESPONDENT. EXHIBIT P9- TRUE COPY OF ORDER NO.A9-4921/14 DATED 23.7.14 PASSED BY THE 3RD RESPONDENT. EXHIBIT P10- TRUE COPY OF RELEVANT PAGE OF THE DATA BANK ALONG WITH A READABLE COPY