

Vicar vs State of Kerala

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Court : Kerala

Decided On : Aug-09-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/17376/2023

Appellant : VICAR

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
WEDNESDAY, THE 9TH DAY OF AUGUST 2023 / 18TH SRAVANA,
WP(C) NO. 17376 OF 2023 PETITIONER: VICAR HOLY GHOST
FORANE CHURCH, MUTTUCHIRA MUTTUCHIRA P.O., KOTTAYAM
DIST, PIN - 686 613. BY ADVS. SAJU JOHN JELSON J.EDAMPADAM
RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY ITS
SECRETARY, DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001. 2 THE REVENUE
DIVISIONAL OFFICER PALA, OFFICE OF THE REVENUE DIVISIONAL
OFFICER, PALA, KOTTAYAM DIST, PIN - 686 575.

3 THE TAHSILDAR (LR) VAIKOM TALUK, VAIKOM P.O, KOTTAYAM DISTRICT, PIN - 686 141. 4 THE VILLAGE OFFICER MUTTUCHIRA VILLAGE, MUTTUCHIRA P.O, KOTTAYAM, PIN - 686 613. BY ADV SMT.K.M.RESHMI-SENIOR GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

JUDGMENT

Dated this the 9th day of August, 2023 The petitioner-the Vicar of Holy Ghost Forane Church is owner of 269.53 Ares of land in Muttuchira Village in Vaikom Taluk of Kottayam District. The petitioner submitted Ext.P1 application to the 2nd respondent-Revenue Divisional Officer for permission to use the petitioners land for non-agricultural purposes. The application was filed invoking Clause 6 of the Kerala Land Utilization Order, 1967.

2. The petitioner states that considering Ext.P1

application, the 2nd respondent-Revenue Divisional Officer has now passed Ext.P6 proceedings under the Kerala Land Utilization Order, 1967 granting permission to the petitioner to use the land for non-agricultural purposes. But Ext.P6 stated that the petitioner will have to remit 25% fees under the Kerala Conservation of Paddy Land and Wetland Rules. :3:

3. Counsel for the petitioner urged that since the

petitioner has obtained orders under the Kerala Land Utilization Order, 1967, the petitioner cannot be driven to satisfy the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008. The issue has been decided by this Court in the judgment in Thomas George v. State of Kerala [2020 (4) KLT 650].

4. Government Pleader entered appearance for the

respondents and resisted the writ petitions. The Government Pleader denied all the allegations made by the petitioner in the writ petitions. On behalf of the

respondents, the Government Pleader submitted that on and from 30.12.2017, if any applications are to be made for changing the nature of the land in Revenue Records, the provisions of the Act, 2008 will apply and the petitioner will have to resort to the provisions of the Act, 2008. This is not a case where proceedings under the KLU order were passed prior to the introduction of Section 27A in the Act, 2008. :4:

5. I have heard the learned Counsel for the petitioner and the learned Government Pleader representing the respondents.

6. In this writ petition, it is an admitted position that the

application for permission to use land for non-agricultural purposes was submitted under the Kerala Land Utilization Order, 1967 prior to 31.12.2017, before the introduction of Section 27A in the Act, 2008. Ext.P6 Order was passed by the Revenue Divisional Officer in the year 2023. This Court considered the issue as to whether in such circumstances the applicants should be driven to resort to the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008.

7. In Thomas George (supra), in paragraph 10 of the judgment, this Court held as follows: So also, the directions and orders in Ext.P2

judgment have also become final and conclusive

inter partes. Even in a case where R.6(2) application is filed before the cut of date of 30.12.2017, then notwithstanding the fact that orders may not have been passed on such application before the cut of date, still this Court has held that such a party is legally entitled to get such an application filed prior to the cut of date of 30.12.2017 considered strictly in accordance with the provisions contained in R.6(2) of the K.L.U. Order and in such a case the party cannot :5:

be mulcted to face the rigorous procedure and to pay the higher amounts as conceived as per the amended provisions of the 2008 Act including

S.27A thereof and the amended Rules framed thereunder. In such a case, this Court has also held consistently that where the party gets orders or permission under R.6(2) of the K.L.U. Order, then he is equally entitled to maintain an application under S.6A of the Kerala Land Tax Act to get the subject property re-assessed in terms of that statutory provision to secure additional entries in the BTR to show correctly the change of nature of the land as garden land/purayidom instead of the earlier BTR entries as nilam/paddy land and without such a party having to pay any amounts as conceived as per the amended provisions of the 2008 Act and the amended Rules framed thereunder.

8. From the above judgment, it is clear that when

application under the KLU order was submitted prior to 31.12.2017 and when final permission was given after that date, the parties cannot be mulcted to face the rigorous procedure and to pay fees as conceived as per the amended provisions of the Act, 2008 including Section 27A therein. This Court also held that in such circumstances the parties can invoke Section 6A of the Kerala Land Tax Act to get the subject property re-assessed to basic tax and to make additional entries in the Basic Tax Register. In view of the above, the petitioner is also entitled to relief in this writ petition. :6:

9. Hence, the 3rd respondent-Tahsildar is directed that

if the petitioner submits an application in Form-A invoking the Kerala Land Tax Act, 1961 then the 3rd respondent shall re-assess the basic tax making necessary additions in revenue records in the light of the judgments in District Collector v. Fr. Jose Uppani [2020 (4) KLT 612], LLMC Kizhakkambaklam Grama Panchayat v. Mariumma and another [2015 (2) KLT 516] and M/s Sealand Builders Pvt. Ltd. v. The Revenue Divisional Officer [2020 (5) KLT 56]. Ext.P4 is set aside. Writ petition is disposed of as above. Sd/- N. NAGARESH AMR JUDGE :7: APPENDIX OF WP(C) 17376/2023 PETITIONERS EXHIBITS Exhibit P1 TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER ON BEHALF OF THE CHURTH UNDER CLAUSE 6 OF THE KLUO-1967 DATED 23.10.2017. Exhibit P2 TRUE COPY OF THE RECEIPT NO.1247/17 DATED 28.10.2017 EVIDENCING THE

RECEIPT OF EXT.P1 BY THE 2ND RESPONDENT OFFICE. Exhibit P3 TRUE COPY OF THE JUDGMENT DATED 08.11.2017 IN W.P(C) 35718 OF 2017 OF THIS HON'BLE COURT. Exhibit P4 TRUE COPY OF THE ORDER NO. L7-3924/18 DATED 18.03.2019 OF THE 2ND RESPONDENT. Exhibit P5 TRUE COPY OF THE JUDGMENT DATED 25.01.2023 IN W.P(C) 41806 OF 2022 OF THIS HON'BLE COURT. Exhibit P6 TRUE COPY OF THE ORDER NO. L6-325/23/K DIS DATED 18.05.2023 OF THE 2ND RESPONDENT.

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