

Sanjaykumar vs the Additional Tahsildar

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Court : Kerala

Decided On : Mar-28-2023

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr.Justice Murali Purushothaman

Appeal No. : WP(C)/9363/2014

Appellant : Sanjaykumar

Respondent : The Additional Tahsildar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN TUESDAY, THE 28TH DAY OF MARCH 2023 / 7TH CHAITHRA, 1945 WP(C) NO. 9363 OF 2014 PETITIONER: S. SANJAYKUMAR, T.C. 44/1516, WEST STREET, SWRA 126 FORT, THIRUVANANTHAPURAM BY ADV SRI.B.KRISHNA MANI ADV.DHANUJA.M.S. RESPONDENTS: 1 THE ADDITIONAL TAHSILDAR TALUK OFFICE, THIRUVANANTHAPURAM 695 001 2 THE VILLAGE OFFICER, VILLAGE OFFICE, THIRUMALA, THIRUVANANTHAPURAM 695 006

3 P. JYOTHINDRAKUMAR S/O K. PARAMESWARAN NAIR, HARI MANDIRAM, T.C 16/69, KLRA 69, KUKKILIYA ROAD, JAGATHY, THIRUVANANTHAPURAM 695 014 4 THE DISTRICT COLLECTOR THIRUVANANTHAPURAM 695 001 BY ADVS.SRI.TEKCHAND.V, SR. GOVERNMENT PLEADER ADV.RAM MOHAN.G. ADV.G.P.SHINOD ADV.MANU V. ADV.GOVIND PADMANABHAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :: 2 ::

JUDGMENT

Dated this the 28th day of March 2023 S.MANIKUMAR, C.J. Petitioner is stated to be the co-owner and in joint possession of the properties covered under Exts.P1 to P4. By Ext.P11 order, dated 31.1.2014, in Complaint No.513 of 2013, Upa Lok Ayukta ordered mutation of the property in respect of Mr.P.Jyothindra Kumar, the 3rd respondent herein / the complainant.

2. Upa Lok Ayukta has also directed disciplinary

proceedings to be initiated against the Village Officer, Thirumala, Thiruvananthapuram for not complying with the directions issued by his superior officer, namely the Additional Tahsildar, Taluk Office, Thiruvananthapuram, the 1st respondent.

3. Relevant portion of Ext.P11 order, dated 31.1.2014 in Complaint No.513 of 2013, which is impugned in this writ petition, reads thus: 7. Ext.P8 direction was given to the second respondent on taking into consideration a report :: 3 ::

given by the then Village Officer that the complainant was in possession of the property. Now the second respondent says in the statement filed by him that the complainant has to prove his possession over the property and since he has failed to prove the same mutation cannot be effected. This is a case in which on a former occasion the Village Officer on conducting an enquiry gave a report that the complainant was in possession over the property. An officer who is superior to the second

respondent has given a direction to effect mutation on the basis of the former report of the Village Officer. Now second respondent insists that the complainant has to prove his possession over the property. What the Village Officer is expected to do is to conduct an enquiry and find out who is in the actual possession of the property instead of asking the complainant to prove that he is in possession of the property. In case property owners are directed to prove their possession over the property and mutation is refused by saying that they have not succeeded in proving their possession that will lead to the denying of mutation to owners of the property who are entitled to get mutation. What the Village Officer has to do is to make an enquiry and find out who is in actual possession of the property. That has been done by a Village Officer on a previous occasion and now after the first respondent Additional Tahsildar giving specific direction to effect mutation the second respondent Village Officer is refusing to effect mutation. Even if mutation is effected in favour of a person and he is allowed to pay tax in respect of an item of property that alone will not prevent any other person from claiming title over the property before a competent court. If as a matter of fact the 3rd respondent claims that he has title over the property he can get it established through court. So it is not open to the second respondent to refuse to :: 4 ::

effect mutation by saying that the third respondent also claims title over the property especially in the light of the direction contained in Ext.P8 letter of the first respondent. The refusal on the part of the second respondent to effect mutation of the property in the name of the complainant has resulted in injustice and hardship to him. For the reasons stated above report under Section 12(1) of the Kerala Lok Ayukta Act is sent to the competent authority with the following recommendations:-

- i. Mutation of the property mentioned in the complaint has to be effected in the name of the complainant within two months from this date.

2. Disciplinary proceedings has to be initiated

against the second respondent for not complying with the direction given by his superior officer the Additional Tahsildar. That also has to be done within three months from this date. Intimation will be given to the complainant regarding the sending of this report to the competent authority. Competent authority to whom this report is sent u/s 12 (1) of the Kerala Lok Ayukta Act shall file an Action Taken Report here within one month of the expiry of the period mentioned in this report.

4. Being aggrieved by Ext.P11 order, instant writ petition is filed by the petitioner, 3rd respondent in the complaint seeking for the following reliefs: (i) call for records leading to Ext.P11 and quash the same by a writ of certiorari or any other appropriate :: 5 :: writ, direction or order;

(ii) issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents 1, 2 and 4 not implement Ext.P11 in any manner.

(iii) declare Ext.P11 is illegal, without jurisdiction and beyond the powers conferred;

(iv) call for the records leading to Ext.P7 and quash the same by a writ of certiorari or any other appropriate writ, order or direction.

(v) stay all further proceedings pursuant to Ext.P11, until the disposal of the writ petition.

5. Mr.B.Krishnamani, learned counsel for the

petitioner contended that the materials available on record clearly shows that the property still stands in the name of the petitioner. The third respondent has also claimed that he has title over the property when in fact he has no such title. Thus, according to the learned counsel for the petitioner based on the contentions of the third respondent right, title and possession of the property in question is in dispute.

6. According to the learned counsel for the petitioner, the partition deed relied on by the third respondent, does :: 6 :: not deal with the property in question.

Moreover, Ext.P11

order passed by the Upa Lok Ayukta is beyond the scope of

the Kerala Lok Ayukta Act, 1999. It is also contended by the learned counsel for the petitioner that the dispute if any with regard to right, title, ownership and possession is a matter to be decided by the competent civil court.

7. Record of proceedings shows that on 31.3.2014, while admitting the writ petition, a learned Single Judge of

this court has granted interim stay of the impugned order

for a period of two months. Thereafter, on 1.7.2014, it has been extended until further orders.

8. Refuting the submissions made by learned counsel

for the petitioner, Mr.Govind Padmanabhan, learned counsel appearing for the 3rd respondent, submitted that on an earlier occasion, a direction was given to the Village Officer, Thiruvananthapuram to effect mutation. However, due to the non-compliance of the said direction, the third respondent was constrained to approach the Honble Lok Ayukta, for the following reliefs: :: 7 ::

A) Initiate a probe into the mal-administration and nepotism of respondents 1 and 2 which resulted in not effecting the mutation of 1 acre 33 cents of property comprised in survey No.1983 and 1981 of Thirumala Village in favour of the complainant and not allowing the complainant to pay the property tax of the same. B) Direct the second respondent to effect mutation of the said property in favour of the complainant and collect property tax from him in accordance with the Ext.A8 order issued by the first respondent. C) Direct the first respondent to initiate disciplinary action as against the 2nd respondent for not complying with the directions contained in Ext.A8

order passed by him.

9. Mr.Tek Chand.V, learned Senior Government

Pleader submitted that mutation has already been effected on 31.3.2014 and if the petitioner has any dispute, over title or possession, as the case may be, he can approach the competent civil court for appropriate remedy.

10. Heard learned counsel for the parties and perused the materials available on record.

11. Though several grounds have been raised by the

petitioner and also relied on certain documents, especially :: 8 :: Ext.P8, copy of the Thandapper account regarding the property claimed by the third respondent on the basis of the partition deed, the fact remains that a direction has already been given to the Village Officer, Thiruvananthapuram to effect mutation.

12. Section 2(b) of the Kerala Lok Ayukta Act, 1999 defines the term allegation as follows:

(b) allegation, in relation to a public servant, means any affirmation that such public servant,-

(i) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; or

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant;

13. Section 2(k) of the Kerala Lok Ayukta Act, 1999 defines maladministration as follows: (k) maladministration means action taken or purporting to have been taken in the exercise of administrative functions in any case where,-

(i) such action or the administrative procedure :: 9 :: or practice adopted in such action is unreasonable, unjust, oppressive or improperly discriminatory; or

(ii) there has been willful negligence or undue delay in taking such action or the administrative procedure or practice adopted in such action involves undue delay.

14. On the facts and circumstances of this case, what

is required to be considered by this court is as to whether there was any complaint, as defined under the Kerala Lok Ayukta Act, 1999 and, mal-administration has been substantiated.

15. Lok Ayukta has dealt with the above aspect in extenso. Lok Ayukta has considered the rival contentions and passed appropriate orders.

16. Giving due consideration to the facts and

circumstances of the case, we are of the view that the inaction on the part of the Village Officer, Thiruvananthapuram/second respondent to comply with the direction to effect mutation falls within the definition of mal administration. :: 10 ::

17. Though there is an interim order passed by a

learned Single Judge of this court on 31.3.2014, mutation has also been effected on the same day. As rightly contended by the learned counsel for respondent No.3, if the petitioner has any dispute over the title or possession of the property, he can approach the court of competent civil jurisdiction, in accordance with law.

18. However, taking the overall circumstances of the

case, we are of the view that the recommendation of Upa Lok Ayukta to initiate disciplinary proceedings against the Village Officer is not warranted and hence is liable to be set aside. Accordingly we set aside the said direction issued by the Upa Lok Ayukta. Writ petition is disposed of accordingly. SD/- S.MANIKUMAR CHIEF JUSTICE SD/- MURALI PURUSHOTHAMAN JUDGE jes :: 11 ::
APPENDIX PETITIONERS EXHIBITS: EXHIBIT P1 TRUE COPY OF THE TANDAPPER EXHIBIT P2 TRUE COPY OF THE EXTRACT OF THE

SETTLEMENT REGISTER EXHIBIT P3 TRUE COPY OF THE REVENUE LIST UNDER THE RIGHT TO INFORMATION ACT EXHIBIT P4 TRUE COPY OF THE TAX RECEIPT DATED 19-08-1985 EXHIBIT P5 TRUE COPY OF THE PROCEEDING NO M6-41256/11 DATED 27-08-2011 ISSUED BY THE FIRST RESPONDENT EXHIBIT P6 TRUE COPY OF THE TAX RECEIPT DATED 24-12-2012 EXHIBIT P7 TRUE COPY OF THE ORDER DATED 07-10-2011 PASSED BY THE FIRST RESPONDENT EXHIBIT P8 TRUE COPY OF THE THANDAPPER ACCOUNT REGARDING THE PROPERTY CLAIMED BY THE 3RD RESPONDENT ON THE BASIS OF A A PARTITION DEED EXHIBIT P9 TRUE COPY OF THE RELEVANT PORTION OF THE COMPLAINT, COMPLAINT NO 513/2013 BEFORE THE HON'BLE LOKAYUKTHA DATED 01-04-2013 EXHIBIT P10 TRUE COPY OF THE OBJECTION DATED 12-08-2013 IN COMPLAINT NO 513/2013 BEFORE THE HON'BLE LOKAYUKTHA EXHIBIT P11 TRUE COPY OF THE REPORT UNDER SECTION 12(1) OF THE KERALA LOKAYUKTHA ACT DATED 31-01-2014 // True Copy // P.S. TO JUDGE

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