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Saji Augustine vs State of Kerala

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Court : Kerala

Decided On : Jun-30-2023

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/18291/2012

Appellant : Saji Augustine

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945 WP(C) NO. 18291 OF 2012 PETITIONER: SAJI AUGUSTINE AGED 42 YEARS MUTTUSOORIL HOUSE, PAITTAKULAM, OLIYAPURAM, KOOTHATTUKULAM P.O., ERNAKULAM DISTRICT. BY ADVS. SRI.M.S.UNNIKRISHNAN SRI.P.Z.NIJAZ SRI.K.SUNIL RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION, TRIVANDRUM - 695001 2 THE DISTRICT COLLECTOR ERNAKULAM - 682011 3 THE REVENUE DIVISIONAL OFFICER MUVATTUPUZHA - 682019 4 THE TAHSILDAR MUVATTUPUZHA - 682019 5 THE

VILLAGE OFFICER KOOTHATTUKULAM - 682015 SRI.APPU P S- GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of June, 2023 This writ petition is filed seeking the following prayers: (i) Issue of a writ of certiorari or any other appropriate

order or direction to quash exhibit P8 and P10 orders

passed by the 2nd and 5th respondents directing the petitioner to restore the remaining land to its original position; when the Commissioner has directed the third respondent to consider the same after examining all aspects relating to conversion by neighboring owners.

(ii) Issue a writ of mandamus or any other appropriate

writ order or direction directing the 3rd respondent to consider and pass final orders in exhibit P2 petition submitted before it, and the same is directed to be disposed of by the Commissioner of Land revenue as per

order dated 27.07.2010.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the

petitioner is the owner of 50 cents of property in Re-Survey Nos.563/5, 563/6 and 563/8 of Koothattukulam Village in Moovattupuzha Taluk. It is submitted that Ext.P1 is the partition deed by which the petitioner obtained possession of the 50 cents of land. On a complaint submitted by certain neighboring people, Ext.P3 proceedings had been issued on 24.05.2008 requiring the petitioner to carryout paddy cultivation in the property. The petitioner had submitted appeals against

Ext.P3 order. It is submitted that by Ext.P5, the Commissioner of Land Revenue, by order dated 27.07.2010, had remitted the case back to the Revenue Divisional Officer for fresh disposal after considering the lie of the land and examining all aspects relating to conversion by neighbors. The learned counsel for the petitioner submits that the neighboring lands also stand converted and pursuant to Ext.P7 judgment by this Court, the issue was considered by the District Collector and Ext.P8 order was passed. Ext.P8 is challenged by the petitioner on the ground that the actual lie of the land had not been considered while passing the same.

4. A counter affidavit has been placed on record by the 4 th

respondent stating that the petitioner had been granted permission only for filling up of an extent of 10 cents of land for the construction of a dwelling house in Re-Survey No.563/5 of the Koothattukulam Village. It is stated that after the coming into force of the Kerala Conservation of Paddy Land and Wetland Act, 2008, the petitioner had carried out the conversion of the entire 50 cents of property which is clearly against the law and Ext.P8 order had therefore been issued after considering all relevant aspects permitting the petitioner to retain the conversion of 10 cents of land and the construction carried out therein, but requiring the conversion of the rest of the property.

5. The learned Government Pleader submits that the property is described as paddy land both in the Basic Tax Register and the data bank and that therefore, the petitioner cannot successfully challenge Ext.P8 order.

6. Having considered the contentions advanced, I notice that Ext.P7

judgment was dated 15.09.2010 and directed only the consideration of

the application made by the petitioner under the provisions of the Kerala Land Utilization Order. All aspects of the matter were duly considered in Ext.P8 order and it was found that 11 cents, which had been converted by the petitioner, is not suitable for paddy cultivation and that only 10 cents are liable to be excluded. I do not find any legal infirmity in Ext.P8 order. In view of the fact that the land stands

included in the data bank, the only option available to the petitioner would be to file a Form 5 application for removal of the property from the data bank in case he can establish that the property stood converted before 2008.

7. In the above view of the matter, in case the petitioner files a

Form 5 application within two weeks from the date of receipt of a copy of this judgment, the same shall be considered, in accordance with law, within a period of two months thereafter. Till orders are passed on the Form 5 application and communicated to the petitioner, further coercive steps on the basis of Ext.P8 shall be kept in abeyance. However, it is made clear that in case the Form 5 application submitted by the petitioner is rejected, the further steps for enforcement of Ext.P8 can be taken by the respondents. This writ petition is ordered accordingly. Sd/- ANU SIVARAMAN JUDGE NP APPENDIX OF WP(C) 18291/2012 PETITIONERS EXHIBITS EXHIBIT P1 PHOTOCOPY OF THE PARTITION DEED NO.413/2009 DATED 27.03.2009 EXHIBIT P2 PHOTOCOPY OF THE PETITIONER DATED 06.10.2008 EXHIBIT P3 PHOTOCOPY OF THE ORDER DATED 24.05.2008 BEARING NO.A9 1582/2008 OF THE 3RD RESPONDENT EXHIBIT P4 PHOTOCOPY OF THE REPORT BY THE 5TH RESPONDENT 06.03.2010 EXHIBIT P5 PHOTOCOPY OF THE ORDER DATED 27.07.2010 IN APPEAL, NO.LR(A)1-49016/2008, BEFORE THE COMMISSIONER OF LAND REVENUE EXHIBIT P6 PHOTOGRAPHS OF THE PROPERTY AND THE HUT. EXHIBIT P7 PHOTOCOPY OF THE ORDER IN W.P.(C).11470/2010 DATED 15.09.2010 OF THIS HONBLE COURT. EXHIBIT P8 PHOTOCOPY OF THE PROCEEDINGS NO.5-558100/10 DATED 20.05.2012 EXHIBIT P9 PHOTOCOPY OF THE PERMIT NO.E2/4007/2011 DATED 24.03.2012, ISSUED BY THE PETITIONER. EXHIBIT P10 PHOTOCOPY OF THE NOTICE DATED, 17.07.2012 ISSUED BY THE 5TH RESPONDENT. RESPONDENTS EXHIBITS: NIL

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