Davis vs Kuttumukku Devaswom

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Court : Kerala

Decided On : Aug-02-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : WP(C)/24364/2020

Appellant : DAVIS

Respondent : Kuttumukku Devaswom

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945 PETITIONER: DAVIS, AGED 53 YEARS, S/O.ENASSU, KUNNAN HOUSE, PALAYAMPARAMBU P.O., KALLUR VADAKKUMMURI VILLAGE, PRESENTLY CHALAKUDY TALUK, THRISSUR DISTRICT. BY ADVS.T.N.MANOJ SRI.K.SUNNY JOHN RESPONDENTS: 1 KUTTUMUKKU DEVASWOM REPRESENTED BY DEVASWOM OFFICER,

SREEKRISHNAPURAM AND KUTTUMUKKU, PIN - 680 008. 2 COCHIN DEVASWOM BOARD REPRESENTED BY SECRETARY, THRISSUR - 680 020. 3 THE SUB COLLECTOR (APPELLATE AUTHORITY UNDER THE LAND CONVERSANCY ACT), O/O THE SUB COLLECTOR, TRISSUR - 680 003. 4 THE SPECIAL TAHSILDAR COCHIN DEVASWOM BOARD, LC UNIT, THRISSUR - 680 020. 5 THE VILLAGE OFFICER VILVATTOM VILLAGE OFFICE VIVATTOM, PIN - 680 008 *6 STATE REPRESENTED BY THE SECRETARY DEPARTMENT OF REVENUE, THIRUVANANTHAPURAM. THE DESCRIPTION OF THE 6TH RESPONDENT IS SUO MOTU CORRECTED AS STATE OF KERALA, REP.BY SECRETARY TO GOVERNMENT, REVENUE (DEVASWOM) DEPARTMENT, GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM-695 001 AS PER ORDER DATED 02.8.2023 IN WPC SRI S.RAJMOHAN, SR. GOVERNMENT PLEADER ; SRI K.P. SUDHEER, STANDING COUNSEL, CDB THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

02.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The petitioner has filed this writ petition under Article 226

of the Constitution of India, seeking a writ of certiorari to quash Ext.P14 order dated 17.08.2020 of the 3rd respondent Sub Collector. The petitioner has also sought for a declaration that his land is not Government land or Puramboke so as to recover the same resorting to the provisions of the Kerala Land Conservancy Act, 1957 but Devaswom land capable of getting Pattayam/Purchase Certificate under the Kerala Land Reforms Act, 1963; a writ, order or direction granting liberty to the petitioner to approach the Land Tribunal, Thrissur to continue the proceedings under SMP No.4143 of 2015, pending before it for obtaining

Pattayam/Purchase Certificate; and a writ, order or direction to stay all further proceedings of eviction and recovery

of 0.0311 Hectors of land/property comprised in Survey No.211/2 of Vilvattom Village from the possession of the petitioner, in obedience to Ext.P1 notice dated 06.06.2019, till SMP No.4143 of 2015 is finalised by the Land Tribunal.

2. Going by the averments in the writ petition, the land

in question having an extent of 8.5 cents is part of 1.72 Acres of land situated in Survey No.211/2 of Vilvattom Village, belongs to Sreekrishnapuram Temple. By virtue of Document No.4105/1116 of Sub Registrar Office, Thrissur, the properties having a total extent of 2.56 Acres were given on licence in favour of Kongoth Parameswara Menon. Thereafter, the Devaswom Board, vide its decision dated 19.12.1953, in proceedings No.3923/1953 gave the property to the said Parmeswara Menon with Verumpattam rights, upon his request. Thereupon, the said person, who was holding the property as cultivating tenant as defined in Section 2(8) read with Section 13 of the Kerala Land Reforms Act, became the absolute owner in possession of the property. The said property was again assigned in favour of Cherumukkil Gopalan Nair, who partitioned the said property among his legal heirs. Thereafter, an extent of 8 cents from the said property was assigned in favour of the petitioner. However, the petitioner has been issued with Ext.P1 order dated 06.06.2019 of the 4th respondent Special Tahsildar resorting to the provisions of the Kerala Land Conservancy Act and the Rules made thereunder, for eviction from the unauthorised occupation of the said property. Challenging the said order, the petitioner preferred an

appeal, i.e., Appeal No.A3/11272/2019, before the 3rd

respondent Sub Collector, which was dismissed by Ext.P14 order

dated 17.08.2020. Hence this writ petition.

3. On 10.11.2020, when this writ petition came up for

admission, this Court admitted the matter on file. The learned Standing Counsel for Cochin Devaswom Board took notice for respondents 1 and 2. The learned Government Pleader took notice for respondents 3 to 5. This Court granted an interim

order to the effect that there shall be no eviction till the disposal

of the writ petition.

4. Heard the learned counsel for the petitioner, the learned Standing Counsel for Cochin Devaswom Board for respondents 1 and 2 and the learned Senior Government Pleader for respondents 3 to 6.

5. Ext.P14 order dated 17.08.2020 of the 3rd respondent

Sub Collector, which is under challenge in this writ petition, is one passed in Ext.P12 appeal, i.e., Appeal No.11272 of 2019, which was one filed by the petitioner under Section 16(1)(b) of the Kerala Land Conservancy Act, challenging Ext.P1 order dated 06.06.2019 of the 4th respondent Special Tahsildar.

6. Section 16 of the Kerala Land Conservancy Act deals

with appeal and revision. As per sub-section (1) of Section 16, any person aggrieved by any decision or order under this Act of any officer authorised under Section 15 may appeal, (a) where such officer is the Revenue Divisional Officer to the Collector. As per the proviso to clause (a), no such appeal shall lie in any case where the order is passed by the Revenue Divisional Officer on appeal under clause (b). As per clause (b) of sub-section (1) of Section 16; in all other cases appeal shall lie to the Revenue Divisional Office. The Collector or the Revenue Divisional Officer, as the case may be, may pass such order on the appeal as he thinks fit. As per sub-section (2) of Section 16, the Collector may either suo motu or on application revise any decision made or

order passed under this Act by any officer authorised under

Section 15. As per the first proviso to sub-section (2), where such officer is the Revenue Divisional Officer, the Collector shall not on application revise any decision made or order passed otherwise than on appeal. As per the second proviso to sub- section (2), the Collector shall not revise any decision or order if an appeal against such decision or order is pending or if the time for preferring appeal, if any, against such decision or order has not expired. As per sub-section (3) of Section 16, any person aggrieved by any decision or order of the Collector under this Act (otherwise than on appeal or revision) may appeal to the Board of Revenue and the Board of Revenue may pass such order on the appeal as it thinks fit. As per sub-section (4) of Section 16, the Commissioner of Land Revenue may either suo motu or on application revise any order passed by the Collector on appeal. As per sub-section (5) of Section 16, the Government may either suo motu or on application revise any order passed by the Commissioner of Land Revenue on appeal. As per sub-section

(6) of Section 16, no order shall be passed under sub-section (1)

or sub-section (2) or sub-section (3) or sub-section, (4) or sub- section (5) without giving the party who may be affected thereby an opportunity of being heard. As per sub-section (7) of Section 16, pending disposals of any appeal or revision under this Act, the appellate authority or the revising authority, as the case may be, may suspend the execution of the decision or order appealed against or sought to be revised.

7. Section 17 of the Kerala Land Conservancy Act deals

with the limitation for appeal and revision. As per sub-section (1) of Section 17, no appeal or revision shall be preferred under Section 16 after the expiration of thirty days from the date on which the decision or order appealed against or sought to be revised was received by the appellant or applicant as the case may be. As per sub-section (2) of Section 17, notwithstanding anything contained in sub-section (1), the appellate authority or the revising authority may admit an appeal or application for revision preferred after the period specified in that sub-section, if such authority is satisfied that the appellant or applicant had sufficient cause for not preferring the appeal or application within that period. As per sub-section (3) of

Section 17, the Collector shall not suo motu initiate proceedings to revise any decision or

order after the expiry of one year from the date on which such

decision has been made or order has been passed. As per sub- section (4) of Section 17, the Government or the Board of Revenue the Commissioner of Land Revenue the Commissioner of Land Revenue shall not suo motu initiate proceedings to revise any order after the expiry of one year from the date on which such order has been passed.

8. In view of the provisions under sub-section (4) of

Section 16 of the Act, the petitioner has a statutory remedy of revision before the Commissioner of Land Revenue, against Ext.P14 order dated 17.08.2020 of the 3rd respondent Sub Collector.

9. In Commissioner of Income Tax v. Chhabil Das

Agarwal [(2014) 1 SCC 603] the Apex Court held that non- entertainment of a writ petition under Article 226 of the Constitution of India when an efficacious alternative remedy is available is a rule and self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution of India, despite the existence of alternative remedy. However, High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same, unless he has made out an exceptional case warranting such interference or there exists sufficient ground to invoke the extraordinary jurisdiction under Article 226.

10. In Authorised Officer, State Bank of Travancore

v. Mathew K.C. [(2018) 3 SCC 85] the Apex Court reiterated that the discretionary jurisdiction under Article 226 of the Constitution of India is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law.

The normal rule is that a writ petition under Article 226 of the Constitution of India ought not to be entertained if alternative statutory remedies are available, except in cases falling within the well-defined exceptions as observed in Chaabil Das Agarwal [(2014) 1 SCC 603], i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice. After referring to the law laid down in Thansingh Nathmal v. Superintendent of Taxes [AIR 1964 SC 1419] and Titaghur Paper Mills Company Ltd. v. State of Orissa [(1983) 2 SCC 433] the Apex Court held that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of contains a mechanism for redressal of grievance. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

11. In Thansingh Nathmal [AIR 1964 SC 1419] a

Constitution Bench of the Apex Court held that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will

ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce for which the writ is claimed. The High Court does not, therefore, act as a Court of appeal against the decision of a Court or tribunal, to correct errors of fact, and does not by

assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed and will leave the party applying to it to seek resort to the machinery so set up.

12. In Titaghur Paper Mill [(1983) 2 SCC 433] a Three-Judge Bench of the Apex Court held that the Orissa Sales Tax Act, 1947 provides for a complete machinery to challenge an

order of assessment, and the impugned orders of assessment

can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Water Works Co. v. Hawkesford [(1859) 6 CBNS 336] at page 356 in the following passage:

> "There are three classes of cases in which a liability may be established founded upon statute ... But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ... the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in that passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. [1919 AC 368] and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co.

[1935 AC 532] and Secretary of State v. Mask and Co. [AIR 1940 PC 105]. It has also been held to be equally applicable to enforcement of rights and has been followed by the Apex Court throughout.

13. In Balkrishna Ram v. Union of India [(2020) 2

SCC 442] one of the issues raised before the Apex Court was whether an appeal against an order of a single judge of a High Court deciding a case related to an Armed Forces personnel pending before the High Court is required to be transferred to the Armed Forces Tribunal or should be heard by the High Court. The Apex Court held that sub-section (1) of Section 14 of the Armed Forces Tribunal Act, 2007 clearly provides that the Armed Forces Tribunal will exercise powers of all Courts except the Supreme Court or High Court exercising jurisdiction under Article 226 and Article 227 of the Constitution of India. Section 34 is very carefully worded. It states that 'every suit', or 'other proceedings' pending before any Court including a High Court immediately before the establishment of the Tribunal shall stand transferred on that day to the Tribunal. The Legislature has clearly not vested the Armed Forces Tribunal with the power and jurisdiction of the High Court to be exercised under Article 226 of the Constitution. There can be no manner of doubt that the High Court can exercise its writ jurisdiction even in respect of orders passed by the Armed Forces Tribunal. Since an appeal lies to the Supreme Court against an order of the Armed Forces Tribunal, the High Court may not exercise their extraordinary writ jurisdiction because there is an efficacious alternative remedy available but that does not mean that the jurisdiction of the High Court is taken away. In a given circumstance, the High Court may and can exercise its extraordinary writ jurisdiction even against the orders of the High Court [sic: Armed Forces Tribunal].

14. In Balkrishna Ram [(2020) 2 SCC 442] the Apex

Court held that the principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The Writ Courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when there is an alternative remedy available - Union of India v. T.R. Varma [AIR 1957 SC 882]. The rule of alternative remedy is a rule of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction. There may be cases where the High Court would be justified in exercising its writ jurisdiction because of some glaring illegality committed by the Armed Forces Tribunal. One must also remember that the alternative remedy must be efficacious and in

case of a Non-Commissioned Officer (NCO), or a Junior Commissioned Officer (JCO); to expect such a person to approach the Supreme Court in every case may not be justified. It is extremely difficult and beyond the monetary reach of an ordinary litigant to approach the Supreme Court. Therefore, it will be for the High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary writ jurisdiction or not. There cannot be a blanket ban on the exercise of such jurisdiction because that would effectively mean that the Writ Court is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in L. Chandra Kumar v. Union of India [(1997) 3 SCC 262].

15. Viewed in the light of the law laid down in the

decisions referred to supra, the conclusion is irresistible that in view of the statutory remedy provided under sub-section (4) of Section 16 of the Kerala Land Conservancy Act, before the Commissioner of Land Revenue, the petitioner cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, for challenging Ext.P14 order dated 17.08.2020 of the 3rd respondent Sub Collector, on the grounds raised in this writ petition.

16. In such circumstances, this writ petition, which was one filed on 09.11.2020, fails on the ground of maintainability and the same is accordingly dismissed; however without

prejudice to the right of the petitioner to challenge Ext.P14 order

dated 17.08.2020 of the 3rd respondent Sub Collector before the Commissioner of Land Revenue, by invoking the statutory remedy provided under sub-section (4) of Section 16 of the Act. The legal and factual contentions raised by the petitioner are left open.

17. The submission of the learned counsel for the

petitioner that the petitioner shall file a revision before the Commissioner of Land Revenue, under sub-section (4) of Section 16 of the Act, challenging Ext.P14 order dated 17.08.2020 of the 3rd respondent Sub Collector, within a period of three weeks from the date of receipt of a certified copy of this judgment, is recorded. In the application to be filed for condonation of delay, invoking the provisions of sub-section (2) of Section 17 of the Act, the petitioner shall point out the period of pendency of this writ petition before this Court.

The interim order granted by this Court in this writ petition, on 10.11.2020, shall continue to be in force, till a decision is taken by the Commissioner of Land Revenue, as directed above, within the time limit stipulated above. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE AV/2/8 APPENDIX OF WP(C) 24364/2020 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE NOTICE DATED 6/6/2019 OF THE SPECIAL TAHSILDAR COCHIN DEVASWOM BOARD. EXHIBIT P2 TRUE COPY OF THE LIST OF DOCUMENTS PRODUCED BY THE PETITIONER, BEFORE THE SPECIAL TAHSILDHAR TO SUPPORT HIS CLAIM OF TITLE AND OWNER SHIP DT. 09/04/2019.

EXHIBIT P3 TRUE COPY OF THE TITLE DEED NO.4322/2005 OF TRISSUR SRO OF THE PETITIONER DT. 10/06/2005. EXHIBIT P4 TRUE COPY OF THE VERUMBATTAM DEED NO.160/1954 IN FAVOR OF PARAMESWARA MENON DT. 11/01/1954. EXHIBIT P5 TRUE COPY OF THE CERTIFICATE DATED 7/6/1961 ISSUED FROM THE OFFICE OF THE SRO TRISSUR ISSUED IN SUPPORT OF VERUMBATTAM DEED NO.160/1954. EXHIBIT P6 TRUE COPY OF THE ASSIGNMENT DEEDS NO.1790/1974 OF TRISSUR SRO IN FAVOUR OF GOPALAN NAIR. EXHIBIT P7 TRUE COPY OF POSSESSION CERTIFICATE DATED THE VILLAGE OFFICE, VILVATTOM VILLAGE OFFICE. EXHIBIT P8 TRUE COPY OF CERTIFICATE DATED 28/10/2015 ISSUED BY THE VILLAGE

OFFICER, VILVATTOM VILLAGE OFFICE. EXHIBIT P9 TRUE COPY OF REPORT OF THE ADDITIONAL TAHSILDAR TRISSUR DATED 7/9/2015, FILED BEFORE THE DISTRICT COLLECTOR TRISSUR. EXHIBIT P10 TRUE COPY OF REPORT DATED 11/11/2014 OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR LAND REFORMS TRISSUR. EXHIBIT P11 TRUE COPY OF REPORT OF THE PROCEEDINGS/ORDER DATED 27/1/2020 OF THE SUB COLLECTOR AT TRISSUR. EXHIBIT P12 TRUE COPY OF THE MEMORANDUM OF APPEAL NO.11272/2019 OF THE PETITIONER BEFORE THE RDO TRISSUR. EXHIBIT P13 TRUE COPY OF REPORT DATED 8/2/2018 OF THE VILLAGE OFFICER VILVATTOM VILLAGE OFFICE. EXHIBIT P14 TRUE COPY OF ORDER DATED 17/8/2020 OF THE SUB COLLECTOR AT TRISSUR DISMISSING THE APPEAL.