

Ubaid vs State of Kerala

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Court : Kerala

Decided On : Feb-23-2022

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WA/113/2022

Appellant : UBAID

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY WEDNESDAY, THE 23RD DAY OF FEBRUARY 2022 / 4TH PHALGUNA, 1943 WA NO. 113 OF 2022 AGAINST THE JUDGMENT IN WP(C) 21603/2021 OF HIGH COURT OF KERALA DATED 7.12.2021 APPELLANTS:

1 UBAID AGED 52 YEARS, S/O. LATE MERY JOHN, PARAPATHU HOUSE, KMP NO.X/4/10 (UA), HMT COLONY P.O., KALAMASSERY, ERNAKULAM-683503. 2 NOUSHAD P.S., AGED 47 YEARS, S/O. LATE SAIDU MUHAMMED, KMP NO.X/5/10 (UA), HMT COLONY P.O.,

KALAMASSERY, ERNAKULAM-683503. 3 ABDUL AZEEZ, AGED 76 YEARS, S/O. LATE PAREETHU KAHDDHER, KMP NO.X/1/10 (UA), HMT COLONY P.O., KALAMASSERY, ERNAKULAM-683503. 4 OMANA PRASANNAN, AGED 60 YEARS, W/O. PRASANNAN, KMP NO.X/2/10 (UA), HMT COLONY P.O., KALAMASSERY, ERNAKULAM-683503. 5 BINDU AYYAPPAN, AGED 42 YEARS, W/O. LATE AYAPPAN, KMP NO.X/3/10 (UA), HMT COLONY P.O., KALAMASSERY, ERNAKULAM-683503. BY ADVS. JAMES ABRAHAM (VILAYAKATTU) P.BALAN (VYTTLILA)

RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, DEPARTMENT OF WATER RESOURCES, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 THE MANAGING DIRECTOR, KERALA WATER AUTHORITY, JALABHAVAN, THIRUVANANTHAPURAM-695033. 3 THE EXECUTIVE ENGINEER, OFFICE OF THE EXECUTIVE ENGINEER, JNNURM PROJECT CIRCLE, HOSPITAL ROAD, ERNAKULAM-682011. 4 THE DISTRICT COLLECTOR, ERNAKULAM, CIVIL STATION, KAKKANAD, ERNAKULAM DISTRICT-682030. 5 THE TAHSILDAR (LA) GENERAL TALUK OFFICE, KANAYANNOOR, ERNAKULAM-682011. 6 THE TAHSILDAR (LR) GENERAL, TALUK OFFICE, KANAYANNOOR, ERNAKULAM-682011. 7 THE VILLAGE OFFICER, VILLAGE OFFICE, THRIKKAKARA, ERNAKULAM DISTRICT-682024. 8 KERALA WATER AUTHORITY EMPLOYEES UNION, ERNAKULAM, REPRESENTED BY ITS DISTRICT SECRETARY, P.M.SAMSON, AGED 43 YEARS, S/O. MOHANAN, RESIDING AT LAKSHMI BHAVAN.

BY ADVS. SRI.V.TEKCHAND, SR.GOVERNMENT PLEADER FOR R1 & 4-7 SHRI.P.BENJAMIN PAUL, SC, KERALA WATER AUTHORITY OTHER PRESENT: SRI.P.V.MOHANAN FOR R8 THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23.02.2022, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 23rd day of February, 2022 S. Manikumar, CJ. Before the writ court, petitioner/appellants have sought for the following reliefs:

(i) Issue a writ of mandamus or appropriate order or

direction directing the respondents 2 to 6 to allot the land to the petitioners as ordered in Exhibit P3 G.O and further directed the 4th respondent to assess the cost of construction of houses and disburse the same to the petitioners within a time frame fixed by this Hon'ble Court.

2. Short facts leading to filing of the writ petition are as under:

Petitioners are in possession of respective lands in re-survey No.174 of Thrikkakara North Village, Kanayannoor Taluk and they are residing there with their families for more than 40 years. Their residential houses were numbered by the local authority, as evidenced by Exhibit P1.

3. Admittedly the said land is vested with the Kerala Water

Authority and by a letter dated 5.11.2013, the Managing Director, Kerala Water Authority, Thiruvananthapuram/2nd respondent has informed the Additional Chief Secretary to Government, Department of Water Resources, Thiruvananthapuram/1st respondent that the land, which occupied by the petitioners, are in need of expansion of drinking water project and thus the petitioners cannot be allowed to continue in the said land. Consequently, the Government took the decision by issuing G.O.

(MS) No. 26/14/WRD dated 4.3.2014 (Exhibit P3) to rehabilitate the petitioners into the property of the 2nd respondent, comprising of survey No. 452/7 of Thrikkakara Village.

4. By issuing Exhibit P3, the Government have specifically ordered

that the petitioners have to be allotted the same extent of land, which they are now in possession, and further directed the District Collector, Ernakulam/4th respondent to assess the cost of construction of the residential building and ordered to disburse from the Government fund.

5. Petitioners approached the Executive Engineer, JNNRUM Project Circle, The District Collector, Ernakulam, Tahsildar (LA) General, Kanayannur Taluk, Ernakulam and the Tahsildar (LR) General,

Kanayannur Taluk, Ernakulam/respondents 3 to 6, being the implementing authorities of Exhibit P3 G.O. dated 4.3.2014, but till date no effective action has been taken by them, to allot the land to the petitioners, even after a lapse of more than 7 years.

6. During the pendency of the writ petition, vide order dated 7.12.2021, Kerala Water Authority Employees Union, Ernakulam, represented by its District Secretary got impleaded as additional

respondent No.8. Submission has been made by the Union that the competent authority has to consider their objections also, before a final decision is taken. The said argument has been made on the basis of the principles of law public trust and that the land in question was acquired by Water Authority for a public purpose.

7. After considering the rival submissions, writ court declined to

entertain the objections of the additional 8 th respondent, made against Exhibit P3, in an indirect manner, particularly, when the Union has not chosen to challenge the same in the manner known to law.

8. However, quite contrary to the said decision, writ court disposed of the writ petition with a direction to the Managing Director,

Kerala Water Authority, Thiruvananthapuram and Executive Engineer, Ernakulam/respondents 2 and 3 therein, to consider the claims of writ petitioners/appellants on the basis of Exhibit-P3 Government Order, after affording the petitioners, the 8 th respondent, as also any other person who may be

interested, an opportunity of being heard and a decision be taken, not later than three months from the date of receipt of a copy of the judgment.

9. Being aggrieved by the direction to entertain the 8th respondent

therein, by giving an opportunity of hearing to the Employees Union and other persons, in the matter of allotment of lands to the appellants, instant writ appeal is filed.

10. According to the appellants, when the Union had not challenged the G.O (Exhibit P3), they have no right to be heard in the matter of allotment.

11. Earlier, when the matter came up for hearing on 31.1.2022,

taking note of the fact that the Revenue Authorities/respondents 4 to 7 have not measured the subject land, for the purpose of allotment, we directed them to measure and submit a report.

12. Accordingly, the First Grade Surveyor has taken measurement and submitted a report dated 17.2.2022, which reads thus:

L1-17177/2012 Village: 'Thrikkakara North Block No, B, Re. Survey No. 452/7 REPORT Sub: Submitting survey report - regarding Ref 1. Honourable High Court Judgment in WA-113/22.

2. Instruction received from Tahsildar, Kanayannur in L1-

Kind attention is invited to the reference cited above. As per the government order, it has been instructed to identify land in Thrikkakara North village to rehabilitate the 5 unauthorised occupant (families) residing in the land owned by Kerala Water Authority. Government order was to identify land in survey No. by these 5 families. Complying with the Honourable High Court Judgment, survey sketch of the aforesaid land identified is submitted herewith for further proceedings. Sd/- Ernakulam RAJEEV JOSPEH 17.2.2022 First Grade Surveyor

13. Mr. Benjamin Paul, learned Standing Counsel for Kerala Water

Authority submitted that as per Section 55 of Kerala Water Supply and Sewerage Act, 1986, any directions issued by the Government, is binding on Kerala Water Authority. Section 55 of the Act reads thus: 55. Directions by the Government.-

(1) In the discharge of its functions, the Authority shall be guided by such directions on questions of policy as may be given to it by the Government.

(2) If any question arises as to whether any matter is or is not a matter in respect of which the Government may issue a direction under sub- section (1), the decision of the Government thereon shall be final.

14. Exhibit P3 is the order made in G.O (Ms) No.26/14/WRD dated

4.3.2014, by which the Government ordered that the five families, who have been unauthorisedly residing for the last 36 years, within the property of Kerala Water Authority in Parappathu Colony, be rehabilitated

into the property of Kerala Water Authority, comprising in Survey No.452/7 of Thrikkakkara Village, taken from HUDCO and further directed to allot the same extent of land, in occupation of the petitioners/appellants. Government also ordered to disburse the fund for construction of the house from the Government, assessed by the District Collector.

15. From the above, it is abundantly clear that Government had

decided to rehabilitate the five families, who had been unauthorisedly residing in the property of Kerala Water Authority in Parappathu Colony, Thrikkakkara, into another property bearing Survey No.452/7 of Thrikkakkara Village and accordingly issued Exhibit P3 orders. But the said order has not been implemented in letter and spirit for nearly seven years. Thus the appellants were constrained to prefer W.P(C). No.21603 of 2021 for the reliefs stated supra.

16. Kerala Water Authority Employees Union, represented by the District Secretary/additional 8th respondent, though got impleaded vide

order made in I.A. No.1 of 2022 dated 7.12.2021, their objections against

Exhibit-P3 have been specifically declined by the writ court. Having done so, writ court ought not to have permitted an opportunity of being heard to the said Union and also to any person, who may be interested. The direction issued in paragraph No.7 of the impugned judgment is in direct conflict with the decision taken in paragraph No.5 of the very same

judgment.

17. For brevity paragraphs 5 and 7 are extracted: Paragraph 5 Paragraph 7

5. When I evaluate the afore submissions, it is 7. I am, therefore, of the

evident that the 8th respondent has not opinion that

also says that they are bound by the same and that necessary action in terms of its stipulations will be taken forward. I, therefore, cannot countenance the objection of the 8th respondent against Ext.P3, made in an indirect manner, particularly when they have chosen not to call it into question through a proper process of law until now.

18. Kerala Water Authority Employees Union, though claimed to

have projected a case on the principle of public trust, their contention against Exhibit P3 has been rejected and in such circumstances, we are of the view that they have no right to be heard in the matter of allotment of land to the appellants towards rehabilitation.

19. Decision of the Government has been taken in the year 2015 and as we could see, it has taken nearly 7 years, even for initiating the process of measuring the land, for the purpose of allotment.

20. Now that the First Grade Surveyor, Thrikkakara North Village

has measured and submitted a report on 17.2.2022, having regard to the intention of the Government, Managing Director, Kerala Water Authority, Thiruvananthapuram and Executive Engineer of JNNURM Project Circle, Ernakulam/respondents 2 and 3 are directed to take all steps to implement Exhibit P3 Government Order, in terms of Section 55 of Kerala Water Supply and Sewerage Act, 1986 within two months from the date of receipt of a copy of this judgment.

Direction issued to provide opportunity of hearing to respondent No.8 and others is set aside. In all other respects, impugned judgment is sustained, with further directions, issued in this appeal. Sd/- S. Manikumar, Chief Justice Sd/- Shaji P. Chaly, Judge sou. APPENDIX OF WA 113/2022 PETITIONER ANNEXURES Annexure A1 A TRUE COPY OF THE ORDER DATED 16.11.2021 IN WP(C) NO.21603/2021.

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