

Narayanan.a vs the State of Kerala

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Court : Kerala

Decided On : Jan-31-2022

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/4133/2020

Appellant : Narayanan.a

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN MONDAY, THE 31ST DAY OF JANUARY 2022 / 11TH MAGHA, 1943 WP(C) NO. 4133 OF 2020 PETITIONER: NARAYANAN.A S/O LATE APPUTTY,SRI KRISHNA NIVAS, PALLAM,PALAKUNNU,UDMA, KASARAGOD-671319,KERALA. BY ADV A.C.VENUGOPAL RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY ITS PRINCIPAL SECRETARY,DEPARTMENT OF REVENUE, KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 DISTRICT COLLECTOR, CIVIL STATION,VIDYA NAGAR,KASARAGOD DIST-

671123. 3 REVENUE DIVISIONAL OFFICER, KASARAGOD AT KANHANGAD, PIN-671121. 4 THASILDAR(LR), HOSDURG,KASARAGOD DIST-671123. 5 VILLAGE OFFICER, CHITHARI VILLAGE,HOSDURG, KASARAGOD DIST-671123. 6 ADDL.R6. SASIKALA AGED 59 YEARS,W/O. LATE V.KRISHNAN, CHAITHRAM, KANJIRAVAYAL, NELLIKATTU, BALLA(P.O.), BALLA VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT, PIN-671 315

IMPLEADED AS ADDL.R6 AS PER ORDER DATED 09.02.2021 IN I.A.01/21 IN WP(C) 4133/2020. 7 ADDL.R7. THANNOT THIDIL SRI VISHNUMOORTHY DEVASTHANAM REPRESENTED BY ITS PRESIDENT, THANNOT P.O., RAVANESHWARAM, KASARAGOD DISTRICT, PIN-671316. 8 ADDL. R8. KUNHIRAMAN S/O. LATE MUTHU PRESIDENT, THANNOT THIDIL SRI. VISHNUMOORTHY DEVASTHANAM THANNOT P.O., RAVANESHWARAM, KASARAGOD DISTRICT, PIN-671316. 9 ADDL.R9. BABU,S/O.KUNHIKRISHNAN, SECRETARY, THANNOT THIDIL SRI VISHNUMOORTHY DEVASTHANAM OLPPADUKKAM HOUSE,PODICHANAM, RAVANESHWARAM P.O., KASARAGOD DISTRICT, PIN-671316. 10 ADDL. R10. KANNAN, S/O. LATE RAMAN, VALAPPIL HOUSE, RAVANESHWARAM P.O., KASARAGOD DIST., PIN-671316. 11 ADDL. R11. AMBUNHI, S/O.LATE KELU, AMBILERI VEEDU, THANNOT, P.O. RAVANESHWARAM, KASARAGOD DISTRICT, PIN- 671316. 12 ADDL. R12. P.KUNHIRAMAN, THANNOT P.O., RAVANESHWARAM, KASARAGOD

DISTRICT, PIN-671316. 13 ADDL.R13. AJANUR GRAMA PANCHAYATH REPRESENTED BY ITS SECRETARY, BELLIKOTH P.O., KASARAGOD DISTRICT, KERALA 671531.

IMPLEADED AS ADDL. R7 TO R13 AS PER ORDER

DATED 26.02.2021 IN I.A.02/2021 IN WP(C) BY ADVS. GOVERNMENT PLEADER RANJIT BABU SRI.B.DEEPAK SRI.M.SASINDRAN SRI.KARTHIK

BHAVADASAN SMT. K.AMMINIKUTTY - SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of January, 2022. The petitioner says that he had applied for assignment of an extent of 2.5 cents of Government Puramboke in his favour, since he has no other access

to his residential house. He says that his access has been completely blocked by the party respondents in this case, who have trespassed into the Government land and that, therefore, he preferred a complaint before the second respondent - District Collector, which led to a report being settled, showing that his allegations are true.

2. The petitioner alleges that, however, in spite of this, his application for assignment had been rejected

through Ext.P4 by the Tahsildar, but which, when he took up in appeal before the Revenue Divisional Officer (RDO), culminated in Ext.P5 order saying that as and when the Government land is assigned in future, his eligibility for the same will be reserved.

3. The petitioner says that, notwithstanding

Ext.P5, not merely has his application for assignment not been finally disposed of, but the party respondents have now come back into the Government land, disregarding the various interim orders issued by this Court earlier.

4. The petitioner, therefore, prays party

respondents be evicted from the Government Puramboke land and his request for assignment of land, as reserved in Ext.P5, be directed to be considered and granted within a time frame to be fixed by this Court.

5. The afore submissions of Sri.A.C.Venugopal -

learned counsel of the petitioner, were answered by Sri.K.V.ArunKumar - learned counsel appearing for the sixth respondent and Sri.B.Deepak - appearing for some of the other party respondents, saying that petitioner has approached this Court making egregiously improper and incorrect averments and that he is not entitled to any

assignment as has been sought for by him. They vehemently argued that, their clients are not in encroachment of any Government land and therefore, that until a proper enquiry is made into all these by the competent Authorities taking note of the old survey records, as well as the resurvey records, any action against them may be interdicted.

6. Smt.K.Ammunikutty - learned Senior

Government Pleader, pointed out that Ext.P5 was issued by the RDO as early as in the year 2017. She submitted that, she has no information whether petitioner has made any application for assignment and as to the present state of the alleged encroachments by the party respondents, if any.

7. When I assess and evaluate the afore

submissions on the touchstone of the various materials available on record, it becomes inevitable that there are broadly two issues involved in this case, namely: a) Whether the party respondents are in encroachment of any Government land; and b) Whether the petitioner is entitled to assignment, as per the order of the RDO, namely Ext.P5. As far as the question of encroachment into Government lands is concerned, it is certainly a matter which has to be considered by the fourth respondent Tahsildar - who is admittedly the competent Authority after hearing both sides and after examining all records. This process cannot be delayed, particularly because, as rightly stated by Sri.A.C.Venugopal, there were earlier interim orders of this Court in this case, based on which, it was reported that all such encroachments have been removed. If there are any further encroachments or fresh ones, then surely the Tahsildar must act without any delay, after hearing all sides, including the petitioner.

8. As far as the application for assignment of the

petitioner is concerned, if the same is pending, then the competent Authority - who is also the Tahsildar - will consider the same, but if such an application has either been closed or is unavailable, then the petitioner will be given an opportunity of making a fresh one, based on which, further action in terms of the applicable Statutes and Regulations will have to be completed, adverting to Ext.P5.

Resultantly, I order this writ petition with the following directions: a) The fourth respondent - Tahsildar will

immediately issue notice to the petitioner, as also to the party respondents, and conduct a proper enquiry based on the Survey records, as well as other title documents and such other relevant materials, and finalize it under the appropriate Act, including the Land Conservancy Act, with respect to the allegation of encroachment into Government land. This shall be done as expeditiously as is possible, but not later than six months from the date of

receipt of a copy of this judgment. Needless to say, after the said enquiry is completed, necessary consequential action to remove the encroachments, if any, shall also be completed without any avoidable delay thereafter, but not later than three months therefrom. b) The fourth respondent - Tahsildar, will notify the petitioner, either with respect to his pending application for assignment, or giving him liberty to make

a fresh one, which shall be done within a period of one month from the date of receipt of a copy of this judgment; in which event, petitioner shall be heard, either on the pending application or on the fresh one to be made by him, adverting to Ext.P5; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than six months from the date on which said application is made. Needless to say, during the afore proceedings the party respondents will also be given an opportunity of being heard.

Sd/- DEVAN RAMACHANDRAN JUDGE Raj/01.02.2022. APPENDIX OF WP(C) 4133/2020 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF SALE DEED

NO.3675/1997 DATED 27.10.1997 EXHIBIT P2 TRUE COPY OF THE DISABILITY CERTIFICATE ISSUED BY THE HEALTH SERVICE DEPARTMENT GOVERNMENT OF KERALA EXHIBIT P3 TRUE COPY OF THE APPLICATION MADE FOR ASSIGNMENT WITH THE RECOMMENDATION OF THE 5TH RESPONDENT EXHIBIT P4 TRUE COPY OF THE ORDER PASSED BY THE 4TH RESPONDENT DATED 17.03.2016. EXHIBIT P5 TRUE COPY OF THE ORDER DATED 20.06.2017 OF THE 3RD RESPONDENT EXHIBIT P6 TRUE COPY OF THE COMPLAINT GIVEN TO THE HON'BLE REVENUE MINISTER. EXHIBIT P7 TRUE COPY OF THE COMPLAINT GIVEN BY THE PETITIONER TO THE 2ND RESPONDENT EXHIBIT P8 TRUE COPY OF LETTER DATED 09.05.2019 FROM THE 2ND RESPONDENT TO THE PETITIONER. EXHIBIT P9 THE REPORT OF THE 3RD RESPONDENT DATED 19.03.2019 OBTAINED BY THE PETITIONER EXHIBIT P10 TRUE COPY OF THE LETTER DATED 09.05.2019

SENT BY THE 2ND RESPONDENT TO THE 4TH RESPONDENT OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.

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