

C.a.Joseph vs State of Kerala

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Court : Kerala

Decided On : Mar-31-2021

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : WP(C)/4963/2021

Appellant : C.a.Joseph

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA,
1943 WP(C).No.4963 OF 2021(U) PETITIONER: C.A.JOSEPH AGED 69
YEARS CHEETHAPARAMBIL,VADUTHALA,CHERANALLUR,
ERNAKULAM-682023. BY ADVS. SMT.K.P.SANTHI SMT.NISHA
G.THARAMAL SMT.SARIMOL KAREETHARA SMT.TARA PREM
RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO
GOVERNMENT, REVENUE DEPARTMENT,
SECRETARIAT,G.P.O,THIRUVANANTHAPURAM-695001. 2 THE

DISTRICT COLLECTOR, CIVIL STATION,KAKKANAD.P.O,
ERNAKULAM-682030. 3 TAHSILDAR, KANAYANNUR TALUK, PARK
AVENUE ROAD, KOCHI-682011. 4 CORPORATION OF KOCHI, PARK
AVENUE ROAD, KOCHI-682011, REPRESENTED BY SECRETARY.
R4 BY ADV. SRI.K.B.ARUNKUMAR, SC R1 - R3 BY SMT
K.AMMINIKUTTY, SR GOVERNMENT PLEADER THIS WRIT
PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

31.03.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: WP(C).No.4963 OF 2021(U) 2

JUDGMENT

The petitioner, who is stated to be the owner in possession

and enjoyment of 0.81 Ares, 11.13 Ares, 26.73 Ares and 4.05 Ares of property comprised in Sy.Nos.944/7, 944/5, 946/1 and 946/5 of Cheranallur Village in Kanayannur Taluk, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 2nd respondent District Collector to consider Exts.P1, P9 and P10 representations on merits, after affording the petitioner an opportunity of hearing, within a time frame to be fixed by this Court. The petitioner has also sought for a declaration that he is eligible and entitled to be assigned 3.5 cents of land in Sy.No.944/6 of Cheranallur Village in Kanayannur Taluk which is in his continuous uninterrupted possession. Going by the averments in the writ petition, around 3.5 cents of Government land in Sy.No.944/6 is lying on the northern boundary of the petitioner's property. It is a narrow strip of land that begins and ends in the petitioner's property, which connects his 2 cents of land to the larger extent of lands in Sy.Nos.944/7, 944/5, 946/1 and

2. On 23.03.2021, when this writ petition came up for admission, the learned Government Pleader was directed to get WP(C).No.4963 OF 2021(U) 3

instructions as to whether any application for land assignment in the prescribed form has been made by the petitioner. Along with I.A.No.1 of 2021, the petitioner

has placed on record Ext.P14 application for land assignment made before the 2nd respondent, on 26.11.2017.

3. Heard the learned counsel for the petitioner, the learned Senior Government Pleader for respondents 1 to 3 and also the learned Standing Counsel for the 4th respondent.

4. The learned Government Pleader would submit that the

3rd respondent shall consider and take an appropriate decision on Ext.P14 application made by the petitioner for assignment of 3.50 cents of land In Sy.No.944/6 of Cheranallur Village in Kanayannur Taluk, within a time limit that may be fixed by this Court.

5. The learned counsel for the petitioner would submit that consideration of Ext.P14 application may be with notice to the petitioner and after affording him an opportunity of being heard.

6. Having considered the submissions made by the learned

counsel on both sides, this writ petition is disposed of directing the 2nd respondent to consider and pass appropriate orders on Ext.P14 application, with notice to the petitioner and after affording him an opportunity of being heard, within a period of three months from WP(C).No.4963 OF 2021(U) 4 the date of receipt of a certified copy of this judgment.

7. In State of U.P. v. Harish Chandra [(1996) 9 SCC

309] the Apex Court held that no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. In Bhaskara Rao A.B. v. CBI [(2011) 10 SCC 259] the Apex Court reiterated that, generally, no Court has competence to issue a direction contrary to law nor can the Court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law.

8. Therefore, in terms of the direction contained in this

judgment, the 2nd respondent shall take an appropriate decision in the matter, strictly in accordance with law, taking note of the relevant statutory provisions and also the law on the point.

No order as to costs. Sd/- ANIL K.NARENDRAN JV JUDGE WP(C).No.4963 OF 2021(U) 5 APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE REPRESENTATION DATED 18.2.2003 SUBMITTED TO THE 3RD RESPONDENT EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 2-12-2003 IN W.P(C)NO 38005 OF 2003 EXHIBIT P3 TRUE COPY OF THE NOTICE DATED 14.1.2004 OF THE TALUK SURVEYOR,KANAYANNUR EXHIBIT P4 TRUE COPY OF THE ORDER DATED 17.8.2006 IN O.P.NO.191 OF 2006 OF THE LOCAL SELF GOVERNMENT INSTITUTIONS EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 22.4.2010 SUBMITTED TO THE SECRETARY,LOCAL SELF GOVERNMENT DEPARTMENT EXHIBIT P6 TRUE COPY OF THE ORDER DATED 17-11-2016 OF THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT DEPARTMENT IN COMPLAINT NO.487 OF 2016 EXHIBIT P7 TRUE COPY OF THE JUDGMENT DATED 23.6.2017 IN W.P.(C)NO.19784 OF 2017 OF THIS HONOURABLE COURT EXHIBIT P8 TRUE COPY OF THE REPORT DATED 20.8.2017 OF THE VILLAGE OFFICER,CHERANALLUR EXHIBIT P9 TRUE COPY OF THE REPRESENTATION DATED 26.11.2017 AND STATUTORY APPLICATION SUBMITTED TO THE 2ND RESPONDENT RESPECTIVELY EXHIBIT P10 TRUE COPY OF THE REPRESENTATION DATED 27.12.2017 SUBMITTED TO RESPONDENTS 3 AND 4. EXHIBIT P11 TRUE COPY OF THE LETTER DATED 21-3-2018 ISSUED BY THE 3RD RESPONDENT EXHIBIT P12 TRUE COPY OF THE REPLY DATED 13-4-2018 SUBMITTED TO THE 3RD RESPONDENT WP(C).No.4963 OF 2021(U) 6 EXHIBIT P13 TRUE COPY OF THE JUDGMENT DATED 3.2.2019 IN W.P(C)NO.23488 OF 2019 OF THIS HONOURABLE COURT. EXHIBIT P14 TRUE COPY OF THE STATUTORY APPLICATION DATED 26.11.2017 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT