

State of Kerala vs Bindhu

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Court : Kerala

Decided On : Oct-01-2021

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

Appeal No. : WA/758/2018

Appellant : State of Kerala

Respondent : Bindhu

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 FRIDAY, THE 1ST DAY OF OCTOBER 2021 / 9TH ASWINA, 1943 WA NO. 758 OF 2018 AGAINST THE JUDGMENT IN WPC 18853/2010 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/RESPONDENTS 1 TO 4 IN WP(C): 1 STATE OF KERALA TO BE REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. 2 DISTRICT COLLECTOR, ERNAKULAM. 3 REVENUE DIVISIONAL OFFICER, MUVATTUPUZHA. 4 TAHSILDAR, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.

BY SR. GOVERNMENT PLEADER SRI.K.P.HARISH
RESPONDENT/PETITIONER IN WPC: BINDHU W/O. LATE JOSE,
PALLASSERY, VENGOOR WEST VILLAGE, KUNNATHUNADU
TALUK, ERNAKULAM DISTRICT, PIN-683 542. BY ADVS. SRI.ABDUL
JAWAD K. SMT.A.GRANCY JOSE THIS WRIT APPEAL HAVING
COME UP FOR ADMISSION ON 01.10.2021, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING: C.R.

JUDGMENT

Dated this the 1st day of October, 2021

Shaji P. Chaly, J.

The appeal is filed by the State and its officials, who were respondents 1 to 4 in W.P.(C)No.18853 of 2010, challenging the

judgment of the learned single Judge dated 7.11.2017 whereby,

the learned single Judge quashed Exhibits P7 and P8 orders passed by the Additional Tahsildar dated 3.5.2010 and 3.5.2010 respectively. The subject issue relates to illegal quarrying conducted by the husband of the writ petitioner/first respondent ad-measuring 13125 cubic metres. In fact orders were passed by the Additional Tahsildar quantifying the value of the rubbles removed converting the cubic metre into metric tonnes and thereupon a mistake has occurred in the calculation. It was accordingly that the clerical error was identified and Exhibit P7

order was passed and the demand was raised as per Exhibit P8

amounting to Rs.5,25,000/- towards royalty and Rs,85,000/- towards price of the rubbles and thereupon directed the writ petitioner to remit the balance amount of Rs.5,09,906.00 after adjusting an amount of Rs.97,225/- paid by the writ petitioner in accordance with the mistaken calculation.

2. The legality of the impugned orders were challenged by

the writ petitioner stating that there was no power vested with the statutory authority to review the earlier order passed and therefore, the orders are bad, arbitrary and illegal and liable to be interfered with by the writ court. The writ court, after taking into account the said aspects following the judgment of the Apex

Court in *Kalabharati Advertising v. Hemant Vimalnath Narichania* [2010 (3) KLT 986 (SC)], held that a quasi judicial authority or judicial authority cannot review its own order without any power conferred under a statute.

3. The legality and correctness of the said judgment is

challenged by the Government basically contending that the petitioners husband who was the offender in a land conservancy case has extracted 13125 cubic metres of rock from the Government poramboke land and therefore, he or his legal heir is liable to pay the compensation. It is also pointed out that the quantity of rock extracted as shown in Exhibit P1 order is 13125 cubic metres. However, when converting the unit of volume of

rock from cubic metre to metric tonnes a clerical mistake crept in and instead of 32812.50 metric tonnes, it was shown as 5215 metric tonnes in Exhibit P1 order. Therefore, the sum and substance of the contention advanced by the appellants is that mere correction of a clerical error will not amount to review and there was no review of the quantity of the rock illegally extracted by the husband of the writ petitioner but however with the findings in respect to quantity of the rock illegally extracted the quantity when converted to metric tonnes from cubic metre was mistakenly shown as 5250 and therefore, there was no material alteration of the finding with respect to the quantity extracted. The basic contention, therefore, advanced by the appellants is that there was no review of the order as such but a clerical mistake in the matter of conversion was corrected by the Tahsildar, which is permissible under law. Therefore, the submission advanced by the learned Senior Government Pleader is that the judgment of the Apex Court in *Kalabharati Advertising v. Hemant Vimalnath Narichania* (supra) in regard to the finding rendered that a review cannot be done without the power conferred on an authority, may not apply at all in this case. It was also pointed out that if the error

was not corrected by the Tahsildar, on his own motion, there would have been substantial damages caused to the State exchequer consequent to the calculation mistake made by the officer concerned.

4. We have heard, learned Senior Government Pleader

Sri.K.P.Harish for the appellants, and Sri.K.Abdul Jawad and Smt.Grancy Jose appearing for the writ petitioner/respondent and perused the pleadings and the material on record.

5. The issue raised in the appeal lies in a very narrow

compass. The question is whether the correction made by the Additional Tahsildar consequent to the clerical mistake occurred in conversion from cubic metres to metric tonnes a review under law. It is true in *Kalabharati Advertising v. Hemant Vimalnath Narichania* (supra) the Honble Apex Court had considered the question with respect to a power exercised by an authority for reviewing its own order and held that unless there is a power conferred under statute an authority cannot review its own order. No doubt, under the Land Conservancy Act, there is no power conferred on an authority to review its own order. But going through the facts and circumstances, we find that the authority

has not reviewed its order. The order passed by the authority was that the husband of the writ petitioner trespassed into a Government property and conducted illegal quarrying and thus removed 13125 cubic metres of rock from the property in question. The said finding in our considered view has not been altered at all consequent to the correction of the clerical mistake occurred while converting the measurement from cubic metre to metric tons.

6. Fact remains, 13125 cubic meters was converted to metric

tonnes and thereupon the authority mistakenly converted it as 5250 metric tonnes instead of 32812.50 metric tonnes. So basically the findings rendered by the statutory authority in respect of the illegal extraction of the rock made by petitioner's husband trespassing into the property in question, has not been altered or reviewed by the statutory authority. But when a mistake due to a clerical

omission was found while doing the conversion from cubic metre to metric tonne substantially affecting the public interest in terms of money, the conversion was done correctly and thus, the clerical error was rectified. We are unable to agree that the correction made is a review. In our view, arithmetical or clerical

mistakes can always be corrected by the judicial, quasi judicial and administrative authorities, which can never be treated as a review in the eye of law, causing any manner of prejudice to the person in question. This is basically for the reason that there is no material alteration to the fundamental findings at all. We are also of the opinion that one does not have to grope in the dark to find a source of law in synonymous situations because section 152 of the Code of Civil Procedure takes care of such corrections, which specifies that clerical or arithmetical mistakes in Judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either on its own motion or on the application of any of the parties. We do not think the situation in the case at hand is in any manner different from the said enabling provision. Therefore we have no hesitation to hold that the Judgment of the learned single Judge requires interference. Resultantly appellants are entitled to succeed in the appeal.

Therefore, the writ appeal is allowed and the judgment of the learned single Judge in W.P.(C)No.18853 of 2010 dated 7.11.2017 is set aside and hold that Exhibits P7 and P8 orders passed by the Additional Tahsildar dated 3.5.2010 and 3.5.2010 respectively, are in accordance with law and no manner of interference was required to the same in the writ petition. Consequently, the writ petition would stand dismissed. Pending interlocutory applications, if any, shall stand closed. Sd/- S.Manikumar Chief Justice Sd/- Shaji P.Chaly Judge vpv TRUE COPY P.A. TO JUDGE

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