

Divakaran vs the District Collector,

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Court : Kerala

Decided On : Sep-30-2021

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/19508/2021

Appellant : Divakaran

Respondent : The District Collector,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 WP(C) NO. 19508 OF 2021 PETITIONERS: 1 DIVAKARAN AGED 52 YEARS S/O.NARAYAN, KUDUKKAKKUNNEL HOUSE, KUTHUPARA, MINALUR P.O., THRISSUR 680 581 2 SREEJESH K.S. AGED 32 YEARS S/O.NARAYANAN, KAVUPARAMBIL, KILLIMANGALAM P.O., THRISSUR 680 591 BY ADVS. I.DINESH MENON L.RAJESH NARAYAN RESPONDENTS: 1 THE DISTRICT COLLECTOR, CIVIL STATION P.O., AYYANTHOLE, THRISSUR 680 003 2 THE TAHSILDAR TALUK OFFICE, THALAPPILLY, WADAKKENCHERRY-680 623, THRISSUR. 3 THE

VILLAGE OFFICER PERINGANDUR/MINALUR, GROUP VILLAGE, PERINGANDUR, THRISSUR 680 581 4 STATE OF KERALA REP.BY SECRETARY, PUBLIC WORKS DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM 695 001. SHRI.JAFFER KHAN -SR. GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.09.2021, ALONG WITH WP(C).5354/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 19508 OF 2021 2

JUDGMENT

The petitioners have approached this Court impugning Ext.P10 Circular issued by the Government of Kerala, imposing an embargo on Revenue Authorities considering any application for assignment of 'Road Puramboke' and those adjoining 'Public Roads'.

2. The petitioners say that the blanket embargo contained in Ext.P10 is illegal and contrary to the provisions of the Land Assignment Act and therefore, prays that their application, namely Ext.P8, preferred under the said Act, be directed to be considered de hors the aforementioned Circular.

3. Shri.Jaffer Khan, learned Senior Government

Pleader appearing for the respondents, submitted that petitioners cannot challenge Ext.P10 since, as is clear therefrom, Government has only directed the Revenue Authorities not to accept applications for assignment of land adjoining a road or 'Road Puramboke', since they are required in future for development. He submitted that, therefore, the petitioners' application, namely Ext.P8, cannot be WP(C) NO. 19508 OF 2021 3 considered.

4. In reply, Shri.I.Dinesh Menon, learned

counsel appearing for the petitioners,

which his clients have been holding possession of for the last several years, if not decades. He submitted that, therefore, his clients alone have been discriminated

and thus argued that, consequently, Ext.P10 cannot operate as a complete embargo and that the Authorities must consider each request on a case-to-case basis.

5. I find some force in the submissions of

Shri.I.Dinesh Menon. However, I must also add that I cannot find Ext.P10 to be illegal or unlawful. What I mean to say is that while 'Road Puramboke' and areas adjoining the roads must be protected from encroachments, the applications of persons made under the Land Assignment Act will require to be considered under its guidelines on a case-to-case basis. This is because, the facts in each case would vary - with persons claiming possession for several WP(C) NO. 19508 OF 2021 4 years to those who have encroached in the recent past - and every such case cannot be considered on the principle of one size fits all and each of them will have to be considered on the basis of individual facts and circumstances presented.

6. I am, therefore, of the firm view that the petitioners' application, namely Ext.P8, must be

considered; however, after verifying whether the area in question is required to be used for future development of the road and on the edifice of such other applicable qualifications and criterion. In the afore circumstances, I allow this writ petition and direct the competent Authority to take up Ext.P8 application of the petitioners and consider the same, after making an evaluation whether the land stated to be in their possession is required for any developmental purpose of the Road, thus culminating in an appropriate order thereon as expeditiously as is possible, but not later than one month from the date of receipt of a copy of this

judgment.

Needless to say, the afore exercise shall be WP(C) NO. 19508 OF 2021 5 completed after affording an opportunity of being heard to the petitioners; however, making it clear that I have not set aside Ext.P10 and that the competent Authority will certainly be guided by it, but without taking it as a complete embargo

on a general basis. It goes without saying that the exercise as

afore shall be considered by the
order.

In view of my afore directions, it may not be necessary to say specifically, but until the afore

exercise is completed and the resultant order

communicated to the petitioners, all action to dispossess them from the property in question shall stand deferred.

Sd/- DEVAN RAMACHANDRAN JUDGE MC/30.9 WP(C) NO. 19508 OF 2021 6
APPENDIX OF WP(C) 19508/2021 PETITIONER EXHIBITS Exhibit P1 TRUE
COPY OF THE EXCHANGED DEED DATED 15.10.1999 Exhibit P2 TRUE COPY
OF THE PHOTOGRAPHS OF PETITIONER'S SHOP Exhibit P3 TRUE COPY OF
THE RELEVANT PAGES OF THE BASIC TAX REGISTER DATED 5.2.2021
Exhibit P4 TRUE COPY OF THE APPLICATION DATED 13.10.99 Exhibit P5
TRUE COPY OF THE COMMUNICATION DATED 14.7.2003

Exhibit P6 FEW PHOTOGRAPHS SHOWING THE SHOPSExhibit P7

3RD RESPONDENT ON 1.7.2021 Exhibit P10 TRUE COPY OF THE CIRCULAR
DATED 30.9.2009 NO.20541/C3/09/PWD

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