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Kunhali vs the Tahsildar

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Court : Kerala

Decided On : Jun-29-2020

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appeal No. : WP(C)/1051/2020

Appellant : Kunhali

Respondent : The Tahsildar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE MONDAY, THE 29TH DAY OF JUNE 2020 / 8TH ASHADHA, 1942 PETITIONER: KUNHALI, AGED 67 YEARS, S/O. MOOSAKUTTY, THATTANGATTU, KUMMANKODE AMSOM, NADAPURAM DESOM, VATAKARA, KOZHIKODE DISTRICT. BY ADVS. SRI.B.KRISHNAN SRI.R.PARTHASARATHY RESPONDENTS:

1 THE TAHSILDAR, LAND RECORDS, VATAKARA, KOZHIKODE DISTRICT, PIN - 673 101. 2 THE REVENUE DIVISIONAL OFFICER, VATAKARA, KOZHIKODE DISTRICT, PIN - 673 101. 3 THE DISTRICT COLLECTOR, CIVIL STATION, KOZHIKODE DISTRICT, PIN - 673 020.

4 THE LAND REVENUE COMMISSIONER, PUBLIC OFFICE BUILDING, MUSEUM JUNCTION, THIRUVANANTHAPURAM, PIN - 695 033. 5 STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, THIRUVANANTHAPURAM - 695 001. BY ADV. SRI.Y JAFFAR KHAN, GP THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON

29.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2- C.R.

J U D G M E N T

Dated this the 29th day of June 2020 In this writ petition, the petitioner questions the validity of the proceedings initiated under the Kerala Land Conservancy Act, 1957 (for short 'the Act') to evict him from the land comprised in R.Sy.No.72 of Nadapuram Village in Vatakara Taluk. The extent of the land involved is 6.58 cents.

2. The proceedings were initiated on the

premise that the land in question is part of a thodu puramboke which is vested with the local Panchayat. The Tahsildar (LR) initiated proceedings. The petitioner exhausted all remedy. In these proceedings, initiated for a judicial review, the petitioner seeks to challenge the proceedings on two grounds. One is referring to the settled possession of the land and the second is on the ground that the Tahsildar (LR) has no authority or power to initiate the proceedings in respect of the land vested with the local Panchayat. -3-

3. Heard the learned Counsel for the petitioner and the learned Government Pleader.

4. Point No.1: The petitioner refers to

Ext.P2 partition deed. The petitioner states that the title of the land in question is traceable to a partition deed executed in the year 1958. The petitioner states that the land was allotted to his family. There was a dispute between the petitioner and the neighbouring owner. The petitioner's siblings filed a suit for injunction and recovery of possession (Ext.P3). That suit was decreed in favour of the plaintiffs. In that suit, a reference was made in respect of the land in question. The petitioner refers to Ext.P6 sketch prepared by the Advocate Commissioner. It is to be noted that decree schedule is not produced before this Court. It appears that the defendants therein contended that the land in question was not part of the title deed of the petitioner. As seen from Ext.P4 judgment, the petitioner instituted a suit in respect of the land in survey No.71/5. Thereafter, based on a Commissioner's report, who prepared the -4- report with the assistance of the Taluk Surveyor, amended the plaint correcting the survey number as

72. As seen from the judgment of this Court in the

second appeal, the court entered into a finding that the land in question belonged to the plaintiffs, based on the lie and nature of the property and based on the boundary description in the title deed.

5. The learned Counsel for the petitioner

vehemently contended that the finding by the civil court though may not bind the Government as the Government was not a party to the suit nevertheless it would establish that the petitioner and his predecessor in interest were in 'settled possession' of the land. Therefore, it is argued such a long possession cannot be disturbed through a summary proceedings initiated under the Act. It is also submitted that the petitioner having asserted title over the land, any dispute on land can only be resolved through the civil court.

6. The learned counsel for the petitioner

also placed reliance on the judgment of the -5- Division Bench of this Court in Banerjee Memorial Club v. Taluk Tahsildar [2016 (1) KLT 241]. In paragraph 21 of the aforesaid judgment, it was observed as follows:

21. It is settled principle of law that when a person

> is in continuous possession of a property for a considerable long time under an assertion of title without any challenge, the said possession has to be ascribed of a legal origin. In this context it is useful to refer to the judgment of the House of Lords in Harris and another v. Earl of Chersterfield and another((1911) AC 623) where the above principle was referred to and recognised...

7. The learned Counsel for the petitioner also brought my attention to the paragraph 24 of the aforesaid judgment which reads thus:

24. Learned counsel for the petitioner has also placed

> reliance on the judgment of the Apex Court in Government of Andhra Pradesh v. Thummala Krishna Rao & Anr.((1982) 2 SCC 134). In the above case summary proceedings under the Andhra Pradesh Land Encroachment Act, 1905 were initiated. The Apex Court held that summary proceedings can be initiated only where unauthorised occupation of Government property is not disputed and when title to the land is bona fide disputed by the occupant such dispute must be adjudicated not by the summary proceedings but by civil suit. It is held that bona fides of the occupant's claim can be inferred from his occupation for a long period... -6-

8. The petitioner also placed reliance on the

judgment of this Court in Deviprasad v. District

Collector [2019 (3) KLT 376] wherein, at paragraphs 9 and 10 it was held as follows: 9 ...If the possession is with the holder of the land, without determining the

interest of the holder of the land, proceedings under the Land Conservancy Act cannot be invoked to evict the holder of the land from the land.

10. ...Settled possession creates an interest in the

> land. It is true that the land belongs to the Government. That does not mean that the Government retained the legal possession. In order to invoke land conservancy proceedings, it must be shown that the Government is in legal possession and the person holding the land is in the occupation of the land. When the entire possessory right is parted in whatever mode, without determining the interest of the possession in the land, the Government cannot have legal possession.

9. The learned Government Pleader argued that

> mere possession or occupation of the government land by a stranger itself is not decisive to claim that such occupant is in 'settled possession' or occupation of the land. It is further argued that at no point of time the petitioner paid any land tax in respect of the land in question and therefore, occupation of a thodu puramboke cannot be assumed in possession of such person. The -7- learned Government Pleader points out to the revenue records Exts. R1(a) and R1(b) to show that the land in question is a thodu puramboke. It is submitted that the petitioner was evicted pursuant to the impugned orders as reflected from Ext.R1(c) Mahazar prepared by the Village Officer on 09.05.2018.

10. The learned Counsel for the petitioner

further submitted that eviction of the petitioner is untenable in the light of the injunction obtained by the petitioner's siblings in O.S. No.40/2018 from the Sub Court, Vadakara.

11. The learned Government Pleader submitted

that the schedule of the above suit instituted by the petitioner's siblings clearly would show that they have not claimed any relief in respect of the land in question. The subject matter of the suit instituted by the siblings of the petitioner was in respect of the land in resurvey No. 71/5.

12. What is 'settled possession'? How does the

Court determine whether a particular case falls within the class of 'settled possession' based on -8- the facts? Perhaps, the answer to these questions would conclude point No.1. There are possibilities of raising two types of claims in respect of the land involved in land conservancy proceedings. One is referable to the title or interest in the land. Other claim is based on the adverse possession.

This Court invariably interfered with the summary

proceedings initiated under the Act when a notice is able to prove a 'semblance of interest' created in such land. This 'semblance of interest' denotes prima facie legal possession. In such cases, this Court held that without recourse to the civil court

such dispute cannot be resolved under summary

proceedings under the Act. It is to be noted that the power to initiate action under the Act would arise only when a person is shown to be in occupation of a government land. If such person is able to show that he is in possession, without determining the possession, proceedings under the Act cannot be initiated. A clear distinction has to be drawn to the resistance to the proceedings initiated under the Act based on -9- 'settled possession' and adverse possession. In the former case, this Court had only injuncted the authorities from initiating proceedings under the Act by holding that, such 'settled possession' cannot be disturbed without recourse to the civil court. In the latter case, possession may be with a person who resists eviction proceedings. But in that scenario, this Court

cannot hold that possession is adverse to the true owner without relegating such party to the civil court. The person, who claims to be in possession also will have to acknowledge ownership of the land to the Government. In those cases, the party concerned has to approach the civil court for declaratory relief to establish his title by adverse possession as against the interest of the Government.

13. Therefore, this Court has to examine

whether the petitioner's case falls under the first category as referred above, that is, 'settled possession'. In the Banerjee Memorial Club's case (supra), the claim was resisted on the ground that the land in question was gifted by the Maharaja of -10- Cochin for construction of a Club in the year 1914. Thereafter, a building was constructed. Therefore, the main question that arose for consideration was that when there is a rival claim between the alleged occupant of Government land and the Government, that can be only resolved through a civil court. The fact clearly would show that the Club was in possession of the land from 1914 onwards and this interest was acknowledged by the public officials. Similarly, in Deviprasad's case (supra) by this Court, the fact clearly establish that the land was put in possession of the occupant from 1931 to 1935 and the petitioner and predecessor-in- interest were cultivating the land with coffee. That also would clearly show that an interest has been created in the land. Therefore, it was held that without determining such interest, it was not possible to invoke the Act.

14. Coming back to the facts of this case,

there is nothing on record to show that the Government or any public authority had acknowledged the possession or occupation claimed by the -11- petitioner. There is no payment of land tax. In a dispute between the petitioner and neighbouring owner, the property was the subject matter. That will only establish that the petitioner as against strangers is entitled

to retain the possession of the land. If there is nothing on record to show that 'semblance of interest' is created in the land, the Court cannot say that summary proceedings cannot be initiated under the Act. The 'semblance of interest' would come into existence only when a person in occupation is able to show that at some point of time the Government or any other public functionary have acknowledged the possession of the land. That would prima facie establish case of a legal possession. In that case, without determining such interest, summary proceedings cannot be initiated. What is interdicted in such matters is the competency and authority of the Collector under the Act in proceeding against the land without dispute being adjudicated in proper forum. The proceedings under the Act is of a summary nature. There is inherent lack of power on such authority -12- to decide the disputed question of interest or title of the parties concerned. That is the reason this Court interdicted such proceedings.

15. In other category of cases, if a person

concerned claims a long period of occupation, he can at the best, claim title by adverse possession. That is a matter in the domain of the civil court and has to be established by evidence, showing that such possession was adverse to the interest of the Government for holding the same for a period of 30 years as contemplated under Article 112 of the Limitation Act, 1963. This Court cannot decide this issue in this case. That has to be considered by appropriate civil court in proceedings to be initiated before such court.

16. Thus the petitioner's case does not fall

within the category which can be classified based on the 'semblance of interest' that exist in the land being proceeded under the Act. Therefore, the argument of the petitioner that long possession of the petitioner as evident from the decree and civil -13- suit will not hold good to interdict

proceedings initiated under the Act.

17. Point No.2. the learned Counsel for the

petitioner pointed out to a government notification delegating the authority of the Collector upon the Secretary of the Panchayat to initiate proceedings under the Act. The State by amendment to Section 15 of the Act, authorised the Government to confer the power of the Collector to any other officer including the Secretaries of Panchayats and Municipalities. This amendment was made on 12.05.2000. Thereafter, the Government issued a notification authorising the Secretaries of the Panchayats and Municipalities. The notification conferring the power on Secretaries of Panchayats was issued on 24.06.2019. Therefore, it is argued that the proceedings initiated by the Tahsildar

(LR) is legally unsustainable.

18. The learned Government Pleader points out

to the definition of property of Government under Section 3 of the Act, 1957, particularly, Explanation IV which reads thus: -14- Explanation IV.- (1) Lands belonging to the Government of any other State in India or the Kerala State Electricity Board or to a University established by law [or to any Panchayat as defined in the Kerala Panchayat Raj Act, 1994 (13 of 1994)] or any Municipality as defined in the Kerala Municipality Act, 1994 (20 of 1994) owned or controlled by the Government of Kerala or to a Municipal Corporation shall be deemed to be the property of Government within the meaning of this Section.]

(2) All unassessed lands within the limits of private

estates used or reserved for public purposes or for the communal use of villagers, and all public roads and streets vested in any local authority shall, for the purpose of this Act, be deemed to be the property of Government.

It is further submitted that Explanation IV clearly establish that the land vested with the Municipality or Panchayat shall be deemed to be the property within the meaning of Section 3 of the Act to enable the Collector to proceed. It is also submitted that sub-delegation of power of the Collector under Section 15 of the Act is only an enabling provisions to confer authority on the Secretaries of the local authorities and that itself does not confer any exclusive power to the Secretaries of the local authorities to initiate action. I find merit in the argument of the learned Government Pleader. -15-

19. Section 15 of the Act, reads thus:

15. Officers to exercise powers of Collector.--- The

Government may, by notification in the Gazette, authorise any officer [including the Secretaries of Panchayats and Municipalities] by name or by virtue of his office to exercise all or any of the powers conferred on a Collector under this Act.

On a plain reading of Section 15 of the Act, 1957 it would go to show that in addition to the power exercised by the Collector, power is also conferred on the Secretaries of local authorities to exercise all the power of the Collector; except the power of hearing appeals and revision under Section 16 of the said Act. That means, authority notified as the Collector would extend to the Secretaries of local authorities. Nowhere it is stated that all that is in relation to the property vested with the Panchayat should be proceeded exclusively by the Secretaries of such local authorities. In the light of the definition of the 'Government property', in respect of the property vested with the Panchayat, it is open for the Tahsildar (LR) or the Secretaries of local authorities to proceed against the occupants of the land. Co-existing power -16- vested with the different Collectors will not deprive one of such Collector in exercising such power. Therefore, this argument also must fail.

20. Having considered the facts, I am of the

considered view that there is no scope for interfering with the impugned proceedings. If the civil suit is pending, the petitioner is free to seek any relief against the property. The parties are bound by orders to be passed by the civil court in this regard. With the above observations, this writ petition is dismissed. Sd/- A.MUHAMED MUSTAQUE JUDGE

akv -17- APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PROCEEDINGS DATED 28.4.2018. EXHIBIT P2 TRUE COPY OF THE DEED OF PARTITION DATED 17.7.1958. EXHIBIT P3 TRUE COPY OF THE JUDGMENT IN O.S.87/1982 DATED 17.12.1990 OF TRIAL COURT ACCEPTING TITLE. EXHIBIT P4 TRUE COPY OF THE JUDGMENT IN A.S.8/1991 DATED 18.9.1991 OF LOWER APPELLATE COURT. EXHIBIT P5 TRUE COPY OF THE JUDGMENT IN S.A.584/1992 DATED 25.1.1993 OF THE HON'BLE HIGH COURT. EXHIBIT P6 TRUE COPY OF THE COMMISSIONER'S PLAN IN O.S.87/1982. EXHIBIT P7 TRUE COPY OF THE COMMISSIONER'S REPORT DATED 26.10.1983 IN THE SUIT IDENTIFYING THE LAND. EXHIBIT P8 TRUE COPY OF THE REVENUE RESETTLEMENT REGISTER OF THE LAND. EXHIBIT P9 TRUE COPY OF THE LAND TAX RECEIPT DATED 23.11.1987. EXHIBIT P10 TRUE COPY OF THE LAND TAX RECEIPT DATED 24.10.1966. EXHIBIT P11 TRUE COPY OF THE LAND TAX RECEIPT DATED 23.10.1979. EXHIBIT P12 TRUE COPY OF THE LAND TAX RECEIPT DATED 26.11.1980. EXHIBIT P13 TRUE COPY OF THE ORDER BY THE 2ND RESPONDENT IN DISMISSING THE APPEAL DATED 26.11.2018. EXHIBIT P14 TRUE COPY OF THE ORDER DATED 12.5.2019 BY THE 3RD RESPONDENT IN DISMISSING THE REVISION. -18- EXHIBIT P15 TRUE COPY OF THE ORDER DATED 14.10.2019 BY THE 4TH RESPONDENT IN CONFIRMATION CARRIED BY PETITIONER. EXHIBIT P16 TRUE COPY OF THE PROCEEDINGS DATED 16.9.1992 LEVYING EXECUTION OF EXT.P3

JUDGMENT.

EXHIBIT P17 TRUE COPY OF THE PROCEEDINGS DATED 18.1.1993 LEVYING EXECUTION OF EXT.P4

JUDGMENT.

EXHIBIT P18 TRUE COPY OF THE PROCEEDINGS DATED 27.1.1993 LEVYING EXECUTION OF EXT.P5

JUDGMENT.

EXHIBIT P19 TRUE COPY OF THE DELIVERY PROCEEDINGS DATED 12.1.1993. EXHIBIT P20 TRUE COPY OF THE COMMISSIONER'S PLAN MARKED AS EXHIBIT C6 IN OS 87/1982 DATED 21.1.1987. EXHIBIT P21 TRUE COPY OF THE COMMISSIONER'S REPORT MARKED AS EXHIBIT C7 IN OS 87/1982 DATED 21.1.1987. RESPONDENT'S/S EXHIBITS: EXHIBIT R1 A THE TRUE COPY OF THE RELEVANT PAGE OF THE RESETTLE ADANGAL ON THE FILES OF VILLAGE OFFICE, NADAPURAM. EXHIBIT R1 B THE TRUE COPY OF THE RELEVANT PAGE OF THE SETTLEMENT REGISTER. EXHIBIT R1 C THE TRUE COPY OF THE MAHAZAR PREPARED BY THE VILLAGE OFFICER ON 09/05/2018. EXHIBIT R1 D THE TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER, NADAPURAM ADDRESSED TO THE TAHSILDAR, VATAKARA DATED 09/05/2018. //TRUE COPY// PA TO JUDGE

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