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Subha Devi .V vs State of Kerala

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Court : Kerala

Decided On : Aug-12-2020

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/14886/2020

Appellant : Subha Devi .V

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V WEDNESDAY, THE 12TH DAY OF AUGUST 2020 / 21ST SRAVANA, 1942 WP(C).No.14886 OF 2020(I) PETITIONER : SUBHA DEVI .V., AGED 48 YEARS, WIFE OF BALACHANDRAN PILLAI, EZHIYATHU MELATHIL, SANTHOSH BHAVAN, EZHIYAM P.O., ANCHAL, KOLLAM-691 306. BY ADVS. SMT.REKHA VASUDEVAN SMT.V.DEEPA SRI.B.AKSHITHA RESPONDENTS :

1 STATE OF KERALA, REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY, REVENUE DEPARTMENT, SECRETARIAT,

THIRUVANANTHAPURAM-695 001. 2 THE LAND REVENUE COMMISSIONER, COMMISSIONERATE OF LAND REVENUE, PUBLIC OFFICE BUILDING, MUSUEUM ROAD, VIKAS BHAVAN, THIRUVANANTHAPURAM-695 033. 3 THE DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION ROAD, KAANKATHU MUKKU, KOLLAM-691 013. 4 THE SUB REGISTRAR, OFFICE OF THE SUB REGISTRAR, STATE HIGHWAY-1, CHADAYAMANGALAM, KOLLAM 691 534. 5 THE TAHSILDAR, TALUK OFFICE, KOTTARAKARA TALUK, MINI CIVIL STATION, KOTTARAKARA, KOLLAM-691 506. 6 THE VILLAGE OFFICER, KOTTUKKAL VILLAGE, KOTTUKKAL P.O., ANCHAL, KOLLAM-691 306. SRI.BIMAL K.NATH, SENIOR GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

12.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No.14886 OF 2020 2

JUDGMENT

The petitioner states that she is the absolute owner in the title and possession of property having an extent of 14 Ares and 16 Sq. Mtrs. devolved on her as per Exhibit P2 settlement deed executed in her favour by her mother in the year 1993. The above property is a portion of 95 cents of property assigned in favour of Sri. Sasidharan Pillai as per Exhibit P1 Land Assignment Certificate dated 13.11.1973 in SMP No.91/72. A portion of the afore property to the extent of 20 Ares and 23 Sq. Mtrs. was sold by the assignee to the mother of the petitioner. The petitioner contends that the basic tax was being received by the respondents in the name of the petitioner as is evident from Exhibit P7 tax receipt. Her grievance is that though the property was assigned to her as early as in the year 1993, no other revenue certificates are being issued to her stating that I.P.No.

2. The petitioner contends that I.P.No.3/1100 (M.E) was filed by a

wealthy merchant by name Koya Kunju, who had extensive properties in the Chadayamangalam area as it stood then. The properties of the insolvent were handed over to the official receiver, District Court, Kollam, and subsequently, all the creditors were paid off and finally, the insolvency proceedings were annulled by the District Court by order dated 23.11.1960.

3. It is contended that after the coming into force of the Kerala Land

WP(C).No.14886 OF 2020 3 Reforms Act, 1963, the property of Sri. Koya Kunju, came to be vested with the Government by virtue of Section 72 of the said Act, free of all encumbrances, created either by the landowner or the intermediaries. Various proceedings were initiated before the Land Tribunal, Chadayamangalam in respect of properties comprised in Sy. Nos. 624/1 and 664 of the Ittiva and Kottukal Village. All those cases were disposed of by the Land Tribunal and assignment certificates were issued in respect of the properties involved therein. It is contended that the property settled in favour of the petitioner is also a part of such properties.

4. After the issuance of the purchase certificates as aforesaid, though

there was no embargo in accepting basic tax, the revenue authorities took a stand that tax could not be accepted. One of the purchasers approached this Court and filed W.P. (C) No.21756 of 2010 seeking a direction to the village authorities to accept land tax. The legal heirs of late Koya Kunju on the other hand filed W.P.(C) No.17048 of 2010 seeking a direction to interdict the revenue authorities from receiving tax or issuing possession certificates in respect of properties involved in I.P.No.3/1100 (M.E). By Exhibit P3 common judgment, a learned Single Judge of this Court dismissed W.P. (C) No.17048 of 2010 and disposed of W.P. (C) No. 21756 of 2010 directing the revenue authorities to accept tax from the persons in whose name the purchase certificates stand. In paragraph No. 6 of the judgment it was observed as follows:

6. First of all, the contention of the Government is that the decision as

reflected in Ext.P4 order is to accept basic tax in respect of properties from persons in whose name purchase certificate have been issued by the Land Tribunal and in whose name properties are mutated. It may WP(C).No.14886 OF 2020 4

> be true that the land covered by such purchase certificate or mutation are involved in the insolvency proceedings pending before the Sub Court. However fact remains that in respect of those lands, purchase certificate have been issued and mutation has been effected. If anyone aggrieved by such purchase certificates or mutation, their remedy is to take recourse to the remedies as available under the Land Reforms Act or the Transfer Registry Rules as the case may be. Not only that such remedies have not been pursued, but such persons in whose favour purchase certificates have been issued or properties mutated, are not parties to this writ petition. Counsel for the petitioners relied on Ext.P6 order of this Court and wanted this court to hold that since the alleged illegal occupants are parties to T1Pl/ 92, the acceptance of tax from them in pursuance to Ext.P5 shall not and not be to their prejudice. In my view, even such an order cannot passed without the affected parties in the party array. In such Circumstances, this court will not be justified in preventing the Government from accepting tax as decided by the Government. Therefore, the petitioners cannot seek any relief in this proceedings.

5. It appears that pursuant to the orders passed by this Court, a

certain Shihabudeen approached the Court of the Additional Subordinate Judge, Kollam seeking to establish his rights over the property. The learned Subordinate Judge by Exhibit P4 order dated 1.11.2014 dismissed the application holding that the Court had no jurisdiction to consider the application as the insolvency Court had become functus officio. It is contended that Exhibit P4 has become final and has not been subjected to any challenge.

6. Thereafter, when revenue authorities refused to issue possession

certificates, the matter was taken up before the first respondent by several aggrieved persons. The Assistant Commissioner (L.A) was ordered to enquire and submit a detailed report by the Government. The Assistant Commissioner, taking note of the observations made by this Court in Exhibit P3 common judgment, by WP(C).No.14886 OF 2020 5 Exhibit P5 report opined that the village officers can be directed to consider the applications for mutation and issuance of possession certificates and process the same after verification of the deeds in possession of the individuals.

7. However, in spite of Exhibits P3 and Exhibit P5, tax receipts were

issued with endorsement, and certain individuals approached this Court and filed W.P. (C) No. 31255 of 2019 seeking to direct the revenue authorities to issue certificates without any recital or conditions. By judgment dated 16.1.2020, a copy of which is produced as Exhibit P6, a learned Single Judge of the Court, disposed of the Writ Petition and directed the revenue authorities to issue tax receipts without endorsement as to the pendency of I.P.No. 3/1100 (M.E) or any other cases. Though tax was being accepted in the name of the petitioner, when the petitioner approached the 6th respondent and sought for issuance of revenue certificates, they refused to oblige. Being aggrieved, the petitioner is before this Court seeking a declaration that the petitioner is entitled to get revenue certificates such as possession certificates without any endorsement or condition and also for a direction to the respondents 5 and 6 to issue the certificates sought for without marking any adverse endorsements.

8. I have heard Smt. Rekha Vasudevan, the learned counsel appearing for the petitioner and Sri.K.P.Harish, the learned Senior Government Pleader.

9. The learned Government pleader submits that the revenue

authorities have no impediment in issuing the certificate in the light of the directions issued by this Court in Exhibits P3 and P6. However, he points out that WP(C).No.14886 OF 2020 6 it is for the petitioner to produce all the relevant records to show how the property devolved upon her.

10. I have considered the submissions advanced. The petitioner claims

title and interest on the strength of purchase certificate issued by the Land Tribunal under the Kerala Land Reforms Act, 1963. The revenue authorities have been accepting tax in her name as well. However, her grievance is that the revenue authorities are refusing to issue revenue certificates, thus depriving her from enjoying the property. As held by this Court in Exhibit P3 and P6 judgments, if any person is aggrieved by such purchase certificates or the mutation that has been effected, they would have to take recourse to the remedies as available under Land Reforms Act or the Transfer of Registry Rules, as the case may be. There is no case for anyone that such remedies have been pursued. Furthermore, as per Exhibit P5 report submitted by the Assistant Commissioner (LA), in view of the non-pendency of any further proceedings, the village officers ought to have considered the application for mutation and issuance of possession certificates and process the same after verification of the deeds as well as purchase certificates in possession of the applicant. In other words, if the petitioner claims title based on a purchase certificate issued by the Land Tribunal, the revenue authorities are bound to issue revenue certificates including possession certificates without adverse endorsements. It is for the petitioner to approach the revenue authorities with the necessary documents and seek for issuance of revenue certificates. However, it is made clear that the directions issued by this Court will not preclude any person who is aggrieved by acts of the revenue

WP(C).No.14886 OF 2020 7 authorities to mount a challenge against the same as per the provisions of the law if, the provisions enable them to do so, and the same is not barred by any provisions of law.

11. In the result, this Writ Petition will stand disposed of directing the

petitioner herein to approach the competent among respondents 5 and 6 and file an application to issue revenue certificates in respect of the property covered under Exhibit P1 Land Assignment Certificate and Ext.P2 Assignment deed within a period of two weeks from the date of receipt of this judgment. If such an application is filed, the competent among the respondents shall consider the application and if the same is found in order, shall issue such revenue certificates

sought for by the petitioner without marking any endorsement with regard to the pendency of the insolvency petition or any other case. The same shall be done within a further period of three months. While considering the application, the officer concerned shall bear in mind the observations made by this Court in the various earlier judgments as well as in the instant case.

This petition will stand disposed of. Sd/- RAJA VIJAYARAGHAVAN V JUDGE IAP WP(C).No.14886 OF 2020 8

APPENDIX PETITIONER(S) EXHIBITS : EXHIBIT P1 TRUE COPY OF THE LAND ASSIGNMENT CERTIFICATE DATED 13.11.1972 IN SMP NO.91/1972 ISSUED BY THE LAND TRIBUNAL TO SASIDHARAN PILLAI. EXHIBIT P2 TRUE COPY OF THE SETTLEMENT DEED NO.2732 DATED 21.7.1993 REGISTERED WITH THE 4TH RESPONDENT. EXHIBIT P3 TRUE COPY OF THE JUDGMENT DATED 7.12.2010 IN WPC NO.17048 OF 2010 OF THIS HONOURABLE COURT. EXHIBIT P4 TRUE COPY OF THE ORDER DATED 1.11.2014 IN I.A.NO.746/2013 IN IP 03/1100 (ME) OF THE ADDITIONAL SUB JUDGE KOLLAM. EXHIBIT P5 TRUE COPY OF THE FORWARDING LETTER NO.L.R.(J)1/32163/2019 DATED 20.8.2019 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT ALONG WITH THE G.O(RT) NO.427/2017/RD DATED 4.2.2017 ISSUED BY THE IST RESPONDENT ALONG WITH THE REPORT SUBMITTED BY SRI. SABEEN SAMAD, THE ASSISTANT COMMISSIONER (L.A). EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 16.1.2020 IN W.P.(C) NO.31255 OF 2019 OF THIS HONOURABLE COURT. EXHIBIT P7 TRUE COPY OF THE BASIC TAX RECEIPT DATED 17.10.2019 ISSUED BY THE 6TH RESPONDENT TO THE PETITIONER. RESPONDENT(S) EXHIBITS: NIL

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