

Mn.Deviprasad vs the District Collector

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Court : Kerala

Decided On : Jun-26-2019

Judge : Honourable Mr. Justice a.Muhammed Mustaque

Appeal No. : WP(C)/731/2019

Appellant : Mn.Deviprasad

Respondent : The District Collector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE WEDNESDAY, THE 26TH DAY OF JUNE 2019 / 5TH ASHADHA, 1941 WP(C).No.731 of 2019 PETITIONER/S:

1 MN.DEVIPRASAD AGED 68 YEARS S/O.NAGARAJAYYA, KALAMANDIRAM HOUSE, DEVAGIRI ESTATE, MUTTIL NORTH VILLAGE, MUTTIL POST, VYTJORO TALUK, WAYANAD DISTRICT, PIN-673 576. 2 M.N.ARUNAKUMARI, AGED 62 YEARS D/O.NAGARAJAYYA, KALAMANDIRAM HOUSE, ARUNA ESTATE, MUTTIL NORTH VILLAGE, MUTTIL POST, VYTHIRI TALUK, WAYANAD DISTRICT, PIN-673 576. 3 M.N.INDRAKUMARI, AGED 58

YEARS D/O.NAGARAJAYYA, KALAMANDIRAM HOUSE, INDRA ESTATE, MUTTIL NORTH VILLAGE, MUTTIL POST, VYTHIRI TALUK, WAYANAD DISTRICT, PIN-673 576. 4 M.N.CHANDRANATHAN, AGED 60 YEARS S/O.NAGARAJAYYA, KALAMANDIRAM HOUSE, PADMINI ESTATE, MUTTIL NORTH VILLAGE, MUTTIL POST, VYTHIRI TALUK, WAYANAD DISTRICT, PIN-673 576. 5 M.N.SWARANAKUMARI AGED 64 YEARS D/O. NAGARAJAYYA, SUVARNA NIVAS, KALAMANDIRAM, SUVARNA ESTATE, MUTTIL NORTH VILLAGE, MUTTIL POST, VYTHIRI TALUK, WAYANAD DISTRICT, PIN-673 576. -:2:- 6 M.N.NAGENDRA SURYA KUMARI AGED 75 YEARS D/O. NAGARAJAYYA, KALAMANDIRAM HOUSE, KAMALA ESTATE, MUTTIL NORTH VILLAGE, MUTTIL POST, VYTHIRI TALUK, WAYANAD DISTRICT, PIN-673 576. 7 P.SUJATHA KRISHNAMOHAN AGED 61 YEARS W/O KRISHNAMOHAN, MUTTIL NORTH VILLAGE, MUTTIL POST, VYTHIRI TALUK, WAYANAD DISTRICT, PIN-673 576. BY ADVS. SRI.B.KRISHNAN SRI.R.PARTHASARATHY

RESPONDENT/S: 1 THE DISTRICT COLLECTOR WAYANAD,PIN-673 121. 2 THE TAHSILDAR VYTHIRI TALUK, WAYANAD DISTRICT, PIN-673 576. 3 STATE OF KERALA WITH ADDRESS FOR SERVICE, THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, THIRUVANANTHAPURAM-695 001. 4 THE TAHSILDAR LAND RECORDS, VYTHIRI, WAYANAD DISTRICT, PIN-673 576. BY ADV. SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENER THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14.6.2019, THE COURT ON 26.06.2019 DELIVERED THE FOLLOWING:
----- W.P.(C) No.731 of 2019 C.R

JUDGMENT

In this writ petition, the petitioners question the legality of an order of eviction and consequential proceedings under the Kerala Land Conservancy Act, 1957.

2. The petitioners had earlier approached this Court by W.P.(C)

Nos.9216/2011 and 24352/2011 challenging Form 'C' notices issued to them to remove encroachment as contemplated under Rule 11 of the Kerala Land Conservancy Rules, 1958 (for short, the Rules). This Court by judgment dated 16.6.2017, set aside Form 'C' notices issued against them noting that it was not preceded by a final order as contemplated under Rule 11 of the Rules and, directed the Tahsildar to pass a reasoned

order after adverting to the objections. Accordingly, the Tahsildar, Land

Records passed the impugned order on 3.5.2018. Thereafter, Form 'C' notices were served on the petitioners on 25.12.2018 and the petitioners were evicted from the land.

3. The petitioners claim that they were in possession of the land through the predecessor-in-interest from the year 1930 onwards. The land -:2:-

was planted with Coffee. It also seems that Coffee plantation was assessed by the Government for Plantation Tax. The petitioners, however, admits that the land belongs to the Government in Jenmom. According to them, the predecessor-in-interest was put in possession of the land based on the then policy of the Government for bringing wasteland under the cultivation.

4. I have heard Shri B.Krishnan, who appeared for the petitioners and the learned Additional Advocate General, Ranjith Thampan, who appeared for the State.

5. The petitioners challenge is mainly on three grounds - firstly, the

Tahsildar (Land Records) has no jurisdiction to act as a 'Collector' under Section 15 of the Land Conservancy Act to pass the impugned order; second, the Tahsildar without adverting to the jurisdictional facts, invoked Land Conservancy Act and passed the impugned order and; the third, the Government, without determining jural relationship, cannot disturb the settled possession of the land through the land conservancy proceedings.

6. In the counter affidavit filed in the matter, the Government does not acknowledge any kind of jural relationship with the predecessor-in-interest or with the petitioners. However, it is stated that the revenue :-3:-

authorities in the Malabar area used to give temporary permission to occupy Government properties for cultivation purposes under the Grow Food Scheme during 1931-35. It is also stated that a portion of the land which was in occupation of the petitioners was also given for cultivation to one Padmarajan Counden and after the demise of Padmarajan Counden, the property was in occupation of the petitioners' father, namely, Nagarajan Iyer.

7. By government notification published in Gazette dated

07.10.1958, the Taluk Tahsildar was empowered to act as a Collector under the Land Conservancy Act. Section 15 confers power on the State Government to delegate powers conferred upon the Collector on any authorized officer. The learned counsel for the petitioners would argue that the 'Tahsildar, Land Records' is not the 'Tahsildar' referred to in the

notification. The learned Additional Advocate General referred to a government order No.510/98 dated 14.10.1998. By this government order, the Government reorganised the revenue department. Consequent upon reorganisation, the post of Additional Tahsildar was created and subsequently, they were assigned with subjects to streamline the functions. By the said government order there are two Tahsildars for a Taluk; one for

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administration and the other for other subjects. Land Conservancy is a matter allotted to the Additional Tahsildars. The Government, thereafter, by government order dated 27.4.2017 redesignated the post of Additional Tahsildar as Tahsildar (Land Records). The point, therefore, that arises for consideration is whether the expression Additional Tahsildar would also

include Taluk Tahsildar. The designation of Additional Tahsildar or Tahsildar (Land Records) is only for the purpose of allocation of subjects and for the convenience

of the people to understand the functions carried out by them. The Additional Tahsildar or Tahsildar (Land Records) is also a Taluk Tahsildar. They discharge the same functions attached to the office of the Tahsildar. The Division Bench of this Court in Thomas John v. Kochammini Amma [1994 (2) KLT 571] considered an issue in regard to the functioning of the Additional District Judge as an appellate authority under the Kerala Building (Lease and Rent Control) Act, 1965. As per the notification of the aforesaid Act, power was conferred upon the District Judge as an appellate authority. Noting that the Additional District Judge also discharges his functions relatable to the jurisdiction, the Division Bench observed that the Additional District Judge is also conferred with the

powers of the appellate authority. The Taluk Tahsildar's jurisdiction is -:5:-

related to Taluk. Prefixing Taluk clearly indicates that it is related to the jurisdiction within the Taluk. The Additional Tahsildar also discharges the same functions related to the Taluk. Therefore, the Additional Tahsildar or the Tahsildar (Land Records) is a Taluk Tahsildar. There is no distinction between the Taluk Tahsildar and the Additional Tahsildar or the Taluk

Tahsildar (Land Records). Therefore, the challenge on this ground must fail.

8. The challenge based on the non-advertence to jurisdictional fact and the scope of invoking Land Conservancy Act to interfere with the settled possession can be considered together as these both points would overlap.

9. This Court in Harrisons Malayalam Ltd. v. State of Kerala

[2014 (4) KLT 371] held that in order to proceed under the Land Conservancy Act, it is necessary for the Collector to advert to the jurisdictional fact. The jurisdictional facts in the Land Conservancy Act were explained with reference to the legal possession retained by the Government. Therefore, it was observed that the land in question must be characterized as government land and, the Government must show that they are in legal possession of the land. In Banerjee Memorial Club v.

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Taluk Tahsildar [2016 (1) KLT 241] the Division Bench of this Court held

that it is necessary for the Collector to find whether the person in

occupation was unauthorizedly occupying the land. It is also further observed that a person occupying land need not prove ownership of the land occupied. In *Harrisons Malayalam Ltd. v. State of Kerala* [2018 (2) KLT 369] at para.134, after survey of all judgments of this Court and the Apex Court, the Division Bench of this Court held that when land is held on valid permission and when there is a bona fide dispute, in adversarial capacity the State cannot divest the title or adjudicate on the title of the occupier of the land. The Division Bench of this Court in *Shahul Hassan Musaliyar T.K. v. State of Kerala and Others* [2015 (4) KHC 615] also had taken the view that without determining the lease, the Government cannot invoke Land Conservancy Act. The line of decisions as above would clearly show the proposition as to the invoking of power under the Land Conservancy Act to remove encroachments, i.e. it must be shown that the Government is in legal possession of the land and the occupier of the land is occupying the land unauthorizedly. If the possession is with the holder of the land, without determining the interest of the holder of the

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

10. Now, this Court has to consider the merit of the petitioners' argument. The petitioners trace out possessory right from the year 1930 onwards. The land has been assessed for revenue. Coffee registration

was also given to the holder of the land. The petitioners also have produced *Punja chits*. All these documents would show that the petitioners were not occupying the land as an encroachers. The petitioners claimed to have settled possession through their predecessor-in-interest. The total extent of land is 27.3880 hectares. There is no dispute that the petitioners were cultivating Coffee in the land. On the other hand, in the counter affidavit filed before this Court, it is stated that the petitioners' predecessor-

in-interest was given a portion of the land for the cultivation. 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 -:8:- interest of the possession in the land, the Government cannot have legal possession.

11. At this stage of the case, it is important to clearly differentiate

between the concepts of legal possession and actual possession. As aforementioned, the Government's ownership over the land stands undisputed. However, ownership encompasses and refers to a bundle of rights that can be alienated or parted with either separately or as a whole. The right to possession is one of the several rights that constitute the larger right of ownership. Possession may be classified into two types; legal possession and actual possession. Legal possession is always backed by law or a valid contract while actual possession may or may not be entirely lawful. For example, actual possession may happen as a result of encroachment or unauthorized occupation, for it refers to the idea of mere physical possession of the subject matter. Legal possession is constructive in nature and is derived as a matter of right by virtue of law or contract. In both cases, there exists an interest in the subject matter. The nature, extent and enforceability of that interest, however, can only be determined by ascertaining with whom the legal possession and actual possession rests in each case. For example, the land leased out by the owner during

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the pendency of the lease, the lessee is in legal possession. If the lease is determined either referable to the contract or to the statutory provisions, on determination, the owner of the land would be in legal possession even though the lessee is in actual possession. This actual possession, in fact, in law is treated as 'occupation'. The power of the Collector to invoke the Land Conservancy Act would arise only when the Government is in legal possession. A lease

arrangement or agreement vests in the lessor only a reversionary right which can be enforced either upon expiry of the lease deed or on breach of any term of the lease. It also puts the lessee in actual possession of the subject matter of the lease while at the same time giving him legal possession over it. In the case in hand, it is unclear from the

facts as to who has legal possession. It can only be conclusively

determined by a civil court by looking into the nature of the documents that define the relationship and settle the position of the parties to the dispute. The Government assumed upon itself the legal possession of the disputed land and proceeded to enforce a summary eviction even though the petitioners claimed a right of settled possession over it. It shall be the duty of the parties to the dispute to fortify their respective claims through the production of relevant records in that regard. A civil court shall peruse such

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records to determine the relationship between the parties and to settle their positions with regard to the disputed land. The fact that the petitioners had been in actual possession of the land in question until before the eviction reveals that he has a semblance of interest in it, the nature of which can only be determined by deducing with which party the legal possession lies. If the Government had legal possession at the time of eviction, it is justified in its actions but if the petitioners had legal possession at the time of eviction, the proceedings under the Land Conservancy Act are arbitrary. Until the determination of the same is undertaken by a civil court, the eviction of the petitioners from the land in question is illegal and arbitrary.

12. The Land Conservancy Act is an enactment for summary eviction.

The Collector acting under the Land Conservancy Act has no power to determine the interest in a land. There is no requirement for the holder of the land to prove ownership of the land. If the holder of the land is shown to be in legal possession or in actual possession without determining his interest in the land, the Collector

could not have proceeded under the Land Conservancy Act even though the land belongs to the Government.

13. No steps were taken in this matter prior to the issuance of notice under the Land Conservancy Act to determine the interest of the -:11:- petitioners in the land. In such circumstances, the proceedings initiated under the Land Conservancy Act are bad in law. The petitioners are, therefore, entitled for restoration of the land.

14. It is made clear that this Court had not declared that the petitioners

have 'interest' in the land. The discussion as above is only to point out the scope of invoking the Land Conservancy Act when the holder is shown to have a semblance of interest which cannot be decided through

summary proceedings of the Land Conservancy Act.

14. However, the learned Additional Advocate General submitted that

the land is identified for establishing government Medical College in Wayanad and steps have to be taken before September 2019 for establishing the Medical College. In such circumstances, the question is whether the Government should be relegated to invoke the land acquisition proceedings. There is a considerable delay on the part of the petitioners in challenging the impugned order. The petitioners' case is that they waited till Form 'C' notices were issued to them. The impugned order was passed

on 3.5.2018. Form 'C' notices were issued on 21.12.2018. The writ petition was filed only on 18.2.2019. -:12:-

15. In such circumstances, I am of the view that if the land is

required for public purposes, dispensing other statutory formalities, an Award shall be passed computing the compensation. There is no dispute in this case that the land belongs to the Government. The petitioners could only assert a possessory interest in the land. Therefore, they could only claim compensation on proving the nature of the possessory right over the land. Therefore, the Collector shall pass an

award and refer the dispute under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Act 30 of 2013] to determine the right, interest and also the quantum of compensation. It is for the civil court to decide the nature of right and interest based on which the petitioners are entitled for the compensation and also the quantum of compensation. The Award shall be passed after preparing the mahazar with the details of improvements and valuation of the land and all other factors required to determine just and fair compensation under the Act 30 of 2013. Such an award shall be passed within one month. If no award is passed within one month and if the land is not required for any public purposes, the land shall be restored to the petitioners on expiry of one month. In such an event, it is open for the

:-13:- Government to evict the petitioners in accordance with law through the civil court. Thus, the writ petition is disposed with the following directions: I. The Collector shall pass an award in the light of the discussions in the judgment within one month and refer the dispute as to the claim for compensation to the civil court under Section 64 of the Act 30 of 2013. II. If the land is not required for public purposes and no award is passed within time, the Government shall restore the land to the petitioners on expiry of the period. In such an event, the Government is at liberty to evict the petitioners through the civil court in accordance with law. Sd/-

A.MUHAMED MUSTAQUE, JUDGE ms :-14:- APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE JUDGMENT IN WPC HON'BLE COURT. EXHIBIT P2 TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 3.5.2018. EXHIBIT P3 TRUE COPY OF THE OBJECTIONS TO THE NOTICE DATED 20.11.2017 ISSUED BY 2ND

RESPONDENT BEFORE EXHIBIT P2 ORDER

(WITHOUT ANNEXURES). EXHIBIT P4 TRUE COPY OF THE FORM C NOTICE ISSUED TO THE 1ST PETITIONER. EXHIBIT P5 TRUE COPY OF THE FORM C NOTICE ISSUED TO THE 2ND PETITIONER. EXHIBIT P6 TRUE COPY OF THE FORM C NOTICE ISSUED TO THE 3RD PETITIONER. EXHIBIT P7 TRUE COPY OF THE FORM C NOTICE ISSUED TO THE 4TH PETITIONER. EXHIBIT P8

TRUE COPY OF THE FORM C NOTICE ISSUED TO THE 5TH PETITIONER.
EXHIBIT P9 TRUE COPY OF THE FORM C NOTICE ISSUED TO THE 6TH
PETITIONER. EXHIBIT P10 TRUE COPY OF THE FORM C NOTICE ISSUED TO
THE 7TH PETITIONER. -:15:- RESPONDENT'S/S EXHIBITS: EXHIBIT R4(A)
THE TRUE COPY OF THE NOTICE ISSUED TO THE 1ST PETITIONER DATED
26.02.2011. EXHIBIT R4(B) THE TRUE COPY OF THE RELEVANT PAGES OF
THE OLD BASIC TAX REGISTER. EXHIBIT R4(C) THE TRUE COPY OF THE
RELEVANT PAGES OF THE NEW BASIC TAX REGISTER. EXHIBIT R4(D) THE
TRUE COPY OF THE RELEVANT PAGES GO(MS) NO. 510/98/RD DATED
14.10.1998. EXHIBIT R4(E) THE TRUE COPY OF THE PROCEEDINGS OF THE
LAND REVENUE COMMISSIONER DATED 23.06.2000. EXHIBIT R4(F) THE
TRUE COPY OF THE GO(MS) NO. 137/2017/RD DATED 27.04.2017. EXHIBIT
R4(G) THE TRUE COPY OF THE MAHASAR DATED 26.12.2018.
RESPONDENTS' EXTS: NIL \\TRUE COPY// PS TO JUDGE ms

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