

Gopalakrishnan vs State of Kerala

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Court : Kerala

Decided On : Apr-03-2019

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : WP(C)/9595/2019

Appellant : Gopalakrishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
WEDNESDAY, THE 03RD DAY OF APRIL 2019 / 13TH CHAITHRA,
1941 WP(C).No. 9595 of 2019 PETITIONER/S: GOPALAKRISHNAN
AGED 46 YEARS S/O. NANU, ATTICHIRAVEEDU, VELIYANADU P.O.,
KUTTANAD,ALAPPUZHA BY ADV. SRI.P.SHANES METHAR
RESPONDENT/S: 1 STATE OF KERALA REP.BY PRINCIPAL
SECRETARY,DEPARTMENT OF AGRICULTURE DEVELOPMENT
AND FARMERS WELFARE, GOVERNMENT,SECRETARIAT,
THIRUVANANTHAPURAM-695 001 2 THE DISTRICT COLLECTOR,
ALAPPUZHA COLLECTORTE CAMPUS ALAPPUZHA, ALAPPUZHA-
688 3 THE REVENUE DIVISIONAL OFFICER,

ALAPPUZHA,ALAPPUZHA-688 524 4 THE VILLAGE OFFICER,
VELIYANADU VILLAGE, ALAPPUZHA-688 590 SRI MANU RAJ K.J,
GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING
COME UP FOR ADMISSION ON 03.04.2019, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 9595 of 2019 2

JUDGMENT

The petitioner's minor son, Gokul G. Krishna is stated to be the owner of a property having an extent of 80.94 sq. metres covered by Ext.P1 sale deed bearing No. 2705/2016 of Sub-Registrar Office, Kuttanad. The petitioner was issued with Ext.P7 order dated 15.01.2019 of the second respondent District Collector, whereby he has been directed to restore the nature of the land and that order is one issued by the said respondent invoking his powers under Section 13 of the Kerala Conservation of Paddy Land and Wetland Act, 2008. Feeling aggrieved by Ext.P7 order, the petitioner has moved Ext.P8 revision petition before the first respondent, under Section 28 of the said Act. Now the petitioner is before this Court in this writ petition seeking a writ of certiorari to quash Ext.P7 order dated 15.01.2019 of the second respondent and issue a writ of mandamus commanding the 1st respondent to take up, consider and pass orders in Ext.P8 after affording the petitioner an opportunity of being heard, within a time limit to be fixed by this Court, and a further direction to the respondents to keep in abeyance all further proceedings pursuant to Ext.P7 for the said period.

2. On 01.04.2019, when this writ petition came up for WP(C).No. 9595 of 2019 3

admission, the learned Government Pleader was directed to get instructions as to whether Ext.P8 revision petition filed by the petitioner is pending consideration before the first respondent.

3. Heard the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

4. In Commissioner of Income Tax v. Chhabil Das

Agarwal [(2014) 1 SCC 603], the Apex Court held that non-entertainment of a writ petition under Article 226 of the Constitution of India when an efficacious alternative remedy is available is a rule and self imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution of India, despite the existence of alternative remedy. However, High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same, unless he has made out an exceptional case warranting such interference or there exists sufficient ground to invoke the extraordinary jurisdiction under Article 226.

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5. Ext.P7 order, which is under challenge in this writ

petition is revisable before the first respondent in view of the provisions under Section 28 of the Kerala Conservation of Paddy Land and Wet Land Act. In view of the statutory remedy available under Section 28 of the Kerala Conservation of Paddy Land and Wet Land Act, the petitioner cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India seeking an order to quash Ext.P7.

6. The learned Government Pleader would submit that Ext.P8 revision petition filed by the petitioner against Ext.P7

order of the second respondent District Collector is now

pending consideration before the first respondent.

7. Since Ext.P8 revision petition filed by the petitioner is pending consideration before the first respondent, it is for the petitioner to pursue Ext.P8 revision.

8. Having considered the submissions made by the

learned counsel on both sides, this writ petition is disposed of by directing the first respondent to consider and pass appropriate orders on Ext.P8 revision petition filed by the petitioner against Ext.P7 order, with notice to the petitioner and after affording him an opportunity of being heard. WP(C).No. 9595 of 2019 5 Necessary orders in this regard shall be passed, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a certified copy of this

judgment.

Sd/- ANIL K.NARENDHRAN JUDGE DCS WP(C).No. 9595 of 2019 6 APPENDIX
PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE SALE DEED NO.2705 OF 2016 EXHIBIT P2 TRUE COPY OF THE TAX RECEIPT DATED 21.11.2017 EXHIBIT P3 TRUE COPY OF THE CERTIFICATE OF DISABILITY ISSUED FROM T.D. MEDICAL COLLEGE,ALAPPUZHA EXHIBIT P4 TRUE COPY OF THE IDENTITY CARDS PERSONS WITH DISABILITY ISSUED BY THE DISTRICT SOCIAL WELFARE OFFICER, ALAPPUZHA EXHIBIT P5 TRUE COPY OF THE NOTICE NO.C10-41340/17 DATED 08.11.2017 OF THE 1ST RESPONDENT EXHIBIT P6 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 21.11.2017 EXHIBIT P7 TRUE COPY OF THE ORDER NO.C10-41340/17 DATED 15.01.2019 OF THE 2ND RESPONDENT EXHIBIT P8 TRUE COPY OF THE REVISION PETITION TOGETHER POSTAL RECEIPT DATED 20.03.2019

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