

State of Kerala and Others Vs. Kaipadath Property Development Company

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Court : Kerala

Decided On : Aug-03-2015

Judge : Honourable Mr.Justice Antony Dominic

Appellant : State of Kerala and Others

Respondent : Kaipadath Property Development Company

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY MONDAY, THE 3D DAY OF AUGUST 2015 12TH SRAVANA, 1937 WA.No. 489 of 2011 () IN WP(C).10248/2010
----- AGAINST THE

JUDGMENT

IN WP(C) 10248/2010 of HIGH COURT OF KERALA DATED 2001-2011 APPELLANTS/RESPONDENTS IN W.P.(C): ----- 1. STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVT., DEPARTMENT OF REVENUE GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, THRISSUR.

3. THE REVENUE DIVISIONAL OFFICER, THRISSUR.

4. THE TAHSILDAR, THRISSUR. BY ADDL. ACCOUNTANT GENERAL K.A. JALEEL RESPONDENT/PETITIONER IN W.P.(C): -----
KAIPADATH PROPERTY DEVELOPMENT COMPANY (PVT)LTD., REP.BY ITS
MANAGING DIRECTOR ABDULLA KAIPADATHU.REP.BY POWER OF
ATTORNEY HOLDER, M.ANTONY S/O MICHAEL, RESIDING AT PUTHOOR
HOUSE AMABALAPPUZHA.P.O, ALAPPUZHA DISTRICT - 688 561 R1 BY ADV.
SRI.M.K.DAMODARAN (SR.) THIS WRIT APPEAL HAVING BEEN FINALLY
HEARD ON 03/08/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: smv ANTONY DOMINIC & SHAJI P. CHALY, JJ.

----- W.A. No.489 of 2011
----- Dated this the 3rd day of August, 2015

JUDGMENT

Antony Dominic, J.

Respondents in Writ Petition No.10248 of 2010, have filed this appeal challenging the judgment of the learned Single Judge rendered on the 20th of June, 2011.

2. The writ petition was filed by the respondent herein challenging Ext.P6 order issued by the District Collector, Thrissur exercising his powers under Section 13 of the Kerala Conservation of Paddy land and Wet land Act, 2008 (hereinafter referred to as 'Act 28 of 2008'). By the judgment under appeal, the learned Single Judge disposed of the writ petition quashing Ext.P6 and directing as follows:

"6. The writ petition is therefore allowed. Ext.P6 is quashed. Fresh orders will be passed in the matter after hearing the petitioner and after finalising various actions as directed above, and after complying with the following directions: (i) The District Collector will take steps to finalise the appointment of the Local Level Monitoring W.A. No.489 of 2011 2 Committee as enjoined under Section 5(4) of the Act as a first step in the matter, if not already done. After the appointment of the Committee, they will prepare the data bank as provided under Section 5(4) of the Act and notify it under Rule 4(2)(b) of the Rules. (ii) The proceedings under the Kerala Land Reforms Act will be finalised expeditiously after giving proper opportunities for hearing to the petitioner. (iii) The petitioner will be allowed to

adduce further evidence in the matter after all the above procedures are over. Depending upon the notification issued under Section 5(4) of the Act read with Rule 4(2) of the Rules, the District Collector will evaluate the effect of the orders passed under the Kerala Land Utilisation Order and find out whether the petitioner is entitled for such conversion on the basis of the details furnished and after satisfying whether other conditions in the orders Ext.P2, P3, P9 and P10 have been fulfilled. (iv) In terms of the interim order dated 8.4.2010 much quantity of mud and waste have been removed already and going by the interim report dated 2.9.2010, 6388 lorry loads of mud have been removed till 11.6.2010. It is mentioned that proper accounts have been maintained by the Tahsildar with respect to the removal of mud and waste as directed by this Court. In the light of the directions issued as above, status-quo as regards the properties will be maintained as on today, as fresh orders will W.A. No.489 of 2011 3 have to be passed." It is this judgment which is under challenge before us.

3. We heard the learned Government Pleader appearing for the appellants and the learned counsel for the respondent.

4. This case involves a property purchased by the respondent as per Ext.P1 sale deed executed on 07.04.2007. The vendor of the first respondent had as early as in 1994 obtained Exts.P2, P9, P10, P11 and P23 to P29 orders under the Kerala Land Utilisation Order for the conversion of the land. It appears that after the respondent purchased the land, on 3.12.2009, the Revenue Divisional Officer made an endorsement on the orders obtained by the respondent's vendor under the Kerala Land Utilisation order to the effect that the orders are still valid. On the strength of these orders, attempt was made by the respondent to convert some portion of the property covered by Ext.P1, when stop memo was issued by the Revenue Divisional Officer on 04.06.2008. Further proceedings in the matter culminated in Ext.P6 order dated 10.03.2010 of the District Collector where he has concluded that the respondent has violated the provisions of Act 28 of 2008 and directed them to restore the reclaimed land to its original position by removing W.A. No.489 of 2011 4 the entire earth or other materials used for converting the wet land. Consequential orders were also issued. It was this order that was challenged in the writ petition, and the case was disposed of in the manner that we

have already stated. 5. It is now agreed by both sides that the issues arising in this appeal are governed by the principles laid down by the Apex Court in its judgment in Revenue Divisional Officer, Fort Kochi and others v. Jalaja Dileep and Another [2015(2) KHC109. That was a case where the Supreme Court had examined the provisions of the Kerala Land Utilisation order and Act 28 of 2008 and the manner in which the applications for conversion will have to be dealt with under both the above enactments. Though we agree with the submissions made by the parties, from the judgment under appeal, we find that the learned Single Judge has placed reliance on Exts.P2, P9, P10, P11 and P23 to P29, the orders issued during 1994 by the then Revenue Divisional Officer exercising his powers under the Kerala Land Utilisation Order. By these orders, the vendor of the respondent was permitted to convert the properties, the extent of which is mentioned therein. Though these orders are also mentioned in Ext.P1 sale deed, question would still arise whether the benefit W.A. No.489 of 2011 5 of the orders under the Kerala Land Utilisation Order would enure to the respondent.

6. The above question has not been gone into in the judgment under appeal. From the orders mentioned above, we notice that except in Ext.P23, in all the remaining orders, it was made clear that the benefit thereof would enure only to the applicant therein who is the vendor of the respondent. Even Ext.P23 makes it clear that the permission is only to the applicant therein.

7. In other words, by these orders issued under the Kerala Land Utilisation Order, the applicants before the Revenue Divisional Officer alone were granted permission for conversion of land in accordance with the Kerala Land Utilisation Order. The conditions incorporated in these orders are not challenged at any stage. Therefore, these conditions are binding on the party to whom it was issued. If that is so, the permission granted would not enture to the benefit of the assignee of the vendor of the property. Hence Exts.P2, P9, P10, P11 and P23 to P29 cannot be to the benefit of the respondent. The position is clarified as above. Leaving the matter to be dealt with by the authorities under the Land Utilisation Order or W.A. No.489 of 2011 6 Act 28 of 2008, as the case may be, in the light of the law laid down by the Apex Court in Revenue Divisional Officer, Fort Kochi and others (supra) and modifying the judgment under appeal, the appeal is disposed

of. Sd/- ANTONY DOMINIC JUDGE Sd/- SHAJI P. CHALY JUDGE //true copy//
P.A. To Judge smv

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