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Jose Chandi Vs. State of Kerala

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Court : Kerala

Decided On : Aug-20-2015

Judge : Honourable the Chief Justice Mr.Ashok Bhushan

Appellant : Jose Chandi

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE THURSDAY, THE20H DAY OF AUGUST201529TH SRAVANA, 1937 WP(C).No. 25579 of 2015 (S) ---------- PETITIONER : ---------- JOSE CHANDI AGED59YEARS, S/O.DAVID, RESIDING AT THULUVANANIKKAL HOUSE SINKUKANDUM JUNCTION, CHINNAKANAL, IDUKKI SECRETARY, ADIVASI PUNARADHIVASA SAMRAKSHANA SAMITHI IDUKKI DISTRICT. BY ADV. SRI.K.K.ASHKAR RESPONDENT(S) : ---------- 1. STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, SECRETARIAT THIRUVANANTHAPURAM - 695 001.

2. PRINCIPAL SECRETARY REVENUE AND DISASTER MANAGEMENT, SECRETARIAT THIRUVANANTHAPURAM - 695 001.

3. LAND REVENUE COMMISSIONER PUBLIC OFFICE BUILDING, OPP: MUSEUM, VIKAS BHAVAN P.O. REVENUE COMPLEX, THIRUVANANTHAPURAM - 695 033.

4. THE SECRETARY DEPARTMENT OF SCHEDULED CASTE AND SCHEDULED TRIBES SECRETARIAT, THIRUVANANTHAPURAM - 695 001 5. THE DISTRICT COLLECTOR IDUKKI, COLLECTORATE, KUYILIMALA PAINAVU P.O., IDUKKI - 685 603.

6. THE DEPUTY COLLECTOR (LAND ASSIGNMENT & LAND REFORMS), IDUKKI CIVIL STATION, PAINAVU P.O., IDUKKI - 685 603.

7. THE TAHSILDAR IDUKKI TALUK, PAINAVU P.O., IDUKKI - 685 603. R1 TO R7 BY SPL. GOVT. PLEADER SMT. SUSEELA R. BHATT THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON2008-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mn ...2/- WP(C).No. 25579 of 2015 (S) ---------- APPENDIX PETITIONERS' EXHIBITS : ---------- EXT. P1: TRUE COPY OF DECISION TAKEN ON THE MEETING HELD ON1610/2001 CONVENED BY CHIEF MINISTER FOR SETTLING TRIBAL STRIKE ALONG WITH ITS ENGLISH TRANSLATION. EXT. P2: TRUE COPY OF THE PROCEEDINGS OF INTEGRATED TRIBAL DEVELOPMENT PROJECT OFFICER, THODUPUZHA VIDE NO.E-2512/11 DATED57/2011. EXT. P3: TRUE COPY OF

JUDGMENT
OF THIS HONOURABLE COURT IN WP(C) NO.37069/2010 DATED34/2012. EXT. P4: TRUE COPY OF THE INFORMATION FURNISHED BY THE KONNATHADY VILLAGE OFFICER DATED264/2012. EXT. P5: TRUE COPY OF THE

JUDGMENT
DATED138/2014 OF THIS HONOURABLE COURT IN WP(C) NO.29887/2013. EXT. P6: TRUE COPY OF THE G.O.(MS) NO.600/13/RD DATED2412/2013. EXT. P7: TRUE COPY OF THE LIST OF ELIGIBLE LANDLESS ADIVASIS FOR ALLOTMENT OF LAND AS APPROVED BY TRDM PROJECT OFFICER. EXT.

P8: TRUE COPY OF THE NEWS REPORTING THE ANNOUNCEMENT OF CHIEF MINISTER IN MASS CONTRACT PROGRAM APPEARED IN MALAYALA MANORAMA DAILY DATED315/2015 ALONG WITH ITS ENGLISH TRANSLATION. EXT. P9: TRUE COPY OF THE GOVERNMENT

ORDER
G.O.(RT) NO.3764/2015/RD DATED207/2015 ALLOCATING RS.2.5 CRORE FOR HOSTING MEGA PATTAYA MELA TO BE HELD ON228/2015 IN IDUKKI DISTRICT. RESPONDENT(S)' EXHIBITS : NIL ---------- //TRUE COPY// P.A. TO JUDGE Mn ASHOK BHUSHAN, CJ & A.M.SHAFFIQUE, J.

* * * * * * * * * * * * * W.P.C.No.25579 of 2015 ---------- Dated this the 20th day of August 2015

JUDGMENT

Shaffique, J This writ petition has been filed seeking the following reliefs: "i) To call for the records leading to Ext.P6 Government Order and quash the same since it is arbitrary, discriminatory and violating Art.14 of the Constitution of India. ii) To issue appropriate writ or direction staying all proceedings for assignment of land in Perinchankutty power project left over area on the basis of Ext.P6 Government Order. Iii) Issue a writ of mandamus, any other appropriate writ or direction directing respondents 5 to 7 to reserves 25% of the assignable land to Scheduled Caste and Scheduled tribes before assigning land in Idukki District; iv) Issue a writ of mandamus, any other appropriate writ or direction directing respondents consider the claim of tribal families enlisted in Ext.P7 list as approved by Tribal Settlement and Development Mission for assignment of land in Perinchankutty power W.P.C.No.25579/2015 2 project left area;" 2. Petitioner has approached this Court in a public interest litigation inter alia contending that by Ext.P6 Government order dated 24/12/2013, the Government had offered land to landless people in a hilly area. It is stated that Rule 24 of the Kerala Land Assignment Rules, 1964, gives power to dispense with any provisions of Land Assignment Rules. In Ext.P6 State has taken an arbitrary decision in the matter. It is stated that the order is so unclear that the reason behind the arbitrary classification has not been dealt with.

Petitioner's main grievance is with reference to Ext.P6 order dated 24/12/2013. Ext.P6 order proceeds on the basis that those farmers and other persons who were in occupation of Government land for decades have been demanding Pattayams for land for which maximum permissible limit is only one acre in the hilly tracts which the Government feels is insufficient for the livelihood of the occupants. Accordingly, Ext.P6 order has been passed. Clauses (a) to (e) of the said Government order read as under: "(a) the stipulation that not more than one acre of land either wet or dry, in the plains and not more than one acre of wet land or three acres of dry land in W.P.C.No.25579/2015 3 hilly tracts, for personal cultivation for a family, as prevailed prior to amendments in Kerala Land Assignement Rules, 1964 as per G.O (P) No.63/2005/RD dated 30/03/2005, shall be reinstated. The limit of land for personal cultivation by a family in power project left over areas like Perinchankutty shall be fixed as 4 acres in the relevant provisions of Kerala Land Assignment Rules, 1964. (b) An extent of maximum 4 Acres of land in power project left over areas like Perinchankutty, by invoking the powers vested with the Government in Rule 24 of Kerala Land Assignment Rules, 1964, shall be assigned for agriculture purpose only. (c) Since distribution of patta completing all the procedures stipulated in the Rules requires more time, the Special Tahsildars (LA, of Rajakumari, Nedumkandam, Murikkasseri shall be authorised as assigning authority for issuing pattas in the said areas alone in left over power project of Perinchankutty in Idukki district, by invoking the powers vested with the Government in Rule 23A of Kerala Land Assignment Rules, 1964. (d) Amendment to Rules in the statute shall be brought to the effect that the condition of 25 years' non alienability period for land as per Rule 8(1) of the Kerala Land Assignment Rules, 1964 shall be waived off for all categories, except to those who were W.P.C.No.25579/2015 4 assigned land under Zero landless (Citizens), Kerala 2015 Project by retaining the 25 years' non alienability period. (e) The amendment will be published without placing the same before the subject committee, considering the urgency involved in the matter by invoking provisions contained in Rule 238(1) of Rules of procedure and Conduct of Business in the Subject Committee of Legislative Assembly. After issuing the notification, further action regarding placing the same before the committee shall be taken." 3. Adv.Smt.Susheela Bhatt, the learned Special Government Pleader for Revenue,

on instructions, would submit that the Government is intending to issue pattas to various persons covered by Ext.P6 Government Order within a week and it is only to stop such proceedings, that challenge has been made by the petitioner.

4. It is apparent that though Ext.P6 Government Order is dated 24/12/2013, no attempt has been made by the petitioner to challenge the said Government Order within a reasonable time. That apart, the aforesaid Government Order reflects a policy decision which cannot be interfered by this Court. Though the learned counsel for the petitioner submits that there is W.P.C.No.25579/2015 5 arbitrariness and unreasonableness in classification of the persons who have been allotted the land, we do not think that we will be in a position to go into such details at this point of time and especially when the pattas are about to be issued.

5. Having regard to the fact that Ext.P6 is the outcome of a policy decision of the Government, we do not think that this Court will be justified in interfering at this point of time. The grounds urged lacks clarity. Though it is contended that other tribal people are being discriminated, there is no material for the same. That apart, if any tribal is not given land as promised, it is always open for such persons to approach this Court, claiming individual benefits. Accordingly, this writ petition is dismissed with liberty to any other interested person who is aggrieved by Ext.P6 order to challenge the same at later stage. (sd/-) (ASHOK BHUSHAN, CHIEF JUSTICE) (sd/-) (A.M.SHAFFIQUE, JUDGE) jsr W.P.C.No.25579/2015 6 W.P.C.No.25579/2015 7 W.P.C.No.25579/2015 8

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