

Kerala High Court

Chandran vs The Tahsildar on 14 December, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 16692 of 2010(J)

1. CHANDRAN, PUNTHALAKIZHAKKATHIL,
... Petitioner

Vs

1. THE TAHSILDAR, KARUNAGAPPALLY,
... Respondent

2. THE CIRCLE INSPECTOR OF POLICE,

3. INDIRAMMA, PRANAVAM, ELASSERIL,

For Petitioner :SRI.B.S.SWATHY KUMAR

For Respondent :SRI.P.B.SURESH KUMAR

The Hon'ble MR. Justice ANTONY DOMINIC

Dated :14/12/2010

O R D E R

ANTONY DOMINIC, J.

W.P.(C).Nos.32119/09 & 16692/10

Dated this the 14th day of December, 2010.

C O M M O N J U D G M E N T W.P.(C).No.32119/09 Issues raised in these writ petitions are connected and therefore, these cases were heard together and are disposed of by this common

judgment.

2. I shall first deal with W.P.(C)No.32119/09. Prayer sought in this writ petition is to quash Exts.P4, P5 and P7 orders, passed by the respondents 5, 4 and 3 respectively. The petitioner claims that she and her ancestors were in possession of 45 cents of land in old Survey Nos.13709/A/1-3 and 13709/A/1-1 of Karunagappally Village. In 1994, Ext.P1 order was passed by the 5th respondent, exercising his powers under the Kerala Land Conservancy Act, 1957, finding that the petitioner's husband had unauthorisedly encroached into 3.08 cents of land. On that basis, prohibitory assessment was ordered and a fine of ` 250/- was imposed. Based on Ext.P1, Ext.P2 'form C notice' was issued W.P.(C).Nos.32119/09 & 16692/10 and the petitioner's husband was called upon to remit arrears of tax for 40 years. He was also ordered to vacate from the land.

3. Against these proceedings, the petitioner's husband filed an appeal before the Revenue Divisional Authority. In the meantime, the petitioner's husband was expired and the petitioner joined as a party to the appeal and prosecuted the appeal, which was finally disposed of by Ext.P3 order. A reading of this order would show that, it was the contention of the petitioner that, she and her ancestors were in possession of the property since 110 years and that property was not a path way, as claimed by the rival claimants. Taking note of these contentions, RDO found that the notice issued by the Tahsildar shows the time of encroachment and that, S.5 of the KLC Act could not be evoked in the case. Proceeding further, on the ground that, the Lower Authority had not verified the points that the petitioner raised before the R.D.O., the order passed by the Tahsildar was set aside and a fresh disposal was ordered.

4. On remand, the Tahsildar reconsidered the matter and passed Ext.P4 order. This order shows that, during the course of W.P.(C).Nos.32119/09 & 16692/10 the hearing, the 12th respondent was also heard and that he claimed that, the land in question is a path way. The Tahsildar inspected the land and found that the land is recorded in the revenue records as 'zirkar vazhi' and that the petitioner's husband had encroached upon the poramboke land about 60 years back. Thereafter, the Tahsildar passed the following orders:-

" The above poramboke land comprised in Block No.10, R.S.No.330/5 of Karunagappally Village having an extent of 2.30 Ares is a zirkar "vazhi poramboke". As per the existing orders "vazhi-poramboke" is not assignable. Hence the encroachment is objectionable. In the circumstances the defendant is fined Rs.200/- (Rs.two hundred only). She is also levied prohibitory assessment at the rate of basic tax w.e.f. the year of K.L.C.Act 1957 come into force. The defendant will vacate the encroachment within 7 days on the receipt of this order. The defendant has liberty to submit application for lease on he yielding trees standing in the land."

5. Against this order, the petitioner filed appeal before the R.D.O., which was dismissed by Ext.P5 order. Revision filed before the Collector was also dismissed by Ext.P7 order. A further revision was also filed before the Land Revenue W.P.(C).Nos.32119/09 & 16692/10 Commissioner, which was also rejected by Ext.P9 order, on the ground that, 'the Commissioner of Land Revenue has no powers for second revision as per the KLC Act, 1957, where the District Collector is the revisional

authority". It is in these circumstances this writ petition is filed.

6. Contention raised on behalf of the petitioner is that, R.D.O. himself has found that the encroachment is 60 years prior to Ext.P4 order and hence S.5 of the Act could not be invoked and that, if that be so, proceedings under the KLC Act could not have been initiated against the petitioner or her husband. Learned counsel further contented that, though this issue was specifically ordered to be considered by the Tahsildar, while considering the matter afresh, the Tahsildar did not advert to this contention.

7. On behalf of the party respondents, the contention raised is that the land in question is the only path way they have. It is stated that the petitioner had already approached the Civil Court and the Civil Court has dismissed the suit by R7 judgment. It is argued that, it was taking note of the public interest involved W.P.(C).Nos.32119/09 & 16692/10 in the matter, that the Tahsildar, R.D.O. and the District Collector have ordered the eviction of the petitioner from the poramboke, which is a 'zirkaar vazhi' as per the revenue records. Raising these contentions, the counsel for the party respondents wanted this court to sustain the impugned order.

8. I have considered the submissions made.

9. As already seen, it was the specific case of the petitioner that, she and her ancestors were in possession of the property for more than 100 years. On this basis, the argument set up was that the proceedings under the KLC Act, which came into force only in 1958, could not be initiated in respect of encroachments prior to the Act. It is taking note of this contention that in Ext.P3 order, the R.D.O. passed the following orders :-

" On perusal of the file submitted by the Lower Authority and through the arguments made by the counsel for the appellant on personal hearing, I come to the conclusion that the pleas of the appellant deserve consideration. The Notice issued by the Tahsildar shows the time of encroachment and hence the Section 5 of K.L.C. Act could not be evoked in this case. The Lower Authority has not verified the points that the appellant raised before this court. In the circumstances, the W.P.(C).Nos.32119/09 & 16692/10 following order is passed.

O R D E R The order passed by the Tahsildar read as 2nd above is set aside and remanded for fresh disposal after hearing the appellant as per the provision of KLC Act."

10. Therefore, on remand, when the matter was reconsidered, the Tahsildar ought to have borne in mind the finding of the appellate authority, as contained in Ext.P3 order and examined the issue in the light of such finding. A reading of Ext.P4 order, passed by the Tahsildar, shows that this issue was not even adverted to, despite the finding that, the petitioner's husband had encroached into the property about 60 years back. This contention of the petitioner was again reiterated in her pleadings in the appeal filed before the R.D.O. and in the revision filed before the District Collector. However, either of these authorities also, have not considered the aforesaid findings of the R.D.O., which has

become final. Therefore, I am inclined to think that the impugned orders are liable to be interfered and the matter requires a fresh consideration. In that view of the matter, I am inclined to set aside Exts.P5 and P7 W.P.(C).Nos.32119/09 & 16692/10 orders passed by the Tahsildar, R.D.O. and the District Collector and direct that the 5th respondent will reconsider the matter duly taking only into account the findings in Ext.P3 order passed by the R.D.O.

11. As far as the suits filed by the petitioner resulting in Ext.P7 judgment is concerned, first of all, Government or its officials were not parties and accordingly, that was only an injunction suit. Therefore, that judgment cannot operate against the petitioner and this case cannot be rejected for that reason.

12. It is directed that, while the matter is reconsidered, the petitioner and the party respondents will also be issued notice and they will also be heard.

Orders shall be passed, as expeditiously as possible at any rate within 8 weeks from the date of production of a copy of this judgment along with copy of writ petition.

W.P.(C)No.32119/09 will stand disposed of as above. W.P.(C).No.16692/10 In W.P.(C)No.16692/10, the prayer sought is W.P.(C).Nos.32119/09 & 16692/10 essentially for the implementation of the orders passed by the Tahsildar, which was confirmed by the R.D.O. and the District Collector. In the light of my conclusions in W.P.(C)No.32119/09, setting aside the aforesaid orders, the prayer sought in the writ petition cannot be allowed.

Therefore, this writ petition fails and is dismissed.

ANTONY DOMINIC, Judge.

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