

CASE NO.:
Appeal (civil) 1536 of 2008

PETITIONER:
Manu Santosh & Anr

RESPONDENT:
K.Achutha Panicker & Ors

DATE OF JUDGMENT: 14/02/2008

BENCH:
S.B. SINHA & V.S.SIRPURKAR

JUDGMENT:
JUDGMENT

ORDER

CIVIL APPEAL NO.1536 /2008
(@SLP(C) No.7630/2006)
With
C.A.No.1540/2008 (@ SLP(C) No.7938/2006)
C.A.No.1537/2008 (@ SLP(C) No.7988/2006)

Leave granted.

Application of Section 3 of the Kerala Service Inam Lands (Vesting and Infringement) Act, 1981 (for short hereinafter referred to as 'the said Act') vis-a-vis the possession of the parties is the question involved in these appeals which arise out of judgments and orders dated 24.2.2006 passed by a Division Bench of the Kerala High Court.

The parties hereto claim settlement from the original Inam holder Kali Pillai Gopala Pillai. Appellant(s) claim that the said Inam holder settled 43 cents out of 49 cents in Survey No.1983 of Madathuvilakom village in their favour. One Nani Devki predecessor in interest of the respondents(now represented by Lrs.being respondent Nos. 1-5) claimed that they were also the lessees of the said Inam holder.
-1-

The son of the original Inam holder Gopalan Pillai Velappan Nair(respondent No.9 herein) filed a suit for recovery of possession of the said property with arrears of rent against the appellant which was decreed.

However, it appears that the execution petition to enforce the said decree was pending. Respondents herein claim that they had all along been in possession of the said property. In fact they obstructed execution of the said decree on 14.8.1971. According to the respondents the said suit was a collusive one.

The said Act came into force with effect from 6.8.1981. Appointed date has been defined in the Act; meaning the date from which the said Act came into force.

Indisputably, in terms of Section 3 of the Act, the Inam land vests in the Government. The Act provides for grant of settlement in favour of a person who may file an application therefor being in possession of the property.

For obtaining settlement not only the appellant but also the said Nani Devki as also aforementioned Gopalan Pillai Velappan Nair filed their respective applications.

An inquiry was made by the Settlement Officer. It was held that up of March, 1981 the aforementioned Nani Devki was in possession but she was forcibly dispossessed by the appellant herein. However, the matter was remanded by the District Collector by an order dated 23.10.1987. Pursuant to or in furtherance of the said order dated 23.10.1987 a fresh inquiry was held and in its report the Settlement Officer

-2-

recorded that the property in question was in possession of the appellant herein as on the appointed date. The land in question was directed to be settled in favour of the appellant.

Aggrieved by and dis-satisfied therewith Nani Devki preferred an appeal which was dismissed. The revision application filed before the State was also dismissed by an order dated 26.2.1990. Nani Devki filed a writ petition before the High Court. By reason of a deed of assignment executed on 6.11.1992, the property was transferred. On 16.3.1999, a learned Single Judge of the Kerala High Court allowed the writ petition. An intra Court appeal filed thereagainst has been dismissed by reason of the impugned judgment.

Indisputably, the learned Single Judge and consequently the Division Bench of the High Court arrived at a decision that the Settlement Officer, the Appellate Authority as also the Revisional Authority committed a serious error in ignoring the first report as also the documents filed by the respondents herein, namely, Exhibits A-1, A-2 and A3.

On the said findings it was directed as under:

"9. From what is stated above, it could be seen that dismissal of the application filed by the first petitioner and ordering assignment of the holding in favour of the 4th respondent is not in accordance with law and cannot be justified.

-3-

In the result the original petition is allowed. Exhibits P3, P4, and P5 are quashed. O.A.Nos. 76 of 1982, 640 of 1982 and 861 of 1982 are restored to file and remanded to the third respondent for fresh disposal in accordance with law and in the light of the observations made in this judgment."

The Division Bench of the High Court while affirming the said view, held:

"6. Of course the appellant-4th respondent heavily would rely on the findings regarding his possession in OS No.953/1966 and A.S.No.717 of 1972 arising therefrom. But that is a suit between the 4th respondent and 5th respondent in the O.P. which cannot bind the petitioners in the OP since the 1st petitioner was not a party to the suit.

7. Once the lower authorities have categorically found, as a matter of fact, that the 1st petitioner was in possession till about March, 1981 and she was forcibly dispossessed by the fourth respondent. We are unable to find any infirmity in the findings of the learned Single Judge. In that view, we are of the opinion that there is no illegality whatsoever in the judgment of the learned Single Judge and these appeals deserve to be dismissed. We do so. But taking into account the facts and circumstances of the case we do not make any order as to costs.."

It was observed that in view of the fact that the appellant herein did not question the purported findings of the Settlement Officer dated 26.2.1985, wherein the Settlement Officer and respondent Nos. 2 and 3 therein had found the first respondent to be in actual possession till about March 1981 and she was forcibly evicted by the fourth respondent from the land, the order of the revenue authority which was impugned therein could not be sustained.

Mr.L.N. Rao, learned senior counsel appearing on behalf of the appellant would submit that having regard to

-4-

the fact that the inquiry in the first round of litigation came to an end and fresh inquiry was initiated in terms of the order of the District Collector dated 23.10.1987,

the impugned judgment cannot be sustained. We find considerable force therein.

The Settlement Officer for the purpose of grant of settlement of service Inam lands was bound to arrive at a finding of fact as to who amongst the applicants was in possession of the land in question as on 6.8.1981.

For the said purpose it was obligatory on the part of the said authority to consider both the oral and documentary evidences produced by the parties.

Keeping in view the nature of the order passed by the District Collector on 23.10.1987, in our opinion, the exercise pursuant to order passed by the learned Single Judge as also the Division Bench should be carried out un-influenced by any observation made by the High Court. It goes without saying that the Settlement Officer shall determine the question in regard to the possession of the land by the respective claimants as on 6.8.1981 strictly on the basis of the materials which are placed by the parties and in accordance with law.

The impugned judgment is set aside. The appeals are allowed with the aforementioned observations.

-5-

Parties to maintain Status-Quo till the matter is decided by the Settlement Officer.