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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 11TH DAY OF APRIL 2024 / 22ND CHAITHRA, 1946

RP NO. 445 OF 2024

AGAINST THE ORDER/JUDGMENT DATED IN WP(C) NO.20705 OF 2015 OF
HIGH COURT OF KERALA

REVIEW PETITIONER/S:

KALLODI ST. GEORGE FORANE CHURCH,
REPRESENTED BY THE VICAR, MANANTHAVADY P.O., WAYANAD
DISTRICT., PIN - 670645

BY ADVS.
M.SASINDRAN
SATHEESHAN ALAKKADAN

RESPONDENT/S:

- 1 K.MOHANDAS
AGED 46 YEARS
S/O. K.C.CHANDU, MANAVAYAL HOUSE, KARIKULAM.P.O.,
MANANTHAVADY WAYANAD DISTRICT., PIN - 670646
- 2 V.A.SURESH
AGED 43 YEARS
S/O. ACHAPPAN, VELLARIYIL HOUSE, VIMALANAGAR.P.O.,
MANANTHAVADY WAYANAD DISTRICT., PIN - 670645
- 3 K.SUBRHAMANNYAN
AGED 48 YEARS
S/O. KUNHI KANNAN (LATE), VENGACHOLLA,

MANIKUNNUMALA, THRIKKAIPATTA.P.O., MEPPADI, WAYANAD
DISTRICT., PIN - 673577

- 4 C.K.SANKARAN
AGED 62 YEARS
S/O. KALLAN (LATE), CHEMBOTTI, KAYAKUNNU.P.O.,
PANAMARAM WAYANAD DISTRICT., PIN - 670721
- 5 P.RAMACHANDRAN
AGED 75 YEARS
S/O. VELLAN (LATE) IRIYYACODE HOUSE, VARMAL KADAVU,
ANCHUKUNNU.P.O., MANANTHAVADY, WAYANAD DISTRICT.,
PIN - 670645
- 6 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF
KERALA, TRIVANDRUM., PIN - 695034
- 7 THE PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF REVENUE, GOVERNMENT OF KERALA,
TRIVANDRUM, PIN - 695034
- 8 THE LAND REVENUE COMMISSIONER
THIRUVANANTHAPURAM., PIN - 695034
- 9 THE DISTRICT COLLECTOR
WAYANAD DISTRICT, PIN - 670645

OTHER PRESENT:

SRI.SAJITH KUMAR.V, SRI.ASWIN SETHUMADHAVAN, SR.GP

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
11.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'CR'

P.V.KUNHIKRISHNAN, J**-----
Review Petition No.445 of 2024****in****W.P.(C.) No. 20705 of 2015
-----****Dated this the 11th day of April, 2024****O R D E R**

This review petition is filed to review the judgment dated 19.02.2024 in W.P.(C.) No. 20705/2015 (***K.Mohandas and others v. State of Kerala and others*** [2024 (2) KHC 258]).

The review petitioner is the 5th respondent in the above writ petition. This Court disposed of the writ petition with the following directions :

- 1) *Ext.P5 and consequential patta issued to the 5th respondent are quashed.*
- 2) *The 1st respondent is directed to assess the market value of the property covered by Ext.P5 within two months from the date of receipt of a certified copy of this judgment and inform the 5th respondent about the total value of the property*

covered by Ext.P5 to find out whether they are ready to purchase the property or part of any property on market value. One month can be given to the 5th respondent to decide whether to purchase the land or not. If the 5th respondent is not ready to do the same within one month from the date of informing them about the market value, respondents 1 to 4 will take necessary steps to evict the 5th respondent from the property covered by Ext.P5 as expeditiously as possible, at any rate, within three months from the date of expiry of the time given to the 5th respondent for purchase. The land recovered shall be distributed to the eligible persons in accordance with law. If the land is purchased by the 5th respondent on market value, the entire amount received by the government should be utilised for the welfare of the tribal community in Wayanad.

3) The 1st respondent will file an Action Taken Report before the Registrar General of this Court within eight months from today.

4) The registry will forward a copy of this judgment to Respondent Nos. 1 to 4 forthwith."

2. In the review petition, it is stated that the judgment was pronounced based on the materials placed before this Court as per which the question of assignment of Government land and its property alone was considered. It is submitted that

Annexure AI and Annexure AII produced along with the review petition would show that the premises on which the parties pleaded and the decision making process proceeded were erroneous and that the actual facts pertaining to the property was not brought to the notice of this Court. It is submitted that Annexures AI and AII would show that the property held by the review petitioner earlier belonged to one Bran Ali and subsequently, he granted the property to the review petitioner by way of oral lease. Annexures AI and AII would show that since 1928, the ownership of the property was in the name of Bran Ali and subsequently, after reorganisation, in the Basic Land Tax Register, the ownership of the property has been shown in the name of the review petitioner. It is submitted that the said fact would establish that there was no right with the Government to claim market value of the property. According to the review petitioner, the properties have been held by them since 1931 and even if in the capacity of the tenant, the review

petitioner is entitled for Fixity of Tenure as contemplated under Section 13 of the Kerala Land Reforms Act. Hence, this review petition.

3. Heard Adv.M.Sasindran, who appeared for the review petitioner and the learned Government Pleader. I also heard the learned counsel appearing for the writ petitioner.

4. The short point raised by the review petitioner is that Annexures AI and AII were not within the knowledge of the review petitioner and hence, the review petitioner was not able to produce the same before this Court. Hence, this judgment is to be reviewed in the light of Order 47 Rule 1 of CPC. The counsel also relied on the judgment of this Court in ***Poabs Enterprises Private Ltd. v. State of Kerala*** [2023 KHC 9167] and also the judgment of the Apex Court in ***Lilly Thomas and ors v. Union of India and Ors.*** [2000 (6) SCC 224].

5. This Court considered the contentions of the review

petitioner. First of all, a review petition filed in a proceeding under Article 226 of the Constitution of India is not guided by the provisions of Order 47 Rule 1 of CPC. This point is considered by this Court in ***Cheriyakoya v. UT Administration of Lakshadweep*** [2023 (4) KHC 311]. The relevant portion of the above judgment is extracted hereunder :

“21. “It is true that the above judgment was reconsidered in Pookunju A. V. State of Kerala and others [2012 (4) KLT 509]. In Pookunju's case this Court observed that, Art.124 of the Limitation Act is applicable if a review petition is filed in the writ petition. But this court has not overruled the dictum laid down in Aswathy Elsa Mathew's case (supra) to the effect that, the power of review in the writ petition under Art.226 and Art.227 of the Constitution of India could be traced independent of the provisions of the Code of Civil Procedure. I am in respectful agreement with the above observation in Aswathy Elsa Mathew's case (supra). Therefore, the power of this court to review a judgment, writ, direction or order issued in the jurisdiction under Art.226 and Art.227 of the Constitution of India would not stand regulated by the provisions relating to review in the Civil Procedure Code. A perusal of the judgment relied by the review petitioner to support his contentions would

show that, those decisions are rendered by this court in a review petition filed under O.47 R.1 of the Civil Procedure Code. The impugned orders in those cases are all orders passed by the Civil Court invoking the powers under the Civil Procedure Code. A perusal of the facts in Kizhakkekara Thomas case (supra), it is clear that the impugned order in that case was an order passed by the subordinate judge. Therefore the dictum laid down by this court in Kizhakkekara Thomas case is not applicable while considering a review petition filed in a judgment delivered in a writ petition filed under Art.226 and Art.227 of the Constitution of India. The powers of this court under Art.226 and Art.227 of the Constitution are wide. The same is not regulated by the provisions of the Civil Procedure Code, but of course, the principle of review can be adopted. Moreover, an application for review of judgment or order issued by the High Court in writ petition would be governed by Limitation Act as held in Pookunju's case (supra)''

6. In light of the above, the provisions of Civil Procedure Code is not strictly applicable, but of course, the principle of review can be adopted by this Court.

7. The counsel for the review petitioner submitted that Annexures AI and AII produced in the review petition are material evidence which could not be produced by him at the

time when the judgment was delivered, even after the exercise of due diligence. Hence, the review petition is to be allowed. I cannot agree with the above submission. This Court perused the counter filed by the review petitioner in the writ petition. The stand taken in the memorandum of the review petition is contradictory to the stand taken by the review petitioner in the counter filed in the writ petition. A party to the proceedings cannot take contradictory defences in the same proceedings. In ***Suzuki Parasrampuriah Suitings Private Limited v. Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation)*** [(2018) 10 SCC 707], the Apex Court considered this point. The relevant portion of the above judgment is extracted hereunder:

“12. A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands”.

8. Moreover, even if, Annexures AI and AII are relevant,

those documents cannot be admitted in a review petition filed by the review petitioner. In ***Srinivasan S. and others v. State of Tamil Nadu and others*** [2019 KHC 4531], a Division Bench of Madras High Court considered a similar point.

20. "The Applicants, in the guise of slum dwellers, cannot claim ownership of the property and the slum, by any stretch of imagination, does not belong to these Applicants. Though it is the case of the Applicants that they have been residing in the property for more than four decades, the details, such as from where they acquired the property, who is the original owner of the property? etc. along with documents, like allotment order, sale deeds, etc., have not been produced before this Court at the time of hearing the Writ Petition. Even if all those documents are produced now, all these aspects cannot be considered and perused in an Application filed for review, as the Court cannot rehear the matter afresh / de novo." [Underline supplied]

9. A litigant in a writ petition filed under Article 226 of the Constitution of India cannot take an inconsistent stand. The writ petition was filed by the respondent Nos. 1 to 5 in the review petition in the year 2015 challenging Ext.P5 order. By

Ext.P5, the property mentioned in it is assigned to the review petitioner on payment of Rs.100/- per acre. The review petitioner has not challenged that order stating that he has got title in the property. But, he conceded to that order and is in possession of the same based on the above order. Subsequently, the review petitioner accepted Ext. P5 order and is in possession of the property. Now, when this Court set aside Ext.P5, the review petitioner is coming before this Court with a stand that the order passed by the Government as evident by Ext.P5 assigning the property to the review petitioner is illegal because the review petitioner has got title to the property based on Annexures AI and AII. Such a stand is not taken by the review petitioner at any stage of the case. A perusal of the counter filed by the review petitioner in the writ petition would show that they relied on Ext.R5(a) produced in the counter affidavit which is dated 10.03.1952 in which the disputed land is alienated in favour of the church fixing a remuneration. The

stand of the review petitioner is that the review petitioner was not able to pay the amount because of financial stringencies. Now, after about 70 years, the review petitioner is taking a stand that they have got title to the property. Such a belated contention cannot be accepted by this Court. *“Vigilantibus non dormientibus jura subveniunt”* is a maxim which says that the law assists those who are vigilant, not those who sleep over their rights. The review petitioner is taking a stand from 1952 onwards that the property in dispute is in their possession, but the ownership is with the Government. After about 70 years, when this Court passed the impugned judgment in this review petition, the review petitioner is taking a stand that the review petitioner has got title to the property. This is nothing but an inconsistent plea by the review petitioner. This court cannot digest the case of the review petitioner that, they were not aware of Annexures AI and AII, till the disposal of the writ petition. Such a stand cannot be accepted and it is to be

rejected.

10. The counsel for the review petitioner takes me through the decision of this Court in ***Poabs Enterprises Private Ltd's*** case (supra) and the decision in ***Lilly Thomas's*** case (supra) to contend that this Court has jurisdiction to entertain this review petition. But on the facts and circumstances of this case, I am of the considered opinion that there is nothing to review the judgment. Moreover, there is no error apparent on the face of the order. This is a review petition which ought to have been dismissed with heavy cost for taking an inconsistent stand in a writ petition and wasting the precious time of the court. Since this review petition is dismissed in limine, I refrain from doing so.

Therefore, this review petition is dismissed.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

APPENDIX OF RP 445/2024

PETITIONER ANNEXURES

Annexure AI **A TRUE COPY OF THE SETTLEMENT REGISTER
RELATING TO THE PROPERTY HELD BY
MR.BRANALI IN EDACHINA DESOM EDAVAKA AMSOM
OF WAYANAD TALUK IN MALABAR DISTRICT**

Annexure AII **A TRUE COPY OF THE BASIC LAND TAX REGISTER
DATED 12-03-2024**