

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 8<sup>TH</sup> DAY OF APRIL 2022 / 18TH CHAITHRA, 1944

OP(C) NO. 2024 OF 2021

AGAINST THE ORDER DATED 22.10.2021 IN IA 10/2021 IN OS  
227/2018 OF PRINCIPAL SUB COURT, THRISSUR

**PETITIONERS/PETITIONERS:**

- 1 ANNAMMA  
AGED 76 YEARS  
W/O.LATE POITHOTTATHIL ZACHARIA, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK.
- 2 JULIE ARUN  
AGED 41 YEARS  
D/O.LATE POITHOTTATHIL ZACHARIA, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK.
- 3 LOVELY ANEESH,  
AGED 38 YEARS,  
D/O.LATE POITHOTTATHIL ZACHARIA, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK.

BY ADV K.P.SREEKUMAR

**RESPONDENTS/RESPONDENTS:**

- 1 P.V.VARKEY  
AGED 71 YEARS  
S/O.POITHOTTATHIL VARGHESE, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK - 680 653.
- 2 P.V.JOSEPH,  
AGED 64 YEARS,  
S/O.POITHOTTATHIL VARGHESE, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK - 680 653.
- 3 P.V.POULOSE,  
AGED 60 YEARS  
S/O.POITHOTTATHIL VARGHESE, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK - 680 653.

- 4 P.V.SKARIA  
AGED 58 YEARS  
S/O.POITHOTTATHIL VARGHESE, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK - 680 653.
- 5 ELIAMMA,  
AGED 56 YEARS  
W/O.EDAYANAL RAJAN, CHELAKKARA VILLAGE, CHELAKKARA  
DESOM, THALAPPILLY TALUK - 680 586.
- 6 P.V.YOHANNAN,  
AGED 54 YEARS  
S/O.POITHOTTATHIL VARGHESE, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK - 680 653.
- 7 P.V.ELIAS  
AGED 49 YEARS  
S/O.POITHOTTATHIL VARGHESE, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK - 680 653.
- 8 ANNAMMA,  
AGED 89 YEARS,  
W/O.POITHOTTATHIL VARGHESE, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK - 680 653.
- 9 ELIAMMA  
AGED 72 YEARS  
W/O.MAILETH GEORGE, PERUMBAVOOR VILLAGE, PATTALA  
DESOM, IRINGOL P.O., PERUMBAVOOR TALUK, PIN 683  
545.
- 10 MARY  
AGED 69 YEARS  
W/O.THEKKEATTATH VARGHESE, PAYIKANDAM DESOM,  
PEECHI VILLAGE, THRISSUR TALUK 680 653.
- 11 ANNAMMA  
AGED 67 YEARS  
W/O.POITHOTTATHIL SUNNY, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK. 680 653

- 12 ELIAKUTTY  
W/O.VADAKKANADI BABY, MAROTICAL VILLAGE, DESOM,  
MAROTICAL P.O., THRISSUR TALUK, PIN 680 014.
- 13 AVARACHAN  
AGED 63 YEARS  
S/O.VADAKKEMUNDOTH CHERIAN, PEECHI VILLAGE,  
THEKKEKULAM DESOM, THRISSUR TALUK - 680 653.
- 14 ANNAMMA  
AGED 50 YEARS  
W/O.UNNUKALLIL ELIAS, MANANMANGALAM VILLAGE DESOM,  
MANDAMANGALAM P.O., THRISSUR TALUK, PIN 680 014.

BY ADVS.  
T.C.SURESH MENON  
B.DEEPAK

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON  
30.03.2022, THE COURT ON 08.04.2022 DELIVERED THE FOLLOWING:

**“C.R”**

***A. BADHARUDEEN, J.***

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*O.P(C). No.2024 of 2021*

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*Dated this the 8<sup>th</sup> day of April, 2022*

***J U D G M E N T***

This is an Original Petition filed under Article 227 of the Constitution of India by the petitioners, who are the defendants in O.S.No.227/2018 pending before the Principal Sub Court, Trichur. The petitioners assail the order in I.A.No.10/2021 dated 22.10.2021.

2. Heard both sides, in detail.

3. The respondents herein are the plaintiffs in the above Suit. The petitioners filed I.A.No.10/2021 claiming that the petitioners, being the legal-heirs of one Zachariah, got tenancy

right in respect of 29 cent (15 cent and 14 cent), out of the total extent of the plaint schedule property. Thus a reference under Section 125(3) of the Land Reforms Act was sought for, so as to adjudicate the said claim by the Land Tribunal. The contentions raised by the petitioners as extracted in the impugned order are as under:

*“According to them the properties having an extent of 15 cents and 14 cents were taken on lease by their predecessor one Zachariah from his father Sri.P.P.Varkey on 01.01.1964. Thereafter, he is in absolute possession and enjoyment of the said property and had constructed a building in the 14 cents of property and he is entitled to get tenancy right over the same. The plaintiff has suppressed the said fact and filed this suit. This court has also framed issues regarding the same as issue Nos.1 and 2. Except the 29 cents of property leased out to the husband of the 1<sup>st</sup> defendant the rests of the properties were in the joint possession and ownership of the 1<sup>st</sup> defendant's husband and his brothers. Only from the plaint the defendants have come to know that with respect to the aforesaid property a patta has been obtained by Sri.P.P.Varkey. The said Varkey was not in a possession of the said property. The aforesaid 29 cents are nt partible. Hence in order to determine the tenancy right of the husband of the 1<sup>st</sup> defendant the matter has to be referred to the Land Tribunal.”*

4. The plaintiffs disputed the said claim. The learned Munsiff, after appraising the relevant contentions and after relying

on decisions of this Court reported in [1979 KLT 766], ***E.Keshava Bhat v. Subraya Bhat***; [1995 (2) KLT 115], ***Sundaran v. Mohammed Koya*** and also referring one decision reported in [2020 (5) KLT 384], ***NSS Karayogam No.1300, Mundapally v. State of Kerala***, negated the contention. The relevant observation of the learned Munsiff while disallowing the petition can be had from para.8 of the impugned order. The same is extracted hereunder:

“8. *In this matter on going through patta issued to the predecessor of the parties produced as document No.1 in the plaint it can be seen that the same is issued under the Kerala Government Land assignment Act and rules and not under the Land Reforms Act. Hence it can be seen that it was a government land which was assigned to the predecessor of the parties on conditions. S.3 of the Kerala Land Reforms Act exempts lands belonging to or vested in the Government from the operation of the tenancy provisions of the Act. S.74 prohibits creation of tenancies on and from the 1<sup>st</sup> of April, 1964 and any tenancy created in contravention of that provision shall be invalid. In this case the property belonged to the government till it was assigned to the predecessor of the parties in the year 1975. In the year 1975 the land became vested in the predecessor and till that time it was with the government. From S.3 of the Act it is clear that no tenancy right can be claimed over the government land. Hence as on the date of alleged tenancy the predecessor was not the owner of the property and the same was vested with the government. The defendant had not pleaded how Sri.P.P.Varkey obtained right over the said property. As the matter stands at present it can be seen*

*that patta issued by the Government under the Kerala Government Land assignment Act is in existence and no steps are seen taken to set aside the same. In such circumstances it is not possible to hold that the defendants will get tenancy right over the property as on the commencement of the Land Reforms Act as the said property was a government land. The land was vested with the government and the same was assigned to the predecessor of the parties only in the year 1975 and after that there cannot be any creation of any fresh lease and the same is prohibited under S.74 of the Act.”*

5. However, the learned counsel for the petitioners placed a decision reported in [2008 (1) KLT SN 49], ***Madhavi Amma v. Kesavan***, and argued that when question of tenancy is raised by the defendants and an issue is raised, it is not necessary for any party to file any application for referring the question of tenancy to the Land Tribunal for consideration and non filing of an application before the Land Tribunal is not a ground for rejecting the request for reference. He also pointed out that tenancy right shall be referred to the Land Tribunal and the civil court has no jurisdiction to decide the same.

6. It is relevant to note that in the said decision, after referring the following decisions reported in [1995 (2) KLT 115],

***Sundaran v. Mohammed Koya***; [2000 (1) KLT 12 (SC)], ***Thomas Antony v. Varkey***; [1979 KLT 766 (F.B)], ***Kesava Bhat v. Subraya Bhat***; [1999 (1) KLJ 624], ***S.K.Nathan v. Guruvayoor Devaswom***; [2000 (2) KLT 43], ***Govinda Panicker v. Sreedhara Warriar***; [(1995) Supp.1 SCC 479], ***Mathevan Padmanabhan v. Parameshwaran Thampi & Ors.*** and [AIR 1998 SC 1808], ***Sankaranarayanan Potti (dead) by Lrs v. K.Sreedevi & Ors.***; this Court observed as under:

*“There may be several other instances where reference to the Land Tribunal is not only unnecessary but also unwarranted. In many cases reference made to the Land Tribunal would be a futile exercise and in such cases also the civil court is not bound to refer the question of tenancy raised by the defendant to the Land Tribunal. The question whether the tenancy set up by the defendant is genuine or not on the merits of the claim, whether the defendant would be able to establish the tenancy at the trial, whether he would be able to produce acceptable documents or oral evidence to prove the lease, are all questions beyond the jurisdiction of the civil court at the stage where it has to decide whether a reference under S.125(3) of the Act is required or not. The exclusive jurisdiction to decide those questions being vested with the Land Tribunal and as the decision being amenable to correction only by the appellate civil court, the Trial Court would not be justified in arriving at a tentative finding as to whether the claim made by the defendant is*



*genuine or whether the defendant has a stable case or whether there are chances for him to succeed. Such an enquiry is beyond the scope of S.125(3) of the Act.”*

7. Whereas in the decision reported in ***E.Keshava Bhat v. Subraya Bhat***'s case (*supra*), a Full Bench of this Court comprised of 5 Judges, while dealing with reference under Section 125(3) of the Land Reforms Act, held that in a Suit for injunction, no question of tenancy or rights of a tenant arises and reference to the Land Tribunal is not called for. Similarly, in the same judgment, this court held as under:

*“It is only if the question arises for consideration that the obligation to refer under S.125(3) also arises. We do not think it can be the intention of the Legislature to make the reference to the Land Tribunal dependent upon a plea in the written statement which has got no relation to the claim made in the plaint, and which would not, having regard to the frame of the plaint, or to other legal obstacles in raising the defence, call for any adjudication at all.”*

8. Similarly, in the decision reported in ***Sundaran v. Mohammed Koya***'s case (*supra*), a Division Bench of this Court, while dealing with reference under Section 125(3) of the Land Reforms Act held as under:

*“The question whether the tenant is entitled to the right under S.106 of the KLR Act is also one which should be determined by the Land Tribunal and hence the said question would fall within the ambit of S.125(3) of the KLR Act. Under S.125(3) of the KLR Act if in any suit or other proceedings any question regarding the rights of the tenant, including a question as to whether a person is a tenant “arises” then the civil court does not have jurisdiction to determine that question. It is now well high settled that unless the question legally arises, there is no obligation for the civil court to make a reference of it. But merely because a person raised a claim without any bona fides, can it be said that the said question would arise in the case. If the motive of the party who raised the plea is only to procrastinate the proceedings it is the duty of the civil court to decide first whether the question genuinely arises in the case. The amplitude of the expression “arises” must be constricted to what genuinely arises in a case in view of the very unsatisfactory function of the present Land Tribunal system in Kerala. The courts have to give a useful and practical interpretation to lessen the abuse of the legal requirement envisaged in S.125(3) of the KLR Act. The civil court can consider whether the plea raised by the defendant or the respondent in the case is bona fide or genuine. If there is no reasonable prospect of the plea being upheld by a Land Tribunal, the civil court can justifiably take the view that the question does not reasonably arise in the case. If the question does not reasonably arise in the case, the civil court need not make the reference under S.125(3) of the KLR Act. We may again request the Government to consider whether suitable amendment can be made on S.125 of the KLR Act in the light of the present position resulting from the implementation of such a system.”*

9. Even in the decision in ***Madhavi Amma v. Kesavan's*** case (*supra*), relied on by the learned counsel for the petitioners,

the learned Single Judge of this Court concurred with the earlier decisions and held that **there may be several other instances where reference to the Land Tribunal is not only unnecessary but also unwarranted. In many cases reference made to the Land Tribunal would be a futile exercise and in such cases also the civil court is not bound to refer the question of tenancy raised by the defendant to the Land Tribunal.**

10. Thus the law emerges is that, simply because a contention was raised in the written statement, there is no necessity for the court to refer the same and the courts have the power to decide whether the claim made in the written statement requires adjudication having regard to the frame of the suit, contentions in the written statement and also the claim of tenancy is having sustenance, prima facie. In case, prima facie, the Court satisfies that the claim of tenancy is bogus and baseless, the Court shall refuse reference and if the claim found to be prima facie sustainable on an evaluation of the facts of the case, the court shall

refer the same to the Land Tribunal. It is true that the Civil Courts cannot decide the question of tenancy. However, the Civil Courts can decide the genuineness of the claim to avoid reference of the claim for tenancy without considering its merits, as observed above.

11. Here, as per the impugned order, the learned Munsiff found that as per the patta issued in favour of Sri P.P.Varkey, the Government assigned land in favour of Sri P.P.Varkey on conditions, in the year 1975. As per Section 74 of the Kerala Land Reforms Act, creation of tenancy from 01.04.1964 is prohibited. Therefore, it was found that prior to issuance of patta under the Land Assignment Act, the Government was the owner of the property and, therefore, the contention raised by the legal-heirs of Zachariah, who is none other than the son of Sri P.P.Varkey claiming tenancy right over 21 cents of land to Zachariah, is not *prima facie* sustainable. This is the context in which the learned Munsiff dismissed the application. Thus, it appears that prior to

issuance of patta under the Land Assignment Act in favour of Sri P.P.Varkey, the property was vested with the Government and Sri P.P.Varkey not claimed tenancy right in respect of the property. If so, it is quite unbelievable to hold that Zachariah, the son of Sri P.P.Varkey, obtained tenancy right in respect of the property. Thus, *prima facie* the contention of tenancy raised by the defendants/petitioners shall not sustain and, therefore, the learned Munsiff rightly negated the said contention. In view of the matter, the Original Petition is liable to be dismissed, since the order does not suffer from any perversity, illegality or arbitrariness.

Accordingly, this Original Petition is dismissed.

*Sd/-*

**(A. BADHARUDEEN, JUDGE)**

*rtr/*

**APPENDIX OF OP(C) 2024/2021**

PETITIONERS' EXHIBITS

- Exhibit P1 TRUE COPY OF THE PLAINT IN  
O.S.NO.227/2018, DATED 25.8.2018 FILED  
BY THE RESPONDENTS.
- Exhibit P2 TRUE COPY OF THE ADDITIONAL LIST OF  
DOCUMENTS PRODUCED BEFORE THE COURT  
BELOW BY THE RESPONDENTS, DATED  
24.8.2019.
- Exhibit P3 TRUE COPY OF THE ISSUES SETTLED ON  
20.11.2019 BY THE PRL. SUB COURT,  
TRICHUR.
- Exhibit P4 TRUE COPY OF THE PATTA DATED 25. 5.1974  
PRODUCED BY THE RESPONDENTS ALONG WITH  
THE PLAINT FILED BY THEM.
- Exhibit P5 TRUE COPY OF THE REPLY GIVEN FROM THE  
TALUK OFFICE, TRICHUR DATED 30.1.2019  
ABOUT THE NON-AVAILABILITY OF THE  
RECORDS RELATING TO EXT.P4.
- Exhibit P6 TRUE COPY OF THE I.A.NO.10/2021 IN  
O.S.NO.227/2018 FILED BY THE PETITIONERS  
SEEKING REFERENCE TO THE LAND TRIBUNAL.
- Exhibit P7 TRUE COPY OF THE COUNTER FILED BY THE  
RESPONDENTS TO IA NO.10/2021 IN  
O.S.NO.227/2018 BEFORE THE PRINCIPAL SUB  
COURT, TRICHUR.
- Exhibit P8 TRUE COPY OF THE ORDER OF THE PRINCIPAL  
SUB COURT, TRICHUR IN I.A.NO.10 OF 2021  
IN O.S.NO.227/2018, DATED 22.10.2021.

RESPONDENTS' EXHIBITS

*EXT.R1(a) : TRUE COPY OF THE `PATTAYAM' ISSUED TO SRI.SCARIA, THE  
PREDECESSOR-IN-INTEREST OF THE PETITIOENRS, DATED 16.02.1973.*