

Kerala High Court Sets Aside State Human Rights Commission's Order On Land Dispute

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
S. MANIKUMAR; C.J., MURALI PURUSHOTHAMAN; J.
W.P. (C) NO. 39257 OF 2018; 1 February 2023

K. ABDUL HAMEED versus THE KERALA STATE HUMAN RIGHTS COMMISSION

Petitioner/s by advs. S. Krishnamoorthy; Nithya Sugunan;

Respondent/s: by advs. Azad Babu, SC, Alappuzha Municipality, Premlatha K. Nair, V. Tekchand, Sr. GP.

J U D G M E N T

S. Manikumar, C. J.

Before the Kerala State Human Rights Commission, HRMP No. 2294 of 2015 has been filed by the residents of western side of Police Gas Godown in Sakariya Ward, Alappuzha.

2. Sum and substance of the complaint has been summarized in the order dated 03.06.2016 in HRMP No. 2294 of 2015, which is reproduced:-

“Complainants are resident of in Western side of Police Gas Godown in Sakariya Ward, Alappuzha. The complaint is filed by the complainants stating that they were using a common well from years back and the opposite party demolished the same, though several complaints were made before the appropriate authorities no steps was taken by the authorities hence the common well has to be restored in its original stage.”

3. After getting a report from the Additional Tahsildar, Ambalappuzha as well as the Municipal Secretary, Alappuzha, the Human Rights Commission, on 03.06.2016 in HRMP No. 2294 of 2015, has ordered thus:-

“It is reported that the property mentioned in the complaint was purchased by one Abdul Hameed as per sale deed No.261/91 and comprised in old survey nos.510/1A & 493/1A this was found on verification of reports. It found that a total extend of 6.52 Ares property belongs to the opposite party as per the document, however, as per the re-survey, the property is described as 7.30 Ares and the same is reported in BTR. Hence the property tax was paid in favour of the said party, however, as per the sale deed only 6.52 Ares was in the name of Abdul Hameed. It is told that in the excess land there was a public land and the earlier landlord had set apart the said property in years back for the construction of a well for the public and the public was using the said well however, the Municipal Secretary was given permission unauthorizely for filling the said well and to construct the building there. However, nobody stated that there was excess government land available. On enquiry, the neighbors had reported that there was a well in 1½ cent property and the earlier landlord keep area for said purpose. Recent time the well was filled with sand and trouble stone. It may be the property set apart for the public well by the earlier landlord could be the excess in the property owned by the opposite party.

Since the land found in the re-survey, was given by the earlier landlord, it is necessary to have a sub-division of the same and to be restored hence, the excess land found in the re-survey was given by earlier landlord for a public well the same has to be given in sub- division and step has to be taken to restore the same.

It is directed that the report to that effect has to be given by the Additional Tahsildar, Ambalappuzha within a period of one month. It is also directed that till final decision is taken,

to stop the construction which is carrying out in the excess land necessary steps has to be taken by the Municipal Secretary Alappuzha.”

4. Being aggrieved, instant writ petition is filed on the grounds inter alia contending that the power of the Kerala State Human Rights Commission, the 1st respondent, is only to conduct enquiry of a complaint preferred by a victim or any person for violation of the Human Rights or abetment thereof or negligence in the prevention of such violation is clearly stipulated under Section 12 of the Protection of the Human Rights Act, 1993.

5. Petitioner has further contended that the term 'Human Right' is clearly defined under Section-2(d) of the Act, which means rights relating to Life, Liberty, equality of the individual guaranteed by the Indian Constitution. The civil dispute is in respect of a property having excess land is not at all a function of the State Human Rights Commission and Ext. P6 order has to be set aside as the same is issued without any authority.

6. It is also submitted that the petitioner's building is standing in the entire area and the excess land, if any, was already purchased by the petitioner from the previous owner. There was virivu in the land and there was no well. There is no excess Government land in the custody of the petitioner. At any rate, the Commission is having no authority to decide on the same issue.

7. That apart, Mr. S. Krishnamoorthy, learned counsel for the petitioner, submitted that no notice or opportunity of hearing was given to the writ petitioner, before the impugned order was passed.

8. It is also the contention of the learned counsel for the petitioner that construction of the building was already completed and that petitioner resides in the building since 2015. Submission of the learned counsel for the petitioner is placed on record.

9. Mr. V. Tekchand, learned Senior Government Pleader appearing for the Tahsildar, Ambalappuzha, the 2nd respondent, submitted that construction of the building has been completed in the year 2015 and occupancy certificate has been issued on 01.02.2015. Submission of the learned Senior Government Pleader is placed on record.

10. Heard learned counsel for the parties and perused the pleadings and material on record.

11. Though several contentions have been raised in the writ petition assailing the correctness of the impugned order, we are not inclined to delve into the same on merits. However, from a reading of the order made in HRMP No. 2294 of 2015 dated 03.06.2016, it is apparent that the said order has been passed solely after taking note of the reports of the Additional Tahsildar, Ambalappuzha as well as the Municipal Secretary, Alappuzha. There is no reference in the impugned order as to whether the writ petitioner has been given an opportunity to explain or rebut the averments made in the complaint. Therefore, in our view, violation of natural justice is per se evident.

12. In the abovesaid circumstances, we are inclined to set aside the impugned order. Hence, we do so. Matter is remitted back to the Kerala State Human Rights Commission. As the complaint is of the year 2015, Kerala State Human Rights Commission is requested to disposed of the same, after providing an opportunity of hearing to all parties concerned, as expeditiously as possible.

Accordingly, instant writ petition is disposed of.