

CIVIL APPELLATE

Mr. Justice A. Badharudeen

Ex. S.A. No.16 of 2020

2025 December 3

Palakkad Municipality . . . Appellant

v.

Krishnanunni and others . . . Respondents

Palakkad Municipality is the appellant, challenging the order in E.A. No.180 of 2018 in E.P. No.227 of 2015 in O.S. No.469 of 2001 on the files of the Principal Munsiff Court, Palakkad, and the appellate decree and judgment in A.S. No.118 of 2019 on the files of the District Court, Palakkad. The property of the 1st respondent–plaintiff was acquired by the Palakkad Development Authority, and in return it was agreed to provide 10 cents of Government land within Palakkad Municipality. During execution of the decree, the property vested in the Municipality was ordered to be handed over to the 1st respondent/decree holder upon identification as Government puramboke land. At this stage, the Municipality filed an execution application contending that the property proposed to be delivered is its absolute property, obtained from the District Collector, Palakkad, and therefore cannot be handed over to the 1st respondent in execution of the decree. The learned Munsiff and the learned District Judge concurrently repelled these contentions. According to the appellant, the property ordered to be delivered in execution vests absolutely in the Municipality under Section 207 of the Kerala Municipality Act, 1994, and being municipal property obtained from the District Collector, it cannot be handed over to the decree holder. It was further contended that revenue records establish municipal ownership and that execution cannot travel beyond the decree. According to the respondents, the decree granting 10 cents of Government land has attained finality and cannot be obstructed in execution. Vesting under Section 207 is statutory and without consideration; revenue records do not confer title, and the land continues to be Government puramboke. Dismissing the appeal, the court;

Issue for Consideration

Whether a Municipality can obstruct execution of a final decree by claiming absolute ownership over the property sought to be delivered, on the basis of statutory vesting under Section 207 of the Kerala Municipality Act, 1994 and revenue records, when the land continues to be Government puramboke ?

Municipality Act, 1994 (Kerala Act 20 of 1994)—Section 207—Statutory vesting—Municipality cannot resist execution of decree by asserting ownership over Government puramboke land on the basis of vesting without consideration—Revenue record is not proof of title.

Held:

The above discussion would lead to the conclusion that, even though the property vested in terms of Section 207 of the Kerala Municipality Act, 1994, that is not by paying any consideration by the Municipality to the Government and in fact, the Government is duty bound to protect the interest of the 1st respondent in terms of the decree, since his property was acquired, leaving him landless in view of the action of the Government. In this regard, it is relevant to note that the operation of Section 207 of the Kerala Municipality Act, Municipality is having a wider ramification. That is to say, in view of operation of this statutory provision in a Municipal area, notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 (8 of 1958) or in any other law for the time being in force all public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, and all adjacent land not being private property appertaining thereto in any municipal area other than National Highway or State Highway or major district road or roads classified by Government as such shall stand transferred to, and vest absolutely in the Municipality together with all pavements, stones and other materials and other things provided therein, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the Municipal fund or otherwise in, alongside or under such roads and all works, materials and things appertaining thereto. Be it so, all Government lands adjacent to all public roads and similar situations other than private property shall be that of the Municipality not because of the fact that any consideration was paid by the Municipality to the Government. In such circumstances, it is very difficult to give a land fully owned by the Government which was not subject matter of vesting in terms of Section 207 of the Kerala Municipality Act, having road access to be given to the 1st respondent. In such a situation, the decree to be executed so as to allow the 1st respondent to enjoy the fruits of the decree. If not, the same should result in an absolute injustice denying ten cents of land to be given to the 1st respondent for the land acquired from him. In fact, in the decree, where the Secretary, LSGD also is one among the judgment debtor. (*Paragraph 16*)

List of Acts:

- (1) Constitution of India.
- (2) Kerala Municipality Act, 1994.

List of Keywords:

Execution of decree; Claim petition; Statutory vesting; Section 207, Kerala Municipality Act, 1994; Municipal property; Government puramboke land.

Case Arising From:

Against the judgment in A.S. No.118 of 2019 of the Additional District Court–IV, Palakkad, arising from the order in E.A. No.180 of 2018 in E.P. No.227 of 2015 in O.S. No.469 of 2001 of the Principal Munsiff Court, Palakkad.

Appearance of Parties:

Sri. P.B. Krishnan (Sr. Advocate€0 and *Sri. Binoy Vasudevan.* . for appellant

Smt. K.R. Deepa, Spl. G.P., LSGD, *Sri. Jacob Sebastian*, *Sri. Winston K.V.* and *Smt. Anu Jacob* . . . for respondents

JUDGMENT

Palakkad Municipality, who filed E.A.No.180/2018 in E.P.No.227/2015 in O.S.No.469/2001 on the files of the Principal Munsiff Court, Palakkad, aggrieved by the order in E.A.No.180/2018, dated 06.04.2019, and the appellate decree and judgment dated 19.08.2020 in A.S.No.118/2019 on the files of the District Court, Palakkad, arising out of the same, has filed this execution second appeal under Section 100 and Order XXI Rule 103 of the Civil Procedure Code, challenging the above verdicts.

2. Heard the learned counsel for the appellant and the learned counsel appearing for the 1st respondent. Also heard the learned Government Pleader representing respondents 2 to 5. Perused the verdicts under challenge.

3. The summary of the case is that the Palakkad Development Authority acquired land free of cost from the 1st respondent, who is the plaintiff in the suit, i.e., the decree holder in the execution petition and the Authority agreed to substitute the acquired land by providing ten cents of Government property in Palakkad Municipality. In this case, earlier, the 1st respondent had filed another suit objecting acquisition of his land by the Palakkad Development Authority, and thereafter, the Palakkad Development Authority, represented by the State of Kerala, agreed to grant 10 cents of Government land to the 1st respondent in substitution of 13 cents of property belonged to the 1st respondent acquired for the purpose of formation of Kozhikode-Kalamandapam bye-pass road. Thereafter, the Government failed to substitute the land as offered and aggrieved by the same, the 1st respondent as plaintiff was forced to file the present suit to get the property so agreed and accordingly, a decree was passed in his favour and the same has become final.

4. While executing the decree, the property vested in the Municipality was ordered to be handed over to the 1st respondent/decree holder in the suit on getting the same identified as Government puramboke land. At this juncture, the present application has been filed by the Municipality contending that the property, which is proposed to be transferred to the 1st respondent/plaintiff, is a property absolutely owned by the Municipality and the Municipality obtained the same from the District Collector, Palakkad. Therefore, the said property could not be given to the 1st respondent in execution of the decree.

5. The 1st respondent and other respondents opposed the contention before the Execution Court.

6. The learned Munsiff ventured the matter by adducing evidence.

7. In order to prove title over the property proposed to be transferred to the 1st respondent, Ext.A1 attested photocopy of town survey plan of Sy.No.3627 and Ext.A2 attested photocopy of BTR were produced by the Municipality to show absolute title of the Municipality over the property.

8. When the claim petition was considered by the learned Munsiff, a contention was raised by the 1st respondent that the 4th defendant in the suit was the Secretary for Local Self Government Department, Thiruvananthapuram and therefore, an independent challenge in the form of a claim petition, without challenging the decree and judgment, would not lie. Any how, the learned Munsiff dismissed the claim petition. On appeal before the District Court, the District Judge also concurred the finding of the learned Munsiff.

9. Having heard the appellant as well as the respondents, the points arise for consideration are:

1. Whether the absolute title of the claim petitioner over the property scheduled in the claim petition is established, so that the same could not be transferred to the 1st respondent?
2. Whether the Execution Court as well as the Appellate Court went wrong in finding that the 1st respondent is entitled for the property scheduled in the counter claim?
3. Whether the verdicts impugned would require interference?
4. Reliefs and costs

10. On tracing the case, it could be noticed that O.S.No.469/2001 was decreed directing the defendants therein to provide 10 cents of property in substitution for the 13 cents of property of the plaintiff/decreed holder acquired for the purpose of formation of road for and on behalf of the Government. When there was failure on the part of the defendants concerned to hand over the property in terms of the decree, an execution petition was filed and accordingly, in the execution petition, ten cents of Government land to be given to the 1st respondent in terms of the decree was identified. According to Palakkad Municipality, the said property is absolutely owned by the Municipality and the Municipality obtained title thereof from the 2nd respondent. Here, the 2nd respondent is none other than the District Collector, representing the State of Kerala, and the property in dispute is originally Government puramboke land having road access. On perusal of Exts.A1 and A2, which were produced to substantiate the title of the Palakkad Municipality, it is emphatically clear that those are revenue records and the same by itself would not confer title upon anybody and therefore, those documents by itself are insufficient to prove title of the Municipality over the property scheduled in the claim petition. When a litigant asserts absolute title in respect of an immovable property, it is the duty of the litigant; herein, the claim petitioner to independently establish title over the property otherwise.

11. In this connection, it is relevant to refer Section 207 of the Kerala Municipality Act, 1994 which reads as under:

“207. Vesting of Public Streets and appurtenance in Municipality.— (1) Notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 (8 of 1958) or in any other law for the time being in force all public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, and all adjacent land not being private property appertaining thereto in any municipal area other than National Highway or State Highway or major district

road or roads classified by Government as such shall stand transferred to, and vest absolutely in the Municipality together with all pavements, stones and other materials and other things provided therein, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the Municipal fund or otherwise in, alongside or under such roads and all works, materials and things appertaining thereto.

(2) Notwithstanding anything contained in sub-section (1) the Government may, by notification in the Gazette, at any time, withdraw such public roads and or streets, sewer drain, drainage work tunnel or culvert adjacent to it from the control of the Municipality for the purpose of classifying, it as any public road, street National Highway, State Highway or Major District road under the control of Municipality and thereupon it shall revert in the Government on issuing such a notification:

Provided that before issuing such a notification, the Government shall consult the Municipality concerned and give due regard to the objections, if any.”

12. As per Section 207 of the Kerala Municipality Act, 1994, public roads, streets, lanes, paths, the bridges, ditches, dykes and fences on or beside the same, and all adjacent land not being private property appertaining thereto in any municipal area other than National Highway or State Highway or major district road or roads classified by the Government as such shall transferred to and vest absolutely in the Municipality together with all attachments thereof. Thus, the title of the Palakkad Municipality is in terms of Section 207 of the Kerala Municipality Act, 1994 and not based on Exts.A1 and A2 revenue records, since Exts.A1 and A2 revenue records by itself would not confer title to the Municipality, as contended.

13. When this second appeal was considered by this Court on earlier occasions, an attempt was made to find out another property exclusively owned by the Government, excluding the property now proposed, for which claim was raised by the Municipality and the attempt, even after a long hurdles, could not be materialised, as other items of property found were also one vested in the Municipality. Ultimately, a contempt of court case was initiated and in terms of the contempt proceedings, the property was given possession to the 1st respondent/plaintiff, who is now in possession of the same.

14. Thus, the property over which the Palakkad Municipality has asserted title is based on vesting that took place in terms of Section 207 of the Kerala Municipality Act and as submitted by the learned Government Pleader, the property is still recorded as Government puramboke land.

15. In this case, the property, directed to be given to the 1st respondent in terms of the decree though vested in the Municipality in terms of Section 207 of the Kerala Municipality Act, the property is not one purchased by the Municipality by using its own funds from the Government or one acquired by the Municipality by using its funds for any specific purpose. In fact, the 1st respondent was ordered to be given 10 cents of property in substitution for the 13 cents of property acquired by the Palakkad Development Authority without paying a single paise to the 1st respondent, that too years back. Thereafter, the 1st

respondent was left without any property for many years, and ultimately, due to compulsion and pursuant to the contempt of court proceedings, the property was transferred and possession was handed over to the 1st respondent.

16. The above discussion would lead to the conclusion that, even though the property vested in terms of Section 207 of the Kerala Municipality Act, 1994, that is not by paying any consideration by the Municipality to the Government and in fact, the Government is duty bound to protect the interest of the 1st respondent in terms of the decree, since his property was acquired, leaving him landless in view of the action of the Government. In this regard, it is relevant to note that the operation of Section 207 of the Kerala Municipality Act, Municipality is having a wider ramification. That is to say, in view of operation of this statutory provision in a Municipal area, notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 (8 of 1958) or in any other law for the time being in force all public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, and all adjacent land not being private property appertaining thereto in any municipal area other than National Highway or State Highway or major district road or roads classified by Government as such shall stand transferred to, and vest absolutely in the Municipality together with all pavements, stones and other materials and other things provided therein, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the Municipal fund or otherwise in, alongside or under such roads and all works, materials and things appertaining thereto. Be it so, all Government lands adjacent to all public roads and similar situations other than private property shall be that of the Municipality not because of the fact that any consideration was paid by the Municipality to the Government. In such circumstances, it is very difficult to give a land fully owned by the Government which was not subject matter of vesting in terms of Section 207 of the Kerala Municipality Act, having road access to be given to the 1st respondent. In such a situation, the decree to be executed so as to allow the 1st respondent to enjoy the fruits of the decree. If not, the same should result in an absolute injustice denying ten cents of land to be given to the 1st respondent for the land acquired from him. In fact, in the decree, where the Secretary, LSGD also is one among the judgment debtor.

17. Therefore, in the above contingency, the Execution Court as well as the Appellate Court were not inclined to allow the claim petition. I do not find any reason to hold that the finding of the Execution Court and the Appellate Court is erroneous in the facts of this particular case. Therefore, this Execution Second Appeal must fail and the same is dismissed. The Execution Court is directed to ensure transfer of title and possession of the ten cents of property absolute in the name of the first respondent and close the execution petition on recording full satisfaction.

18. All interlocutory orders stand vacated and all interlocutory applications pending in this Execution Second Appeal stand dismissed.

Registry shall inform this matter to the Execution Court as well as the Appellate Court forthwith.

Result of the Case:

Execution second appeal dismissed.

Headnote prepared by A.A.A.

