

approached Tehsildar, Trivandrum for transfer of patta in their favour. Sri Govinda Pillai Narayana Pillai, a nephew of Sri Madhavan Pillai Velayudhan Pillai also filed similar application. After considering the rival claims, the Revenue Divisional Officer passed order dated 31.12.1959 for transfer of patta in the name of Sri Parameswaran Pillai Krishna Pillai.

Sri Parameswaran Pillai Krishna Pillai died on 02.01.1981. Immediately thereafter, the petitioner submitted application dated 08.01.1981 to Tehsildar, Trivandrum for transfer of patta in his name by claiming that he was the seniormost male member of the family. Along with the application, he filed consent letter of his brother Sri N. Ramakrishna Pillai. The wife and the son of Sri Parameswaran Pillai Krishna Pillai contested the application of the petitioner. On 05.02.1981, the Revenue Divisional Officer appointed Village Officer, Ulloor as the Receiver who took possession of the land on 16.02.1981.

During the pendency of the application, the State Legislature enacted the 1981 Act. After considering various applications except the one filed by the wife of Sri Parameswaran Pillai Krishna Pillai, the Settlement Officer passed order dated 31.12.1983 and allowed the application filed by the petitioner. O.P. No.11079 of 1983 filed by the wife of Sri Parameswaran Pillai Krishna Pillai was disposed of by the High Court on 07.02.1984 and the Settlement Officer was directed to consider her application for implementation as party in O.A. No.650/1982 and pass order on merits after hearing the parties.

Since the Settlement Officer had already disposed of O.A. No.650/1982, the widow of Sri Parameswaran Pillai Krishna Pillai filed O.P. No. 3620 of 1984. The High Court entertained her grievance and passed order dated 09.09.1985 whereby District Collector, Trivandrum, before whom the appeals filed against the order of the Settlement Officer were pending was directed to hear the writ petitioner and pass appropriate order. Thereafter, the District Collector passed order dated 23.04.1987 and remanded the applications filed by the petitioner and others to the Settlement Officer for fresh consideration. Revision filed by the petitioner under Section 13 of the 1981 Act was dismissed by the Board of Revenue vide order dated 29.07.1988. Further petition filed by him was dismissed by the State Government on 28.10.1995 with the finding that the widow and children of Sri Parameswaran Pillai Krishna Pillai were entitled to assignment of the land under Section 5 of the 1981 Act.

The petitioner challenged the aforementioned order of the State Government in O.P.No.18798 of 1995 and pleaded that in view of Rule 10 of the Viruthi Rules, 1945, he was entitled to the land because he was the seniormost male member in the family of Sri Parameswaran Pillai Krishna Pillai. In support of his claim, the petitioner also relied upon Marumakkathayam system of inheritance.

The wife and the son of Sri Parameswaran Pillai Krishna Pillai controverted the petitioner's claim and pleaded that with the enactment of Hindu Succession Act, 1956 and Kerala Joint Hindu Family System (Abolition) Act, 1976, the Viruthi Rules ceased to exist and the petitioner was not entitled to take benefit of Marumakkathayam system.

The learned Single Judge relied upon the Viruthi Rules, 1945 and accepted the petitioner's plea that he was entitled to the land in question.

The Division Bench referred to the provisions of the Viruthi Rules, 1945, the 1981 Act and observed:

"17. The Act came into force on 6.8.1981. Section 2(c) of the Act defines the term 'land holder' to mean a person holding Service Inam land. Under section 3 of the Act, the right, title and interest of the land holder in Service Inam lands held by the land holder vests in the Government free from all encumbrances and any service or obligation attached to Service Inam lands stands abolished. Section 5 enables the land holder of any holding to apply for assignment of the right, title and interest in respect of the holding, which is vested in the Government under section 3. The first respondent/petitioner applied for assignment of the disputed lands under section 5 of the Act contending that he is a land holder as defined in

Section 2(c) of the Act. He claimed that he came into possession of the lands immediately on the death of late Parameswaran Pillai Krishna Pillai on 2.1.1981. He claimed to be in possession as the legal heir of late Parameswaran Pillai Krishna Pillai. He is admittedly residing away from the holding. He, however, relies on the report prepared by the Village Officer when the latter took over possession of the lands to contend that he was in possession of the lands. Under the provisions of the Viruthi Proclamation/Viruthi Rules, no person can enter into possession of the viruthi holding otherwise than with the permission of the Assistant Peishkar. The holder also had no right to transfer possession thereof. No materials have also been produced either before this Court or before the authorities to show that the first respondent/petitioner was in actual physical possession of the lands or that he had exercised acts of possession therein. Sri Parameswaran Pillai Krishna Pillai died on 2.1.1981. The Village Officer took possession of the lands on 16.2.1981. The first respondent/petitioner had no case that he was in possession of the holding even before the death of late Parameswaran Pillai Krishna Pillai. No material is produced before us to show that during the period from 2.1.1981 to 16.2.1981 the first respondent/petitioner was in actual physical possession of the disputed lands or that he had exercised any act of possession therein. The lands are paddy fields wherein there was a standing crop at the time when Sri Parameswaran Pillai Krishna Pillai died. It is not disputed that the legal heirs of late Parameswaran Pillai Krishna Pillai had harvested the crop. That is certainly an act of possession by the legal heirs of the deceased registered holder. On the other hand, apart from the assertion made by the first respondent/petitioner, there is total absence of any evidence to show that he was in actual physical possession of the disputed lands or that he had exercised any act of possession therein. So, the statement in the report of the Village Officer in favour of the petitioner cannot be relied upon.

18. As noticed earlier, Sri Parameswaran Pillai Krishna Pillai passed away on 2.1.1981. Immediately thereafter, the first respondent / petitioner submitted Ext.P2 application dated 8.1.1981 before the Tahsildar, Thiruvananthapuram for transfer of the patta in respect of the disputed holding in his favour. Along with that application he had submitted Ext.P2(a) letter from his brother Sri.N.Ramakrishna Pillai consenting for the transfer of patta in his favour. The reason stated by Sri.N.Ramakrishna Pillai in Ext.P2(a) consent letter was his inability to render Oozhiyam service. But, during the hearing before the Government, it was revealed that Sri.N.Ramakrishna Pillai who has given Ext.P2(a) consent letter was holding another parcel of Service Inam land which was surrendered to him by late Sri.Narayana Pillai Krishna Pillai, the registered holder of the said holding. The Government therefore held that by submitting Ext.P2(a) consent letter, he was only intending to favour the first respondent/petitioner. The Government have in Ext.P22 also considered the question whether the first respondent/petitioner was in possession of the disputed holding on 6.8.1981. After considering the materials available before it, the Government have in Ext.P22 held as follows:

"11.....On 8.1.1981 Shri Sreedharan Nair applied to the Tahsildar, Thiruvananthapuram for assignment of the Uzhiyam service and the property in his favour. This was not sanctioned since the Bill for enfranchisement of Uzhiyam services was introduced in the Assembly on 31.7.1980 and was referred to the Select Committee the same day. The Bill was also published in the Gazette Extra Ordinary dated 16.7.1980. Virtually the contents of the bill came to the knowledge of the public by its publication. The Village

Officer, Ulloor also might have been aware of the Bill. But he hastily prepared a Mahazar in favour of Shri.Sreedharan Nair stating that the property was under his possession. In fact there was no chance to get the property in the possession of Shri Sreedharan Nair at that time since there was paddy crop in the field raised by the deceased patta holder and this was harvested by the legal heirs of the deceased on 17.1.1981 only. There was also no chance for Shri.Narayana Pillai Sreedharan Nair to take possession of the property in between 17.1.1981 and 16.2.1981 and no service was assigned to him during that period by the competent authority. So the assumption made by the Village Officer, Ulloor that the property was in the possession of Shri.Narayana Pillai Sreedharan Nair as on 16.2.1981 is totally baseless, and cannot be accepted. This only affirms that the property in question was in the possession of none other than the legal heirs of the late Shri. Parmeswaran Pillai Krishna Pillai as on the date of its take over by the Receiver under orders of R.D.O. Thiruvananthapuram on 16.2.1981."

The said finding is a finding of fact which cannot be said to be a perverse finding warranting interference by this Court exercising jurisdiction under Article 226 of the Constitution of India."

The Division Bench also discussed the meaning of the word 'holding' appearing in Section 2(c) of the 1981 Act and held that the petitioner cannot be said to be in lawful possession of the disputed land and he was not entitled to take benefit of Section 5 of that Act.

In our view, the first application filed by the petitioner in 1981 under Rule 10 of Viruthi Rules, 1945, which was registered as O.A. No.650 of 1982 and the disposal of which generated series of litigation between the parties, was clearly misconceived and the Settlement Officer committed grave error by entertaining and allowing the same. The second application filed by the petitioner after commencement of the 1981 Act for grant of benefit by being treated him as landholder within the meaning of Section 2(c) and (f) of the Act was equally misconceived and untenable because he was not covered by the definition of 'landholder' under Section 2(c) and the learned Single Judge committed serious error by granting him relief by relying upon the Viruthi Rules, 1945.

In the impugned order, the Division Bench has extensively considered the scope of the Viruthi Rules, 1945 and the relevant provisions of the 1981 Act and rightly held that the name of the petitioner cannot be entered in the relevant records. The petitioner did not produce any evidence to show that on the date of death of Sri Parameswaran Pillai Krishna Pillai, he was in lawful possession of the Service Inam Land. Before this Court also, no material has been produced to show that the petitioner was lawfully allowed to enter over the land in respect of which patta had been issued in favour of Sri Parameswaran Pillai Krishna Pillai in 1959.

During the course of hearing, we repeatedly enquired from the learned counsel as to whether the Settlement Officer was appointed as Assistant Peshkar who could sanction transfer of holding under Rule 10 of the Viruthi Rules, 1945. In reply, the learned counsel fairly stated that he is not in a position to show that the Settlement Officer had the power to transfer the holding of the registered Viruthicar.

In view of the above, we do not find any valid ground or justification to entertain the petitioner's challenge to the impugned judgment. The special leave petition is accordingly dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master