

പതിനാലാം കേരള നിയമസഭ
നാലാം സമ്മേളനം

നക്ഷത്രചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ.1337

02-03-2017 ൽ മറുപടിക്ക്

കോവളം കൊട്ടാരത്തിന്മേലുള്ള സർക്കാരിന്റെ ഉടമസ്ഥത നിലനിർത്താൻ നടപടി

ചോദ്യം

മറുപടി

ശ്രീ.പി.സി.ജോർജ്ജ്

ശ്രീ. ഇ. ചന്ദ്രശേഖരൻ
(റവന്യൂവും ഭവനനിർമ്മാണവും വകുപ്പ് മന്ത്രി)

(എ) വിവാദമായ കോവളം കൊട്ടാരത്തിന്മേലുള്ള സർക്കാരിന്റെ ഉടമസ്ഥത നിലനിർത്താൻ റവന്യൂ വകുപ്പ് എന്തെല്ലാം നടപടികൾ സ്വീകരിക്കുമെന്ന് വിശദമാക്കുമോ;

(എ)
(സി)
&
(ഡി)

The Kovalam Palace (Taking over by Resumption) Act, 2005 ബഹു. ഹൈക്കോടതി റദ്ദാക്കുകയും ആയതിനെതിരെ സർക്കാർ ബഹു.സുപ്രീം കോടതിയിൽ ഫയൽ ചെയ്ത എസ്.എൽ.പി (സി) 12852/15, 08/03/2016 ന് തള്ളി ഉത്തരവാകുകയും ചെയ്ത സാഹചര്യത്തിൽ ഈ വിഷയത്തിൽ കൈകൊള്ളേണ്ട നിയമപരമായ നടപടികൾ സർക്കാർ പരിശോധിച്ചു വരുന്നു

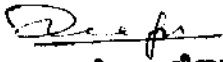
(ബി) പ്രസ്തുത കാര്യത്തിൽ എ.ജി യുടെ അഭിപ്രായം ആരായാൻ റവന്യൂ വകുപ്പ് തീരുമാനിച്ച പ്രകാരം എ.ജി നൽകിയ നിയമോപദേശം എന്തെന്ന് വിവരിക്കുമോ;

(ബി)

അഡ്വക്കേറ്റ് ജനറലിന്റെ നിയമോപദേശത്തിന്റെ പകർപ്പ് അനുബന്ധമായി ചേർക്കുന്നു.

(സി) നിയമ വകുപ്പ് സെക്രട്ടറിയും, എ.ജി യും ടി കേസിൽ പരസ്പരവിരുദ്ധമായ നിയമോപദേശം നൽകിയതുപ്രകാരം എന്ത് തുടർനടപടികളാണ് റവന്യൂ വകുപ്പ് സ്വീകരിക്കാൻ പോകുന്നതെന്ന് വിശദമാക്കുമോ;

(ഡി) കോവളം കൊട്ടാരം തിരിച്ച് പിടിക്കാൻ എന്തൊക്കെ നടപടികൾ റവന്യൂ വകുപ്പിൽ നിന്നും ചെയ്യുവാൻ സാധിക്കുമെന്ന് വിശദമാക്കുമോ?


സെക്ഷൻ ഓഫീസർ



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Date: 04.01.2017

LEGAL OPINION

Sub: Letter No.32621/U1/2007/RD dated 26.11.2016 from the Principal Secretary to Government, Revenue (U) Department for furnishing legal opinion on the scope of filing Review Petition in the order in SLP(C) No. 12852/2015 – reg.

The aforesaid letter dated 26.11.2016 along with the connected records have been placed before me for perusal and submission of opinion in the matter. The request contained in the aforesaid letter is to furnish legal opinion on the scope of filing a Review Petition against the order of the Honourable Supreme Court dated 08.03.2016 in a Petition for Special Leave to Appeal (Civil) No. 12852/2015 arising from the judgment dated 08.12.2014 in WA No. 250/2011 of the Honourable High Court of Kerala.

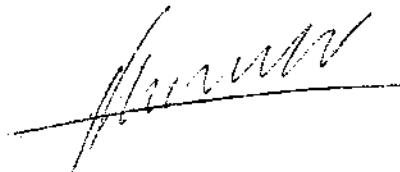
The matter relates to Kovalam Palace and the appurtenant lands acquired by the Government of Kerala and handed over to the Department of Tourism for the purpose of running a Hotel by the name "Kovalam Palace Hotel" by KTDC and later handed over to Government of India for running ITDC Hotel, the "Kovalam Ashok Beach Resort".

I have perused the records produced along with the aforesaid letter which contains the judgment in the various litigations pertaining to the issue. The Kovalam Palace built by Sri. Rama Varma Valiya Koi Thamburan and the appurtenant land was acquired by Government of Kerala after paying compensation of Rs. 5,26,431/-

and handed over to the Department of Tourism, Government of Kerala on.02.05.1954. The predecessor of KTDC started a Hotel by the name "Kovalam Palace Hotel" and the Hotel was conducted till 1970. Thereafter Government of Kerala by GO(Ms) No. 242/70/PD dated 18.07.1970 accorded sanction to hand over possession of Kovalam Palace and adjacent property, measuring 43 acres acquired for Kovalam Project to the Department of Tourism, Government of India pending finalization of the terms and conditions of transfer. Government of Kerala then transferred Kovalam Palace and the properties to Government of India vide a letter dated 23.10.1970. The aforesaid letter reads as follows:

"I am to inform Government that the Kovalam Palace Hotel which was under the control of the Kerala Tourism Development Corporation have been handed over to Shri. B.N.Raman. Additional Director General of Tourism on behalf of the Department of Tourism, Government of India on 23.10.1970, pending finalization of the terms and conditions of the transfer as ordered in the Government Orders cited. Hotels, Restaurant etc. have also been handed over as running concerns and the employees attached to Hotels and Restaurant work under the authority which took them over pending final decision. A list of articles handed over is being prepared."

The Government of India wanted additional properties also for the project and the remaining 21 acres of land was also acquired by the Government of Kerala and handed over to the ITDC and ITDC made further investments in the land acquired and had been running a Hotel in the said property by the name "Kovalam Ashoka Beach Resorts". It is pertinent to note that transfer of Kovalam Palace by order dated 18.07.1970 was to take immediate effect "pending finalization of the terms and conditions of the transfer". Therefore, the



terms and conditions of transfer to ITDC or to the Government of India were never finalized and the property comprising the Kovalam Palace and the appurtenant land continued to remain in the permissive possession of Government of India. The title and ownership of the said property was with the Government of Kerala and only possession was given and retained by Government of India.

Government of India decided to restructure ITDC for the purpose of disinvestment and in furtherance to the same, Kovalam Ashoka Beach Resort was sold by ITDC to M/s. Kovalam Hotels Pvt Ltd and thereafter the hotel is seen sold to M Far Hotels Ltd., and thus the aforesaid company took possession of the property from the ITDC and continued to run the Hotel and its business.

The State Government, finding that ITDC had no right, title or interest so as to convey the property to M/s. Kovalam Hotels Ltd. and M Far Hotel Limited, took immediate measures to re-possess the said property and by GO(Ms) No. 259/04/GAD dated 18.09.2004 issued an order for taking over the Kovalam Palace and the adjoining land and pursuant to the same, the District Collector issued a notice dated 25.09.2004 directing M Far Hotels Ltd to deliver back the possession.

Challenging the aforesaid proceedings, M/s. M Far Hotels Ltd and an other filed WP(C) No. 28270/2004 and the said Writ Petition along with WA No. 1796/04 was disposed of by a Division Bench of the Honourable High Court by judgment dated 08.04.2005 setting aside the Government Order (Exhibit P13) and the revenue officials were directed to put the petitioner back in possession of the items of properties taken possession by way of Exhibit P13. Against the said judgment SLP(C) No. 8603/2005 and 8604/2005 were filed by the State. The fate of those SLPs are not discernible from the files. While disposing of the said Writ Petition the Division Bench in paragraph 14 of the judgment observed as follows:

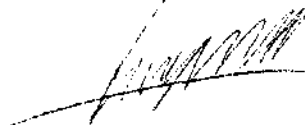


“We are in this case primarily concerned with the question as to whether the petitioners are in legal possession of the property. We have no hesitation to say that they are in legal possession of the property and they can be dispossessed only through a process known to law and not through executive fiat. State Government in our view have showed tremendous haste to dispossess the petitioners.”

Question on the title over the property has not been determined in the case as borne out by para 14 of the judgment. Thereafter, Government of Kerala enacted the Kovalam Palace (Taking over by Resumption) Act 2005 to resume the property consisting of the Kovalam Palace.

Challenging the vires of the aforesaid act, M/s. Kovalam Hotels Ltd. and Hotel Leela Venture Ltd along with the Director, Kovalam Hotels Ltd. filed WP(C) No. 31820/2005 which was allowed by the Learned Single Judge by judgment dated 07.01.2011 declaring the Kovalam Palace (Taking over by Resumption) Act 2005 as unconstitutional, void and inoperative. The Learned Single Judge held that when the Union of India and the State have conflicting claim of title over a piece of property, the State cannot make a piece of legislation overcoming its dispute and asserting its title. The Court held that the State cannot, by law, assert its title to immovable property on the face of the denial of that claim by the Union (paragraph 20 of the judgment). The Court also held that the impugned legislation stands as if it were a decree declaring the title of the State of Kerala over the Kovalam Palace which amounts to a legislative contradiction of the constitutional prerogatives.

Against the aforesaid judgment rendered by the Learned Single Judge, the State and others filed WA No. 250/11 which stands dismissed by the judgment dated 08.12.2014. The Division Bench, by



an elaborate judgment and taking note of the deliberations and correspondences which took place between the Government of India, Ministry of Tourism and State Government, came to a conclusion that the transfer of possession of property in question was effected under the sanction by the President of India on 26.03.1970 and the fact that the ITDC has been running the Kovalam Ashoka Beach Resort for more than three decades indicates that sudden exercise of power to take possession by notice of less than 48 hours is nothing but arbitrary exercise of power. The mere fact that 2005 Act purports to validate the taking possession on 25.04.2004 does not mean that the Act of the State is perfectly valid, reasonable and justified.

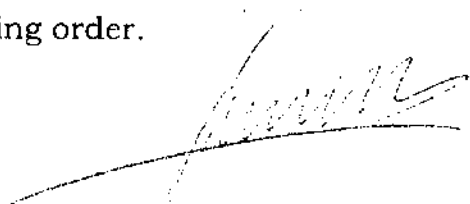
It is pertinent to note that in paragraph 48 of the Division Bench judgment in the above Writ Appeal, the Court observed as follows:

“We make it clear that we are not deciding the issue regarding title of the respective parties”.

The Court concluded that taking possession of the property by enactment with retrospective effect indicates that the enactment is arbitrary and unreasonable. In paragraph 54 of the judgment, the Court observed as follows:

“Property which was handed over to the Union of India on receipt of compensation as value of expenses incurred by the State in acquiring the property and allowed the Union of India and ITDC and the Writ Petitioner to deal with the property as owners suddenly taking a decision to take possession of the property without payment of compensation is nothing but an arbitrary exercise of power.”

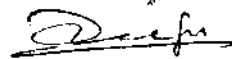
Though SLP(C) No. 12852/2015 was filed challenging the Division Bench order, the Honourable Supreme Court dismissed the Special Leave Petition by a non-speaking order.



I have gone through the relevant records and I have also considered the issue with reference to the request made in the letter of the Principal Secretary to Government, Revenue Department to furnish legal opinion on the scope of filing a Review Petition in the matter. I do not find any valid grounds for review and I am of the opinion that there is no necessity to file a review.

Since in the aforesaid litigation, the Court's have not adjudicated upon the question of title over the property comprising Kovalam Palace and appurtenant land handed over by the Government of Kerala to the ITDC, I am of the considered opinion that the State will have to take a decision whether to initiate proceedings before the competent civil court to get a declaration of the title of the Government over the property in question.


RANJITH THAMPAN
ADDITIONAL ADVOCATE GENERAL


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