

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

WA.No. 1282 of 2013 () IN OP.4059/2002

AGAINST THE ORDER/JUDGMENT IN OP 4059/2002 of HIGH COURT OF
KERALA DATED 23-10-2009

APPELLANT(S)/RESPONDENTS :

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1. SPECIAL TAHSILDAR (LA) ,
GREATER COCHIN DEVELOPMENT AUTHORITY,
KADAVANTHRA, KOCHI-20.
 2. THE SUPERINTENDENT OF SURVEY AND LAND RECORDS
(RESURVEY)
ERNAKULAM SOUTH.
 3. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY
TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV.SUSHEELA R.BHAT,
SPL. GOVERNMENT PLEADER FOR REVENUE

RESPONDENT(S)/PETITIONER:

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1. P.C. MATHEW
S/O. LATE PLEMEENA, POTHADI HOUSE,
RIVER LANDING ROAD,
VADUTHALA, KOCHI-23.
- *ADDL.R2 P.J.GEORGE, S/O.LATE PLEMEENA,
AGED 61 YEARS, POTHADI HOUSE,
MOLAVUKADU P.O.,
PONJIKKARA, KOCHI - 682 504.

*(ADDITIONAL SECOND RESPONDENT IS IMPLEADED AS PER ORDER DATED
30.11.2015 IN I.A.NO.759 OF 2014)

R1&2 BY ADV. SRI.S.SUNIL MAURYN
R1&2 BY ADV. SRI.P.PREMAN
R1 BY ADV. SRI.N.DHARMADAN (SR.)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-11-2015,
ALONG WITH WA. 8/2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

WA1282/13

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE R2 (a) : COPY OF NOTICE NO.B6.LA.569/67 DATED
31.07.1973.

ANNEXURE R2 (b) : COPY OF ORDER DATED 22.02.2010.

ANNEXURE R2 (c) : COPY OF JUDGMENT DATED 27.06.1997 IN OP
17233/96.

RESPONDENT'S EXHIBITS

ANNEXURE R1 : COPY OF FIR BEARING NO.534/2014 BY ERNAKULAM
CENTRAL POLICE STATION.

ANNEXURE R1 (2) : COPY OF FINAL REPORT IN CRIME NO.534/2014
OF THE CENTRAL POLICE STATION, ERNAKULAM.

ANNEXURE R1 (3) : ENGLISH TRANSLATION OF ANNEXURE R1 (2) .

//TRUE COPY//

PA TO JUDGE.

jg-12/5

'C.R.'

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

.....
W.A.Nos.1282 of 2013 and 8 of 2014
.....

Dated this the 30th day of November, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. These writ appeals are by State of Kerala and some of its officers against two judgments in two writ petitions filed by the first respondent herein. Heard the learned Special Government Pleader for the Department of Revenue and the learned Senior counsel appearing for the first respondent.
2. On 21.07.1969, Plemeena, since deceased; was issued a due statutory decision and resultant provisional 'patta' in terms of the Kerala Government Land Assignment Act, 1960; the 'Act', for short, and the Kerala Land Assignment Rules, 1964; for short, the 'Rules'.
3. Till 2001, no basic tax was paid by the aforesaid assignee of Government land. That is an institutional shame on the face of

the Constitution given unto themselves by 'We, the People of India' and the laws of this land. Such executive lethargy is indig and anathema to the vibrant philosophies and doctrines of self-governance embedded in the Constitution of India. Whatever be the result of the adjudication that would follow hereunder; if there is anybody in the domain of executive, who are in slumber, let them be cautioned that the days have come to wake them up in fear of peril, if they do not respond to their duties. Ultimately, the first respondent, who claims to be the son and heir of Plemeena, made a representation stating that the Survey Department did not earmark the land assigned to his mother. Through order in O.P.No.27604 of 2001, this Court directed consideration of that representation. The resultant order is Ext.P12 in O.P.No.4059 of 2002. That was issued holding that since no land tax was paid till 24.07.2001 and because the property has already been acquired for a project at the instance of requisitioning authority, there is no question of the basic tax register being rectified, by including the property with reference to the aforementioned assignment. The learned single Judge quashed

that decision for the prime reason that even as per Ext.P12, which was impugned in O.P.No.4059 of 2002, it was the admitted situation that an extent of 43.500 cents of land stood assigned to Plemeena, now deceased, from river purampoke in survey No.845 of Mulavukadu Village as per B6 LA 567/97 of Tahsildar, Kanayannur. That being so, the learned single Judge rightly issued the judgment in O.P.No.4059 of 2002 by holding that the mere fact that tax was not paid or that the property was later acquired for another project and that the assignee did not show that the said person continued to be in possession, is insufficient to refuse inclusion of the name of the assignee in the basic tax register. Resultantly, the learned Judge directed the competent authority to re-consider the issue in the light of what is stated in the judgment. We do not see any legal infirmity in the approach adopted by the learned single Judge in that regard.

4. The learned Special Government Pleader for the Department of Revenue made reference to Rule 9(6A) of the Rules, which provides that notwithstanding the order of registry of any land

and the communication of that order to the assignee, the title to that land shall not pass to the assignee until he remits that land value and tree value payable in respect of that land, the arrears of tax, if any due in respect of the land and other charges due from him. Though the question is whether such payments remain in the realm of disputed questions of facts, we need to note that the said Rule is part of those framed by the Government as subsidiary legislation in exercise of powers under Section 7 of the Act. That position notwithstanding, Sub-rule (6A) of Rule 9 of the Rules opens with a non obstante clause which obviously indicates that in the absence of any other contra-indication, the said Sub-rule is only prospective. That Sub-rule was introduced in Rule 9 of the Rules only as per SRO 85/70 dated 25.02.1970 published in Kerala Gazette dated 02.03.1970 on which date those Rules would have come into force and not earlier. That being so, as on the date on which the assignment order was issued in favour of Plemeena, that order could not be taken as one depending on any further action on the basis of the Rule referred to by the learned Special Government Pleader. This way also, we do not see

any infirmity in the assertion on behalf of Plemeena's estate that the land in question stood vested in Plemeena by virtue of the assignment order duly issued under the Act.

5. The learned Special Government Pleader; with reference to various materials on record attempted to show that, at least, after the learned single Judge had issued the judgment in O.P.No.4059 of 2002, steps were taken to cancel the assignment in favour of Plemeena. It is also stated that there was an earlier notice as well. Criticism is levied against the first respondent that he had been a manipulator capable of ironing out matters in favour of his mother, since he was working in the Revenue Department. Omnibus superfluous allegations can be levelled and such allegations may also hold substantial worth in common parlance. But, if any ebb or limb of executive governance was concerned about such unauthorised abuse through departmental officials for private gain; the minimum that could have been had is stern action to bring the offenders to book. Power Corrupts; Absolute Power, Corrupts Absolutely. Our system does not admit

absoluteness of power on any individual or any particular limb of governance. Yet, some are christened and ordained in the higher echelons of governance. Greed for material wealth beyond the lawful means of acquisition and hunger for power, many a times make at least some of the elements of the executive, mundane and functionally deficient. We are aware that disciplinary proceedings are often left without being commenced, when a particular Government servant who was shown to have misbehaved in service in terms of official duties had crossed his age of superannuation. But, the limbs of criminal law and penal provisions, which we hope, continue to have teeth in the Indian system and could and ought to reach any person who is at fault. We see no ground for merely hunting at the issue without any basic action being taken on the face of statutory orders.

6. Having found that there is no merit to interfere with the judgment in O.P.No.4059 of 2002, we proceed to consider W.A.No.8 of 2014 which arises from the judgment in W.P.(C.) No.11347 of 2010. That writ petition was filed by the first respondent seeking

inclusion of the item of land referred to above, in different proceedings and documents in relation to the land acquisition on behalf of requisitioning authority, namely, Gosree Island Development Authority. Bestowing our anxious consideration to the nature of the judgment issued in that case, we are of the view that the said judgment is merely one directing consideration of the representation of the first respondent. That judgment is issued in the light of the judgment in O.P. No.4059 of 2002 which we have affirmed hereinabove.

7. But, we here and now, need to necessarily clarify that, having regard to the varying aspects that would fall for consideration in relation to fixation and awarding of compensation on land acquisition, different authorities under the provisions of the Land Acquisition Act, 1894 would have to decide such issues independently and uninfluenced by the fact that directions have been issued by this Court for effecting changes in the basic tax register. We say so because different elements like title, possession, de facto possession, de jure possession, actual extent

available at the time of notification and acquisition etc. have to be considered while deciding the eligibility and quantum, if any, for fixation of compensation to be awarded under the Land Acquisition Act, 1894. Therefore, while affirming the judgment in W.P.(C.) No.11347 of 2010, we clarify that the said judgment, as affirmed through this appellate judgment, will stand with the aforesaid clarifications.

These writ appeals are dismissed, subject to what is stated above.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)