IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 3109 of 2012 (K)

PETITIONER :

ERAKKOT MOIDU,
S/O.ABDURAHMAN, PALERI P.O., KOYILANDY,
KOZHIKODE DISTRICT.

BY ADVS.SRI.T.K.KUNHABDULLA
SRI.V.V.ASOKAN

RESPONDENT(S):
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1. STATE OF KERALA,
REPRESENTED BY ADDITIONAL CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.

2. SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.

3. DISTRICT COLLECTOR, KOZHIKODE, PIN-673 001.

4. TAHSILDAR (REVENUE RECOVERY),
VADAKARA, KOZHIKODE -673 001

5. VILLAGE OFFICER,
PALERI, KOZHIKODE -673 508.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).NO.3109/2012

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE COPY OF THE SALE NOTICE DATED 12/10/2006.

EXHIBIT P2: TRUE COPY OF THE COMMUNICATION INTIMATING THE STAY GRANTED BY THE GOVERNMENT. DATED 1/11/2006

EXHIBIT P3: TRUE COPY OF THE STATEMENT ISSUED BY THE VILLAGE OFFICER, PALERI. DATED 17/9/2009

EXHIBIT P4: TRUE COPY OF THE STATEMENT DETAILS ISSUED BY THE 5TH RESPONDENT, DATED NIL

EXHIBIT P5; A TRUE COPY OF THE LETTER NO.295/H2/11/REVENUE DATED 15/3/2011.

EXHIBIT P6: A TRUE COPY OF THE COVERING LETTER OF THE TAHSILDAR, REVENUE RECOVERY, VADAKARA TO THE PETITIONER. DATED 8/2/2012

EXHIBIT P6(A): A TRUE COPY OF THE PROCEEDINGS OF THE REVENUE DIVISIONAL OFFICER, KOZHIKODE DATED 15/3/1999.

EXHIBIT P6(B): A TRUE COPY OF THE SALE NOTICE DATED 12/10/2006

EXHIBIT P7: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 24/2/2012

EXHIBIT P8: TRUE COPY OF THE COMMUNICATION OF THE 3RD RESPONDENT DATED 2/7/2012

EXHIBIT P9: TRUE COPY OF THE COUNTER FOIL CHALAN DATED 11/9/2013

EXHIBIT P9(A): TRUE COPY OF THE COUNTER FOIL CHALAN DATED 11/9/2013

EXHIBIT P9(B): TRUE COPY OF THE COUNTER FOIL CHALAN DATED 11/9/2013

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.3109 of 2012

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Dated this the 15th day of July, 2015

JUDGMENT

The petitioner was an assessee under the Agricultural Income Tax Act. On account of non-payment of demanded tax, it appears that the petitioner's property was purchased in auction by the Government as bought-in-land as seen from Ext.P6(a). This was on 15.3.1999. The petitioner submits that he was not aware of any such auction in the year 1999. The petitioner approached this Court when Ext.P1 sale notice was published in respect of the above land. This sale notice was dated 12.10.2006. This sale notice was issued to sell the property belongs to the petitioner to recover the tax due from him. The property referred in Exts.P1 and P6(a) are one and the same.

2. It is significant to note that in the meanwhile, the petitioner remitted tax arrears on various dates:

1. 15.11.2006 Rs.25,732/-
2. 15.12.2006 Rs.10295/-
3. 20.1.2007 Rs.10295/-
4. 15.2.2007 Rs.10295/-

5. 15.2.2007	Rs.10295/-
6. 16.3.2007	Rs.10295/-
7. 21.5.2007	Rs.10295/-
8. 29.6.2007	Rs.10295/-

Total	Rs. 97,797/-
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3. This was remitted based on the facility provided by the Government as per Ext.P2. The petitioner now claims that the entire amount due has been discharged. In this matter, this Court on 12.6.2015 passed the following order:

> "Admit. Government Pleader takes notice for respondents.
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> There will be an interim order directing the fourth respondent to provisionally accept the sum of Rs.7,147/- tendered by the petitioner subject to the result of the writ petition. The same denotes the balance allegedly due from the petitioner in terms of Ext.P2 order."

4. The petitioner submits that the above amount has been paid and what now remains the re-conveyance of the bought-in-land.

5. In this matter, the fourth respondent has filed counter affidavit. It is stated in paragraphs 3 and 4 as follows:

"3. It is submitted that, a requisition for the realization of Rs.1,22,562/- and interest towards Agricultural Income Tax dues from the petitiner has been received from the AIT, STO, Perambra through the District Collector, Kozhikode vide C1-47695/96 dated 19.11.1996 of the District Collector, Kozhikode. Demand notices under section 7 and 34 of the KRR Act were issued as per rules. Since the defaulter has not remitted the amount, an extent of 24¼ cents of land in R.S.No.25/2 of Kooniyode Desom in Paleri Village was attached and put for sale and purchased on behalf of the Government for Rs.1/- and made bought-in-land on 14.5.1998. The said sale was confirmed by the RDO, Kozhikode on 15.3.1999. Hence, it is legal and valid.

4. In accordance with circular no.11077/F3/00/RD dated 06.03.2006 of the Rev.(H) Department, the said property was put for resale on 28.11.2006. As per the letter no.81117/H2/06/RD dated 08.12.2006 of the Rev.(H) Department, the petitioner was permtited to remit the arrear in instalments and has began to remit the arrear in accordance with the Government Order. The petitioner has remtited Rs.97,797/- (Rs.93147 towards AIT and Rs.4650/- towards collection charge), till this date. The petitioner has also remtited Rs.7504/- (AIT Rs.7147/-, CC-Rs.357/- as per the order in this writ petition dated 12.6.2013. An amount of Rs.22,628/-(sale amount Rs.21,365/- ST and AST-Rs.1265/-) has been realized by

way of sale of the usufructs collected from the property."

6. The case appears to be that the originally the property was purchased by the Government as bought-in-land and the property was put in for resale on 28.1.2006. It is also admitted that the payments have been effected by the petitioner. If the original sale was concluded, there is no point in reissuing a sale notice to sell the property belongs to the petitioner. If the property exclusively belongs to the Government, necessarily, in the sale notice, it must be shown as the property of the Government instead of showing that the property belongs to the petitioner. Therefore, it is apparently that there is no clear idea on what transpired on 15.3.1999. Assuming that the sale has been taken place on 15.3.1999, the Government having allowed the petitioner to remit arrears in instalments and the Government cannot by conduct deny the reconveyance of the property. The remittance of the tax itself is to exonerate the petitioner from the liability and to reconvey the property. The moment entire tax liability is discharged; any property secured for tax due, will become an unlawful enrichment for the Government. It is stated in the counter that the petitioner's request

for reconveyance cannot be considered for the reason that the petitioner has not made an application within two years from the date of order. This has no significance in the sense that would arise only when a sale is complete in favour of the Government and the person who wants to reconvey the property after discharging the liability. In this case, the Government allowed the petitioner to remit the amount in instalments and the petitioner discharged the entire liability by way of instalments and also as per the directions of this Court. Once the petitioner is permitted, by the conduct, the Government is bound to reconvey the property to the petitioner. The Government is estopped from reneging from such stand. In that view of the matter, this writ petition is allowed.

Accordingly, this writ petition is allowed and the following directions are issued:

i. If any expenses incidental or collection charges due from the petitioner, the same shall be communicated to the petitioner within one month.

ii. Thereafter, on remittance of any amount due by the petitioner, the District Collector shall reconvey the property at the expenses of the petitioner within a further period of two months.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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