

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 4784 of 2010 (W)

PETITIONER(S):

**POYAKKARA ILLATH MOHAMMED,
S/O.KUNHAMMED HAJI, KAYPATTI HOUSE, PUTHIYA VALAPPIL
KOTTACHERRY, P.O.KANHANGAD, KASARAGOD DISTRICT.**

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, REVENUE (L) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DISTRICT COLLECTOR, KASARAGOD.**
- 3. THE REVENUE DIVISIONAL OFFICER,
KASARAGOD AT KANHANGAD, P.O.KANHANGAD
KASARAGOD DISTRICT.**
- 4. THE TAHSILDAR, HOSDRUG,
P.O.KANHANGAD, KASARAGOD DISTRICT.**
- 5. THE TAHSILDAR (LAND ASSIGNMENT)
HOSDRUG, P.O.KANHANGAD, KASARAGOD DISTRICT.**

BY ADV.P.V.ELIAS, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

APPENDIX

PETITIONER'S EXHIBITS:

- P1: COPY OF ORDER NO.D.DIS.6037/89/KLCA 2/88 DATED 31.05.1989 OF THE DISTRICT COLLECTOR, KASARAGOD
- P2: COPY OF ORDER REF. NO.C4.31018/89, DATED 24.04.1990, OF THE DISTRICT COLLECTOR, KASARAGOD
- P3: COPY OF STATEMENT, FILED BY THE PETITIONER BEFORE GOVERNMENT
- P4: COPY OF PETITION FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT
- P5: COPY OF REPORT SUBMITTED BY THE DISTRICT COLLECTOR BEFORE GOVERNMENT
- P6: COPY OF REPORT SUBMITTED BY THE REVENUE INSPECTOR, HOSDURG
- P7: COPY OF ORDER DATED 04.08.2001 OF THE GOVERNMENT
- P8: COPY OF JUDGMENT DATED 22.10.2008 IN OP NO.25190/2001
- P9: COPY OF ORDER G.O.(MS) NO.329/09/RD DATED 19.08.2009

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.4784 of 2010

Dated this the 12th day of August, 2015

JUDGMENT

The petitioner, who is the absolute owner in possession of 3.50 acres of land comprised in R.S.No.302/2 of Panathadi Village, has filed this writ petition seeking a writ of certiorari to quash Exts.P1, P2, P3 and P9.

2. Going by the averments in the writ petition, an extent of 41 cents in R.S.No.313/4 adjoining the Panchayat Road on the west is in absolute possession and enjoyment of the petitioner as well as his predecessor in interest. The enjoyment of the 3.50 acres of land owned by the petitioner comprised in R.S.No.302/2 is impossible without the aforesaid stretch of 41 cents, for the reason that there is no separate access to the land owned by the petitioner except the 41 cents of land referred to above. The petitioner submitted application before the 4th respondent for assignment of 41 cents of land in R.S.No.313/4 on payment of market value, which was filed in the year 1983. Since the said application was misplaced, he submitted another application in

the year 1984. While the said application was pending, proceedings were initiated against the petitioner under the Land Conservancy Act alleging the he is in unauthorised occupation of the land in question. The petitioner filed an appeal before the 3rd respondent, which ended in dismissal by Ext.P1 order. Against Ext.P1, the petitioner filed appeal before the 2nd respondent, which also ended in dismissal by Ext.P2. Ext.P2 order passed by the 2nd respondent was under challenge in a revision filed before the 1st respondent. Pending revision before the 1st respondent, the petitioner filed Ext.P3 statement dated 02.07.1990 showing the details of the extent of property assigned to various persons just north of the property sought to be assigned to him. While the revision was pending before the 1st respondent, the petitioner submitted Ext.P4 petition before the 4th respondent requesting that in case assignment is not possible in the normal course, the property may be assigned to him on payment of market value, as provided in G.O.(MS) No.203/76 RD dated 24.02.1975.

3. While the revision was pending before the Government, the Government have directed the District Collector to enquire into the matter and accordingly the Revenue Inspector submitted

Ext.P5 report before the 4th respondent. In Ext.P5 it has been reported that, the 41 cents of land in R.S.No.313/4 is enjoyed by the petitioner and his predecessor in interest for several years as part of their patta land in R.S.No.302/2 and a portion of the land has been converted into paddy field and the rest is planted with coconut and other trees and the said land is essential for the beneficial enjoyment of the patta land held by the petitioner. It was also reported that since the adjoining land on both sides of the road has already been assigned to several others, there is no possibility of the said land required for any public purpose. Based on Ext.P5, the District Collector has also submitted Ext.P6 report stating that the land sought to be assigned is enjoyed as part of the patta land of the petitioner and that there was no possibility of requiring the same for any widening of the road.

4. The 1st respondent without considering any of these aspects rejected the revision by Ext.P7 order, which was under challenge in O.P.No.25190/2001. By Ext.P8 judgment, this Court set aside Ext.P7 order and the matter was remanded to the 1st respondent to reconsider the matter afresh after referring to the specific contention raised by the petitioner that, it was even without referring to Exts.P5 and P6 reports of the Revenue

Inspector and the District Collector, that Ext.P7 order was passed by the Government. This Court in Ext.P8 judgment, while setting aside Ext.P7 order has directed the 1st respondent to consider the revision petition afresh with notice to the petitioner and pass fresh orders in the matter advertent to the contentions taken by the petitioner within a period of four months from the date of receipt of a copy of the judgment. It was pursuant to the direction contained in Ext.P8 judgment, the 1st respondent passed Ext.P9 order, which is under challenge in this writ petition.

5. In Ext.P9 order, while rejecting the claim made by the petitioner for assignment of land, the 1st respondent ordered that the access way provided should not adversely impact the usability of the puramboke land and it should use the minimum area possible, but not more than 10 feet wide and along one boundary. The rest of the land will be reported to the Land Bank to be used for a public purpose in future. Paragraph 6 of Ext.P9 order reads thus:

"After examining the facts in detail, Government order that the Land Conservancy proceedings taken against the petitioner is sustainable as per rules and the action of Tahsildar in having booked an LC case is justified. But

keeping in view of the fact that the registered land of the petitioner will be cut off from the road, it further orders that the District Collector may assign land by realizing the existing market value to facilitate the petitioner to construct a 10 feet wide road to the property in question along the shortest route, after ascertaining the exact area of land after due survey and demarcation. The access way provided should not adversely impact the usability of the puramboke land and it should use the minimum area possible, but not more than 10 feet wide and along one boundary. The rest of the land will be reported to the Land Bank to be used for a public purpose in future."

It is aggrieved by Ext.P9 order, the petitioner is before this Court in this writ petition seeking various reliefs.

6. A counter affidavit has been filed on behalf of the respondents 2 and 4 contenting, inter alia, that the reasoning of the 1st respondent in Ext.P9 is perfectly legal and no interference of this Court is warranted.

7. I heard the arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

8. The learned counsel for the petitioner would contend that when this Court in Ext.P8 judgment directed the 1st respondent to reconsider the matter taking note of the specific

contention raised by the petitioner that Ext.P7 order passed by the Government is without even adverting to the findings in Exts.P5 and P6 reports, there is absolutely no justification on the part of the 1st respondent in passing Ext.P9 order even without adverting to the aforesaid reports and the factual findings contained therein. Per contra the learned Government Pleader would submit that, it was after considering those factual aspects, Ext.P9 order has been passed by the 1st respondent.

9. As I have already noticed, in Exts.P5 and P6 there is a factual finding to the effect that the assignment of land sought for by the petitioner is not objectionable and that it will not in any way adversely affect the widening of the road in front of the property. When this Court in Ext.P8 judgment directed the 1st respondent to reconsider the matter taking note of the specific contention raised by the petitioner that Ext.P7 order passed by the Government is even without adverting to the findings in Exts.P5 and P6 reports, the 1st respondent ought not to have passed Ext.P9 order. The 1st respondent ought not to have rejected the request made by the petitioner vide Ext.P9, even without adverting to Exts.P5 and P6 reports.

In such circumstances, Ext.P9 order passed by the 1st

respondent is set aside and the matter is remitted back to the 1st respondent for reconsideration in accordance with law. The 1st respondent is directed to pass a reasoned order, after adverting to the various contentions raised by the petitioner. It would be open to the petitioner to submit a detailed argument notes before the 1st respondent raising all contentions and the 1st respondent shall pass appropriate orders, after adverting to all the contentions raised in the aforesaid argument notes. An order in this regard shall be passed as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above. No order as to costs.

SD/-
ANIL K. NARENDRA,
JUDGE

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