

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 5121 of 2012 (M)

PETITIONER(S) :

A.SAROJINI,
CHEMBUMKUZHI VEEDU, POTTAYIL, MALAYINKEEZHU P.O.,
THIRUVANANTHAPURAM.

BY ADVS. SRI.S.M.PREM
SMT.K.P.SANTHI
SRI.P.K.NIJOY

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM-695 001.

3. VILAVOORKAL GRAMA PANCHAYAT,
NEYYATTINKARA, THIRUVANANTHAPURAM-695101,
REPRESENTED BY ITS SECRETARY.

R1,2 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) .No. 5121 of 2012 (M)

APPENDIX

PETITIONER(S) EXHIBITS :

EXHIBIT P1- TRUE COPY OF THE APPLICATION DATED 15.6.1970
SUBMITTED BY THE PETITIONER'S FATHER.

EXHIBIT P2- TRUE COPY OF THE JUDGMENT DATED 17.10.1985 IN OS
NO.1065 OF 1983 OF THE MUNSIFF COURT, TRIVANDRUM.

EXHIBIT P3- TRUE COPY OF THE JUDGMENT DATED 9.12.2003 IN SA
NO.304 OF 1992 OF THIS COURT.

EXHIBIT P4- TRUE COPY OF THE ORDER DATED 6.7.2005 PASSED BY
THE 1ST RESPONDENT.

EXHIBIT P5- TRUE COPY OF THE ORDER DATED 30.7.2010 OBTAINED BY
THE 3RD RESPONDENT.

EXHIBIT P6- TRUE COPY OF THE REPORT DATED 10.1.2011 SUBMITTED
BY THE VILLAGE OFFICER, VILAVOORKAL VILLAGE.

RESPONDENTS' EXHIBITS : NIL

okb.

//true copy//

P.A. to Judge.

K.HARILAL, J.

W.P.(C) No.5121 of 2012

Dated this the 12th day of November, 2015.

JUDGMENT

The petitioner is one of the co-owners in possession and enjoyment of 2.04 acres of land comprised in Survey No.104/1C of Vilavoorkal Village in Neyyattinkara Taluk, Thiruvananthapuram District. According to the petitioner, the said property originally was in possession of the father of the petitioner and on his death, the property has been in possession and enjoyment of the petitioner and other siblings. The petitioner and others have constructed houses in the property and are also cultivating tapioca, banana and other cash crops in the property. In short, the petitioner has been in the possession and enjoyment of the said property in continuation of the right of their ancestors for the past more than 100 years. They have filed a suit, O.S.No.1065/1983, before the Principal Munsiff's Court, Thiruvananthapuram,

seeking declaration of title and consequential injunction restraining the Government from evicting them from the property. The said suit was partially decreed by rejecting the claim for declaration of title and allowing the prayer for permanent injunction restraining the Government from entering into property and dispossessing them except under due process of law. Feeling aggrieved, though they have preferred an appeal before the Appellate Court, the Appellate Court also affirmed the findings of the Munsiff's Court, as such. Again, the petitioner preferred S.A.No.304/1992 before this Court and this Court confirmed the concurrent findings of the courts below; but, the appeal was allowed to the limited extent of directing the Government to consider the application for assigning 25 cents in favour of the appellant. It was also observed that before considering and passing appropriate orders in the petition, the appellant/plaintiff shall not be forcibly evicted from the 25 cents of land, as admitted in the written statement. Even if the application for assignment was rejected, the respondents can only act

as per provisions noted in the second appeal. In compliance with the said direction of this Court in the second appeal, the 2nd respondent has considered the application for assignment filed by the petitioner's predecessors and rejected the application by Ext.P4 order. The legality and propriety of the findings and the reasons whereby the 2nd respondent rejected the application for assignment are subjected to judicial review of this Court invoking jurisdiction under Article 226 of the Constitution of India.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. The learned counsel for the petitioner advanced arguments challenging the reasons whereby the 2nd respondent rejected the claim for assignment of the said land made by the petitioner.

4. Per contra, the learned Government Pleader pointed out that the petitioner has not availed of the remedy of appeal provided under Rule 21 of the Land Assignment Rules, 1964, and thus, without availing the statutory remedies, no circumstance exists to invoke extraordinary jurisdiction under Article 226 of the

Constitution of India.

5. Going by the impugned order, it is seen that the 2nd respondent has passed the impugned order in compliance with the specific direction issued by this Court in S.A.No.304/1992. It stands admitted that as early in the year 1983 the petitioner's predecessor Sri.Velukutty Nadar filed O.S.No.1065/83 before the Principal Munsiff's Court for declaration of title over the said property and injunction and after considering the evidence on record the Munsiff Court rejected the prayer for declaration of title; but allowed the prayer for injunction against forceful eviction, without proceedings under due process of law. Though the petitioner's predecessor has challenged the said decree and judgment before the Appellate Court, that court also confirmed the judgment and decree as such, without any interference. Feeling aggrieved, though the petitioner's predecessor has filed S.A.No.304/92 before this Court, this Court also confirmed the decree rejecting the claim for declaration of title; but, the respondents herein were directed to consider the application for assignment of 25 cents of land

filed by the petitioner's predecessor. After considering the materials on record and providing an opportunity of being heard to the petitioner and the respondents, the 2nd respondent passed Ext.P4 order rejecting the application for assignment. This order is under challenge in this writ petition.

6. This Court is not a court of appeal to reappreciate the findings, whereby the 2nd respondent rejected the claim for assignment of 25 cents. Under Article 226 of the Constitution of India, this Court is concerned with the manner in which the competent authority has arrived at a decision. So also, this Court can consider another question, whether there is any violation of principles of natural justice in arriving at such a finding. But, here, the petitioner has no case that there is procedural irregularity or denial of natural justice, in the decision making process. If that be so, this Court is not inclined to interfere with the reasons, whereby the 2nd respondent rejected the claim for assignment of 25 cents. Moreover, this Court finds that this writ petition is filed without resorting to the statutory remedies

provided under Rule 21 of the Kerala Land Assignment Rules, 1964. In the above view, this Court declines jurisdiction under Article 226 of the Constitution of India, to the petitioner. But, the petitioner is at liberty to seek statutory remedies provided under Rule 21 of the Kerala Land Assignment Rules, 1964. Even though there is a delay in filing the appeal, I hope that the statutory authority will take a lenient view in condoning the delay, considering the pendency of this writ petition from 2012 onwards before this Court. If the petitioner files an appeal within three months from the date of receipt of a copy of this judgment, the 2nd respondent will take a liberal view in the matter of condoning the delay, considering the long pendency of the challenge against Ext.P4 order before this Court.

With the above observations, this writ petition is disposed of.

Sd/-
K. HARILAL, JUDGE

rsr/okb.