

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 6137 of 2010 (N)

PETITIONER(S):

**K.C.POULOSE, AGED 69 YEARS,
S/O.CHAKKU, KIDANGEN HOUSE, MALAYATTOOR,
ERNAKULAM DISTRICT.**

BY ADV. SRI.KISHOR B.

RESPONDENT(S) :

- 1. KERALA STATE HOUSING BOARD,
REPRESENTED BY ITS SECRETARY, PANAMPILLY NAGAR,
COCHIN.**
- 2. ACCOUNTS OFFICER,
KERALA STATE HOUSING BOARD, BRANCH OFFICE,
PERUMBAVOOR.**
- 3. TAHSILDAR,
REVENUE RECOVERY, ALUVA.**

**R1 & R2 BY ADV. SRI.GEORGE BOBAN, S.C, K.S.H.B.
R3 BY GOVERNMENT PLEADER SRI.P.P.PADMALAYAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1(A): TRUE PHOTOSTAT COPY OF INCOME CERTIFICATE DATED 22.01.2009 ISSUED FROM VILLAGE OFFICER, MALAYATTOOR.**
- EXT.P1(B): TRUE COPY OF RATION CARD NO.372737 FOR THE YEAR 1996-2000 ISSUED TO THE PETITIONER.**
- EXT.P1(C): TRUE COPY OF RATION CARD NO.1736040509 FOR THE YEAR 2008-2010 ISSUED TO THE PETITIONER.**
- EXT.P2(A): TRUE COPY OF CERTIFICATE ISSUED BY LITTLE FLOWER HOSPITAL DATED 17.09.2001 TO THE PETITIONER.**
- EXT.P2(B): TRUE COPY OF CERTIFICATE DATED 04.08.2009 ISSUED FROM THE LITTLE FLOWER HOSPITAL.**
- EXT.P3(A): TRUE COPY OF CHEQUE NO.158606 DATED 23.10.2003 ISSUED TO THE 1ST RESPONDENT BY THE PETITIONER.**
- EXT.P3(B): TRUE COPY OF CHEQUE NO.207298 DATED 24.10.2009 ISSUED TO THE 1ST RESPONDENT BY THE PETITIONER.**
- EXT.P4(A): TRUE COPY OF APPLICATION DATED 10.12.1990 SUBMITTED BY THE PETITIONER BEFORE THE ALUVA TAHSILDAR.**
- EXT.P4(B): TRUE COPY OF PROCEEDINGS NO.D2-19138/90 DATED 20.06.1991 OF TAHSILDAR, ALUVA TALUK.**
- EXT.P4(C): TRUE COPY OF MORTGAGE DEED DATED 12.10.1990 EXECUTED BY THE PETITIONER IN FAVOUR OF 1ST RESPONDENT.**
- EXT.P5: TRUE COPY OF NOTICE DATED 09.02.2009 ISSUED BY THE VILLAGE OFFICER, MALAYATTOOR VILLAGE TO THE PETITIONER.**
- EXT.P6: TRUE COPY OF G.O.(MS.)NO.21/2009/HOUSING, TRIVANDRUM DATED 20.05.2009 AND ITS TRANSLATION.**
- EXT.P7: TRUE COPY OF REPRESENTATION DATED 28.01.2010 OF THE PETITIONER TO THE 1ST RESPONDENT.**
- EXT.P8: TRUE COPY OF ORDER IN SLP 36091/09 DATED 06.01.2010 BY THE HON'BLE SUPREME COURT OF INDIA.**

WP(C).No. 6137 of 2010 (N)

RESPONDENT(S)' EXHIBITS :

**EXT.R1(A): TRUE COPY OF THE JUDGMENT IN WRIT PETITION
NO.6896 OF 2009.**

**EXT.R1(B): TRUE COPY OF THE JUDGMENT DATED 28.10.2009 IN
WA.NO.1832 OF 2009.**

EXT.R1(C): TRUE COPY OF THE INCOME CERTIFICATE DATED 15.06.1990.

//TRUE COPY//

PA.TO JUDGE.

Msd.

ANU SIVARAMAN, J.

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W.P. (C) No. 6137 of 2010

Dated this the 18th day of September, 2015

J U D G M E N T

The prayer in this writ petition is for a direction to respondents 1 and 2 to consider the petitioner for the benefit under Ext.P6 order and write off the entire liability of the petitioner to the Kerala State Housing Board and consequently to release the tittle deeds.

2. The petitioner had availed a housing loan from the 1st respondent for an amount of Rs.1,00,000/- during 1990 and it is submitted that the application for the loan was under the higher income group scheme. It is stated that as on 18.05.2015, an amount of Rs.2,70,229/- was due from the petitioner under the loan. Since, the one time settlement scheme is available in the 1st respondent as of now, till 30.09.2015, it is stated that the amount payable under the scheme would come to Rs.2,32,230/-. It is further stated that by Ext.P6, the Government had issued orders for writing off loans taken by weaker sections or lower income groups from the Housing Development Board through the Housing Board and District Collectors.

3. It is the case of the petitioner that he is also entitled to be given the benefit under Ext.P6 order. When revenue recovery proceedings were initiated against him for recovery of the amounts due under the loan, he had earlier approached this Court filing W.P. (C) No. 6896 of 2009, which was disposed of rejecting the contentions raised by the petitioner, but permitting him to clear the entire liability to the respondent by way of six equal monthly instalments. He had taken the matter in appeal, filing Writ Appeal No. 1832 of 2009. The Division Bench held that in view of statement filed by the special Tahasildar, it was made clear that the revenue sale shall be confined only to that portion of the property of the petitioner which would fetch the dues payable by him to the board. With this modification in the impugned judgment the appeal was dismissed. Thereafter, the petitioner preferred a special leave petition before the Honourable Supreme Court, which was also dismissed on 28.10.2009 by Ext.P8 order, permitting the petitioner to withdraw special leave petition with liberty to agitate before the High Court on the basis of Ext.P6 order. It is pursuant to that the present petition has been filed. It is seen that the petitioner states that he is a retired

employee from the K.S.R.T.C. and a senior citizen and as his annual income of Rs.15,300/- only, on the basis of Ext.P1 certificate of income issued by the village officer, it is submitted that he is eligible to have the loan written off in view of the provisions of Ext.P6 Government order.

4. Heard, Sri. Kishor B., learned counsel appearing for the petitioner, Sri. George Boban, learned standing counsel appearing for the 1st respondent and Sri. P.P. Padmalayan, learned Government Pleader appearing for the 2nd respondent.

5. It is contended by the learned counsel appearing for the petitioner that in view of his income as evidenced from Ext.P1 series, he is entitled to be given the benefit of Ext.P6 order issued by the Government.

6. The 1st respondent had filed a detailed counter affidavit pointing out that the petitioner had availed the loan under the higher income group category and such loans are not liable to be included for the benefits contemplated by Ext.P6. It is also submitted that Ext.P6 is a decision taken by the Government identifying the persons and the schemes which are eligible for the write off. Only persons who belong to different weaker sections

under 12 specified schemes and loans availed in 1996 are entitled to be write off. By this 41,500 persons were entitled to get back their tittle deeds. The 12 schemes, which are identified for the purpose of Ext.P6 have also been enumerated therein. It is clear from the pleadings in the counter affidavit filed by the 1st respondent that the writ petitioner who had availed of a loan from the Housing Board under the higher income group scheme during 1990 is not entitled to the benefit of the scheme. Since Ext.P6 order is limited to those loans issued under the schemes specified mentioned therein.

7. In that view of the matter, there is no merit in the contention raised by the petitioner that he is entitled to the benefit of Ext.P6 order, since his income is now low enough to justify the inclusion therein. However, in view of the facts pleaded, the writ petition is disposed of directing the 1st respondent to consider whether the petitioner is entitled to any benefit in view of the one time settlement scheme available in the respondent and to intimate the petitioner with regard to the amounts payable under the said scheme at the earliest at any rate within one week from the date of receipt of copy of this

judgment.

8. In case the petitioner remits the amount demanded under the one time settlement scheme during the currency of the scheme, his debt shall be discharged and his title deeds shall be returned to him. However, if the petitioner does not remit the amount as demanded under the OTS scheme he shall be given three months time to pay off the entire amount outstanding in the loan as against him. If the amounts due under the loans are not cleared off as above, the respondent shall be free to proceed against the property of the petitioner.

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

Sd/-
ANU SIVARAMAN,
JUDGE

DST

//True copy//

P.A. To Judge