IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 6210 of 2010 (A)

PETITIONER :

PANATHODIYIL UMMER,
S/O.PATHUMMA, AGED 40 YEARS, IRITTY.P.O.,
KANNUR DISTRICT. REP. BY POWER OF ATTORNEY HOLDER P.P.SIRAJ,
S/O.BEERAN, AGED 33 YEARS,
SHAMLATH MANZIL, OLD BRIDGE ROAD, IRITTY.P.O.
KANNUR DISTRICT.

BY ADV. SRI.UNNIKRISHNAN.V.ALAPATT

RESPONDENTS:

1. THE VILLAGE OFFICER,
   KEEZHUR VILLAGE,
   PUNNAD.P.O., KANNUR DISTRICT.

2. THE REVENUE DIVISIONAL OFFICER,
   THALASSERY.

3. THE DISTRICT COLLECTOR, KANNUR.

4. THE KEEZHUR CHAVASSERY GRAMA PANCHAYATH,
   REP. BY ITS SECRETARY, PUNNAD.P.O., KANNUR DISTRICT.

5. STATE OF KERALA, REP. BY ITS SECRETARY,
   DEPARTMENT OF REVENUE, SECRETARIAT,
   THIRUVANANTHAPURAM.

R4 BY ADV. SRI.A.MOHAMED MUSTAQUE
R4 BY ADV. SRI.T.PRAVEEN
R4 BY ADV. SMT.LAKSHMI RAJAN
R2 BY GOVERNMENT PLEADER SRI.P.S.SAJEEVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6210 of 2010 (A)

PETITIONER'S EXHIBITS :-

EXT.P1	COPY OF THE JUDGMENT AND DECREE PASSED IN OS 164/87 OF THE MUNSIFF COURT, KOOTHUPARAMBA.
EXT.P1(A)	COPY OF THE DECREE PASSED IN OS 164/87 OF THE MUNSIFF COURT, KOOTHUPARAMBA.
EXT.P2	COPY OF THE JUDGMENT PASSED IN AS 119/1992.
EXT.P2(A)	COPY OF THE DECREE PASSED IN AS 119/1992.
EXT.P3	COPY OF THE REPRESENTATION DTD.10.11.1997 SENT BY PATHUMMA TO THE 1ST RESPONDENT.
EXT.P4	COPY OF THE GIFT DEED DTD.5.6.2000.
EXT.P5	COPY OF THE ORDER PASSED BY THE 2nd RESPONDENT DTD.16.1.2006.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C).No.6210 of 2010

Dated this the 10th day of April, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of certiorari to quash Ext.P5 communication issued on behalf of the second respondent and also seeking a writ of mandamus commanding the respondents to take necessary steps to accept the basic tax of 17 cents of land owned by the petitioner comprised in R.S.No.125/5 of Keezhur amsom and desom.

2. Going by the averments in the writ petition the petitioner is the absolute owner in possession of the aforesaid land having an extent of 17 cents. It appears that Keezhur Chavassery Grama Panchayat (hereinafter referred to as the respondent Panchayath) has issued a notice alleging that the predecessor-in-interest of the petitioner had encroached upon puramboke land and constructed a cow shed. The predecessor-in-interest of the petitioner filed O.S.No.164 of 1987 before the Munsiff's Court, Koothuparamba, seeking an order of permanent prohibitory injunction restraining the respondent Panchayath from trespassing into the aforesaid property

and demolishing the house or cow shed constructed by him. The suit was decreed as prayed for vide Ext.P1 judgment and Ext.P1(a) is a copy of the decree. The respondent Panchayath took up the matter in appeal and the said appeal ended in dismissal by Ext.P2 judgment dated 17.7.1993 of the Court of the Principal Subordinate Judge of Thalassery in A.S.No.119 of 1992. Ext.P2(a) is a copy of the decree.

3. The predecessor-in-interest of the petitioner thereafter moved the Village Officer, Keezhur Village, the first respondent herein, with a request to receive basic tax of the property in question. Ext.P3 is copy of a representation dated 10.11.1997 submitted by him before the first respondent in this regard. While so in the year 2000, the petitioner acquired right over the property in question on the strength of Ext.P4 gift deed.

4. After Ext.P4 the petitioner approached the first respondent with a request to accept the basic tax in respect of the property in question. Later the matter was placed before the Adalath with a prayer to receive the basic tax of the property. But the said request was turned down by Ext.P5 order dated 16.1.2006 of the

second respondent, stating that, as per Village records the property comprised in R.S.No.125/5 of Keezhur amsom desom is a puramboke land. It is aggrieved by Ext.P5 the petitioner has approached this Court in this writ petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the second respondent, contending that as per Village records land in question is classified as puramboke and in such circumstances basic tax cannot be accepted for the said land. Regarding Exts.P1 and P2 judgments of the trial court as well as the first appellate court, the second respondent would contend that those judgments are not binding on the ground that the Revenue Authorities were not made parties to that proceedings. The 2nd respondent would also contend that, in the Adalath held on 16.1.2006 the Senior Superintendent, Revenue Divisional Office, Thalassery, who was the Charge Officer of the Adalath considered the matter and issued Ext.P5 reply dated 16.1.2006 to the petitioner informing that the land tax in respect of the property in question cannot be accepted as claimed by the petitioner. Therefore the second respondent would justify the stand taken in Ext.P5.

6. I heard the arguments of the learned counsel for the petitioner, learned Government Pleader appearing for respondents 1, 2, 3 and 5 and also the learned Standing Counsel for the 4th respondent.

7. The sole issue that arises for consideration is as to whether Ext.P5 order passed by the second respondent can be sustained or not.

8. According to the petitioner, he is having absolute title and possession of the property in question. He is also placing reliance on Exts.P1 and P2 judgments of the trial court as well as the first appellate court in which the court has granted a permanent prohibitory injunction restraining the respondent Panchayath from interfering with his possession over the property. As rightly pointed out by the learned Government Pleader, in Exts.P1 and P2 proceedings before the Civil Court the Revenue Authorities were not made parties. The specific stand taken by the learned Government Pleader is that, going by the revenue records land in question is a puramboke land and in such circumstances they cannot accept the land tax in respect of that property. In Ext.P3 representation

submitted by the predecessor-in-interest of the petitioner before the 1st respondent, he has raised various contentions in support of his claim for accepting basic tax for the property in question, a reading of Ext.P5 order passed by the Senior Superintendent in the office of the second respondent would show that it is only a cryptic order passed without considering any of the contentions raised by the petitioner regarding his absolute title and possession of the property in question.

9. Therefore in the facts and circumstances of the case I find it appropriate to direct the second respondent to consider the grievances of the petitioner and pass an appropriate order, with notice to the petitioner and also to the 4th respondent Panchayath. Therefore the writ petition is disposed of with the following directions:-

1. Ext.P5 order passed by the Senior Superintendent in the office of the 2nd respondent is set aside.

2. The petitioner shall submit an appropriate representation before the second

respondent within a period of 15 days from the date of receipt of a certified copy of this judgment.

3. On receipt of such representation the second respondent shall consider and pass appropriate orders thereon, after hearing the petitioner as well as the 4th respondent Panchayath, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of such representation.

ANIL K.NARENDRAN, JUDGE

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