IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

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

WP(C).No. 13307 of 2006 (H)

PETITIONERS:

1. JOHN.B.NETTO, MANCHADIPARAMBIL HOUSE, CHERUTHONI KARA, IDUKKI VILLAGE, THODUPUZHA TALUK.

2. M.T.KURIAKOSE @ KURIACHAN, MUTHUKATTU HOUSE, CHERUTHONI KARA, IDUKKI VILLAGE THODUPUZHA TALUK.

3. K.H.M. YOUSEFF MOULAVI, KARIKKANPARAMBIL HOUSE, CHERUTHONI KARA IDUKKI VILLAGE, THODUPUZHA TALUK.

4. K.P.IBRAHIMKUTTY, KOTTAN PUTHIYAPURA HOUSE, CHERUTHONI KARA, IDUKKI VILLAGE THODUPUZHA TALUK.

BY ADVS.SMT.SANTHAMMA ISSAC
SRI.N.C.THOMAS
SRI.CHERIAN THOMAS

RESPONDENTS:

1. STATE OF KERALA, REP. BY ITS CHIEF SECRETARY, GOVERNMENT OF KERALA THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR, IDUKKI DISTRICT, IDUKKI.

3. THE TAHSILDAR, TALUK OFFICE, THODUPUZHA.

4. SECRETARY, VAZHATHOPE GRAMA PANCHAYAT, THADIYAMPADU P.O., IDUKKI.

R1 TO R3 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK

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

WP(C).No. 13307 of 2006 (H)

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: LETTER NO.C2/15794/2004 DTD. 10.1.05 OF TAHSILDAR, THODUPUZHA TALUK TO 1ST PETITIONER.

EXT.P2: BUILDING TAX RECEIPT DTD. 29.11.02 FROM PANCHAYAT TO THE 1ST PETITIONER.

EXT.P3: BUILDING TAX RECEIPT DTD. 30.4.03 FROM PANCHAYAT TO THE 1ST PETITIONER.

EXT.P4: BUILDING TAX RECEIPT DTD. 4.5.05 FROM PANCHAYAT TO THE 1ST PETITIONER.

EXT.P5: BUILDING TAX RECEIPT DTD. 30.3.06 FROM VILLAGE OFFICE, IDUKKI TO THE 1ST PETITIONER.

EXT.P6: RECEIPT DTD. 26.5.98 FROM PANCHAYAT TO THE 2ND PETITIONER.

EXT.P7: BUILDING TAX RECEIPT FOR THE YEAR 97-99 FROM PANCHAYAT TO THE 2ND PETITIONER.

EXT.P8: BUILDING TAX RECEIPT FOR THE YEAR 2000-02 FROM PANCHAYAT TO THE 2ND PETITIONER.

EXT.P9: SHOP INSPECTION REPORT DTD. 25.1.89 ISSUED BY AGRICULTURAL INCOME TAX & SALES TAX INTELLIGENCE OFFICER, KATTAPANA TO THE 2ND PETITIONER.

EXT.P10: PROFESSIONAL TAX RECEIPT DTD. 24.3.86 FROM PANCHAYAT TO THE 2ND PETITIONER.

EXT.P11: NOTICE DTD. 28.7.87 FROM SALES TAX OFFICER TO THE 2ND PETITIONER.

EXT.P12: BUILDING TAX RECEIPT FOR THE YEAR 2004-05 FROM PANCHAYAT TO THE 3RD PETITIONER.

EXT.P13: BUILDING TAX RECEIPT FOR THE YEAR 2004-05 FROM PANCHAYAT TO THE 4TH PETITIONER.

EXT.P14(a): APPLICATION DTD. 20.10.04 SUBMITTED BEFORE THE DISTRICT COLLECTOR.

EXT.P14(b): ACKNOWLEDGEMENT DTD. 20.10.04 ISSUED BY DISTRICT COLLECTOR, IDUKKI.

EXT.P14(c): CERTIFICATE DTD. 19.11.05 ISSUED BY THE FOREST RANGE OFFICER, NAGARAMPARA.

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EXT.P14(d): CERTIFICATE DTD. 19.11.05 ISSUED BY THE FOREST RANGE OFFICER, NAGARAMPARA.

EXT.P14(e): CERTIFICATE DTD. 19.11.05 ISSUED BY THE FOREST RANGE OFFICER, NAGARAMPARA.

EXT.P15(a): NOTICE DTD. 8.11.05 ISSUED BY THE TAHSILDAR, THODUPUZHA TO 1ST PETITIONER.

EXT.P15(b): NOTICE DTD. 8.11.05 ISSUED BY THE TAHSILDAR, THODUPUZHA TO 2ND PETITIONER.

EXT.P15(c): NOTICE DTD. 8.11.05 ISSUED BY THE TAHSILDAR, THODUPUZHA TO 3RD PETITIONER.

EXT.P16(a): PETITION DTD. 21.11.05 SUBMITTED BEFORE THE REVENUE MINISTER BY 1ST PETITIONER.

EXT.P16(b): PETITION DTD. 21.11.05 SUBMITTED BEFORE THE REVENUE MINISTER BY 2ND PETITIONER.

EXT.P16(c): PETITION DTD. 21.11.05 SUBMITTED BEFORE THE REVENUE MINISTER BY 3RD PETITIONER.

EXT.P16(d): PETITION DTD. 21.11.05 SUBMITTED BEFORE THE REVENUE MINISTER BY 4TH PETITIONER.

EXT.P17: COPY OF BUILDING PERMIT DTD. 13.04.04 ISSUED TO THE 2ND PETITIONER BY VAZHATHOPE GRAMA PANCHAYAT.

EXT.P18: SANCTIONED BUILDING PLAN, SITE PLAN, RAIN WATER STORAGE TANK PLAN.

EXT.P19(a): PHOTOGRAPH SHOWING THE BUILDING OF THE 1ST PETITIONER.

EXT.P19(b): PHOTOGRAPH SHOWING THE BUILDING OF THE 2ND PETITIONER.

EXT.P19(c): PHOTOGRAPH SHOWING THE BUILDING OF THE 3RD PETITIONER.

EXT.P19(d): PHOTOGRAPH SHOWING THE BUILDING OF THE 4TH PETITIONER.

EXT.P19(e): PHOTOGRAPH SHOWING THE SOME OTHER BUILDINGS IN THE VICINITY OF PETITIONERS' BUILDINGS.

EXT.P20: LIST OF OCCUPANTS APPROVED BY THE IDUKKI DEVELOPMENT AUTHORITY.

// TRUE COPY //

P.A TO JUDGE.

ALEXANDER THOMAS, J.

W.P.(C).No.13307 Of 2006

Dated this the 10th day of April, 2015.

J U D G M E N T

The petitioners aver that they have shop buildings in Cheruthoni township and they have been paying building tax to the Vazhathoppu Panchayat as evident from Exts.P-2 to P-8, etc. The 1st petitioner has also paid the building tax in terms of the Kerala Building Tax Act to the 3rd respondent Tahsildar, Thodupuzha as evident from Ext.P-1. All these buildings are situated in the heart of Cheruthoni town as evident from Ext.P-19 series of photographs. It is averred that the petitioners had submitted applications for grant of patta to the land in which their buildings are situated, before the 2nd respondent District Collector, Idukki. Ext.P-14(a) is one such application submitted by the 1st petitioner and the receipts and acknowledgement in respect of submission of Ext.P-14(a) are evident from Ext.P-14(b). The petitioners point out that in view of the certificates as in Exts.P-14(c), (d) and (e), the lands, in which their respective buildings are constructed, are in their possession and that this was duly certified by the Forest Range Officer, Nagarampara Range. It is also submitted that they have submitted Ext.P-16 series representations before the Minister for Revenue, Government of Kerala. The petitioners submit that without considering their applications of grant of patta as in Exts.P-14(a), the 3rd respondent-Tahsildar has issued the impugned Ext.P-15 series of eviction notices to the petitioners ordering that they shall be evicted from the said land. It is in these background that the petitioners have approached this Court with the following prayers:

"A. To quash the Ext.P-15 series notices including the fourth petitioner's as the same is issued in a discriminatory way.

B. To direct the respondents to verify the proceedings and files kept by different offices, so far pertaining to these petitioners land and building in Iduki village in Cheruthoni Township, such as Vazhathope Panchayat records, village records and to issue pattayam to these proceedings.

C. To allow these petitioners to do business in their building like similarly placed holders on either sides of these respective petitioners lands and buildings in the Cheruthoni Township without discriminating them from other holders excluded from eviction.

AND

D. Such other and incidental relief which in the circumstances of the case, this Honourable court deems just and proper including the costs of the petitioner in this case."

2. This Court while admitting this Writ Petition on 23.5.2006 had also ordered to stay all further proceedings pursuant Ext.P-15 series, till the disposal of the Writ Petition.

3. According to the petitioners Ext.P-20 is the list of authorised occupants prepared by the Idukki Development Authority and that petitioners 1 to 4 herein are serial Nos.1, 2, 8 & 7 respectively in Ext.P-20 list.

4. It is stated in the counter affidavit dated 14.6.2013 filed by the 1st respondent that according to the order of the District Collector, Idukki, directions were given to the Village Officer to take necessary steps to evict them and notices under the Land Conservancy Act were issued through the Village Officer, Idukki to the encroachers on 8.11.2005 directing them to vacate the land within three days and that it was decided to evict the encroachers on 21.3.2006 with the help of police and that as the election to the

local authorities was then declared and Model Code of Conduct came into force, eviction plan was postponed to another time and also awaited for further direction. It is stated in paragraph 4 of the counter that as regards the averment of the petitioners that they had given application for issuance of patta, it is stated that it is under consideration and it is further stated that the documents produced by the petitioners do no prove the possession of the land. That based on the reports submitted by the Director General of Police (Intelligence), Thiruvananthapuram in report dated 1.4.2004, it was decided to take action against encroachment of Government land and to trace out and cancel all bogus pattas. That joint verification has been done by the Forest Department and Revenue Department and only one survey number is existing in Idukki Village as a whole, viz., 161/1. That as per the directions issued that effective steps are taking to evict each and every encroacher that the petitioners do not have any records of possession about the holding from the concerned authorities that they should have approached the authorities with their records of possession if they had. On this basis, the prayers of the petitioners are sought to be rebutted in the proceedings in the counter affidavit.

5. Heard the learned counsel for the petitioners and learned Government Pleader.

6. It is averred in paragraph 4 on page 2 and paragraph 8 on pages 7 & 8 of the counter affidavit as follows:

> "4. It is submitted that the petitioners are stating that they had given the application for the issuance of patta and it is under consideration. The copy of application and copy of acknowledgement cannot be considered as an evidence for the ownership of the holding of land by the encroachers. The documents produced by the petitioners do not prove their possession over the particular land.
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> 8. It is submitted that the petitioners do not have any records of possession about the holding from the concerned authorities. They should have approached the authorities with their records of possession if they had. Hence, the argument about the issue of eviction is baseless. The petitioners could have approached the authorities when they had received the eviction notice. Eviction notices were issued to the petitioners in the light of the report of Sri.Rajan Madhekar, IPS. It is the duty of revenue authorities to protect the Government land. Only with the list received from the District Collector, Idukki, the eviction notices were given to the petitioners. The petitioners have stated that they had given application for the issue of patta and it is under consideration........."

7. The exact import of the averments in paragraph 4 on page 2 and paragraph 8 on page 4 of the counter affidavit of the 1st respondent is not very clear.

8. Since the petitioners have clearly averred that they have submitted applications for grant of patta as stated in Ext.P-14(a) and since the said applications of the petitioners have not been specifically denied in the counter affidavit of the 1st respondent, the said averment of the petitioners need be taken only as correct. The clear implication in the above said submission of the 1st respondent in the counter affidavit is that the said application is under consideration before the competent authority concerned. The main objection taken against the above said plea of the petitioners is that the petitioners have not produced any proof regarding their alleged possession of the land in question. It is the case of the petitioners that their shop buildings are constructed over small extent of lands coming to 3 cents or so and that these shop rooms are constructed in Cheruthoni Town and adjacent to the main road as evident from Ext.P-19 series. They rely on Ext.P-14 series to show that in the

case of similar shop owners, who have constructed shop buildings in such lands it has been certified by the competent Forest Range concerned that such lands coming to about 3 cents of extent are in the possession of such persons concerned and that Exts.P-14 (c), (d) and (e) are issued by the Forest Range Officer for the purpose of consideration of application for grant of patta, etc. It is also clear that the petitioners have a case that their names are included in Ext.P-20 list of authorised occupants prepared by the Idukki Development Authority. The said averment has also not been denied in the counter affidavit. Moreover, the actual issue as to whether the petitioners are in possession of the respective land in question over which their shop buildings are constructed is a factual issue that could be easily ascertained by the competent revenue officer by conducting site inspection and by ascertaining the available official records concerned like building tax register maintained by the Panchayath as evident from Exts.P-2 to P-8 and list of authorised occupants as per Ext.P-20 list prepared by the Idukki Development Authority, etc. Therefore it is not as if the competent authority is totally disabled from considering the applications of the petitioners for grant of patta, on merits. Accordingly, the said technical objection raised by the respondents is untenable and the same is overruled.

9. From a perusal of the pleadings and materials on record in this case, it is seen that persons like the petitioners are said to be in occupancy of small extent of lands in the heart of Cheruthony Town and other nearby areas and the petitioners have constructed shop buildings in such lands lying adjacent to main road as evident from Ext.P-19 series of photographs. It is the case of the 1st respondent that even as of now there is only one survey number i.e., 161/1 alloted for the entire Idukki District. It could also be that as per the records which may not be up-to-date even now, the lands in question may be recorded as forest lands in the records of the Forest Department as suggestive from Exts.P-14(c), (d) and (e) certificates issued by the Forest Ranger Officer. The pleadings in the counter affidavit of the 1st respondent also suggest that a joint verification process of Revenue Department and the Forest Department

of the Government may be necessary for identification and demarcation of the properties in question. Therefore, it is not a case as if it is a recent encroachment of Government/Forest lands. It could very well be a case of settlement of communities in areas which were previously denoted as forest lands in Idukki District and these lands are now lying in the heart of Townships like Cheruthoni. Even main roads have been constructed by Public Works Department of the State Government and the shop buildings which are constructed in these small extent of lands are lying adjacent to main roads. It is the specific case of the petitioners that the Idukki Development Authority has included the lands in which the petitioners' shop rooms are situated in Ext.P-20 list and that their shop buildings are so included in the town planning scheme of that authority. Therefore, the gravity and complexity of the issue of this nature is to be assessed and examined by the authorities concerned, with all seriousness. Interaction and effective consultation between the various departments concerned like Revenue, Survey, Forest etc, may also be highly essential so as to take all steps to be taken to tackle problems of this nature. In order to facilitate this, the 2nd respondent District Collector, Idukki is directed to conduct a detailed enquiry into the various aspects arising out of the petitioners' case and that of similarly situated persons and the 2nd respondent shall also conduct necessary interaction with the revenue and survey officials and the Divisional Forest Officer concerned and find out the nature of the factual aspects of these cases. The 2nd respondent Collector will also ascertain from the Idukki Development Authority whether the petitioners' shop room areas are included in Ext.P-20 list of authorised occupants, as stated by the petitioners. After conducting such enquiry, if the 2nd respondent Collector is of the considered opinion that further guidance from the 1st respondent Government is necessary to deal with the application for grant of patta, then he may approach the 1st respondent Government, detailing out the specific points on which the 2nd respondent requires such clarification. The 1st respondent shall furnish necessary clarification/reply in that regard within three months from the date of receipt of such communication from the 2nd respondent. Based on this, it is for the competent authority concerned (2nd respondent-District Collector, Idukki) to take a final decision on the applications of the petitioners for grant of patta. The 2nd respondent Collector shall consult with the Idukki Development Authority on the plea of the petitioners for grant of patta. In case the applications submitted by the petitioners as in Ext.P-14(a) are not immediately traceable, then the District Collector shall inform the petitioners about the same in which case the petitioners should be given sufficient time to re-submit necessary application for grant of patta with supporting documents etc. The petitioners will be given reasonable opportunity to substantiate their contentions and to produce necessary materials and documents to support their claims. Till a decision is taken by the respondents as directed above, interim order dated 23.5.2006 passed by this Court will continue.

With these observations and directions, the Writ Petition (Civil) stands finally disposed of.

ALEXANDER THOMAS,
Judge.

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