IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 3602 of 2014 (A)

PETITIONER(S):
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1. K.V.VARGHESE,
   KALAPURACKAL HOUSE, DARKAS P.O,
   PARAPPA VIA -671533

2. REJI K.V,
   S/O VARGHESE, KAALPURACKAL HOUSE, DARKAS P.O
   PARAPPA VIA- 671533

BY ADV. SRI.SUBHASH CYRIAC

RESPONDENT(S):
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1. STATE OF KERALA,
   RPERESENTED BY THE CHIEF SECRETARY
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695001

2. THE DISTRICT COLLECTOR,
   KASARAGOD DISTRICT, CIVIL STATION, KASARAGOD- 671121

3. THE TAHSILDAR,
   TALUK OFFICE, HOSDURG, KASARAGOD DISTRICT- 671121

4. THE VILLAGE OFFICER,
   MALOM VILLAGE, MALOM- 671315

BY GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3602 of 2014 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 -TRUE COPY OF THE ORDER OF THE LAND TRIBUNAL IN O.A 75/1990
EXHIBIT P2 -TRUE COPY OF THE PATTA NO.143/91 OF THE LAND TRIBUNAL
EXHIBIT P3- TRUE COPY OF THE LOAN PASS BOOK OF THE IST PETITIONER
EXHIBIT P4- TRUE COPY OF THE ORDER OF THE LAND TRIBUNAL IN O.A 74/90
EXHIBIT P5- TRUE COPY OF THE PATTA NO. 142/91 OF THE LAND TRIBUNAL
EXHIBIT P6- TRUE COPY OF THE DEED EXECUTED IN FAVORUR OF THE 2ND PETITIONER
EXHIBIT P7- TRUE COPY OF THE LOAN PASS BOOK OF THE 2ND PETITIONER
EXHIBIT P8- TRUE COPY OF THE ORDER OF THE 3RD REPSONDENT ISSUED TO THE IST PETITIONER
EXHIBIT P9- TRUE COPY OF THE ORDER OF THE 3RD REPSONDENT ISSUED TO THE 2ND PETITIONER

RESPONDENT(S)' EXHIBITS: NIL

OKB.

//TRUE COPY//

P.A. TO JUDGE

K.HARILAL, J.

W.P(C). No.3602 of 2014

Dated this the 10th day of February, 2015

JUDGMENT

This writ petition is filed challenging Ext.P8 order passed by the 3rd respondent rejecting the request of the petitioners for accepting basic tax for their immovable property. The 1st petitioner is the father of the 2nd petitioner. The 1st petitioner is in possession of 3.5 acres of property in Sy.No.146/A2 in Malom Village. According to him, he was a tenant of one Mr.V.P.P. Muhammed Kunhi of Thrikkaripur. He approached the Land Tribunal, Kanhangad for assignment of the above land under Section 72 MM of the Kerala Land Reforms Act, 1963, (for short, the 'Act'). After considering the claim, the Land Tribunal assigned the aforesaid immovable property to the 1st petitioner vide Ext.P1 order. Pursuantly, Ext.P2 Patta was also issued by the Land Tribunal on the basis of Ext.P1 order. The 1st petitioner continued to cultivate the land and still he is in possession of the land on the basis of Exts.P1 and P2. He was paying basic tax and had availed loan from the State bank of India mortgaging the said property as evidenced by Ext.P3.

2. The 2nd petitioner purchased 4 acres of immovable property comprised in Sy.No.146/A2 of Malom Village and he had purchased the said property from the legal heirs of his grant mother Smt.Thankamma, who was a tenant of the aforesaid V.P.P. Muhammed Kunhi of Thrikkaripur. Smt. Thankamma approached the Land Tribunal, Kanhangad for assignment of the said property and the Tribunal passed Ext.P4 order assigning right, title and interest in favour of the 2nd petitioner. Consequently, Ext.P5 Patta was also issued in the name of the 2nd petitioner. Subsequently, the 2nd petitioner purchased 4 acres of land from the legal heirs of his grant mother by virtue of Ext.P6 deed transferring janmam right in his favour. He also availed agricultural loan from the State Bank of India by mortgaging the said property, as evidenced by Ext.P7. He was also paying basic tax pursuant to the assignment of land by Ext.P4 order of the Tribunal and granting of Patta.

3. But recently, when the petitioners approached the 4th respondent Village Officer to pay basic tax, he refused to accept the same, without assigning any reason. Feeling aggrieved, though the petitioners approached the 3rd respondent by filing an

application seeking a direction to the 4th respondent to accept basic tax, the 3rd respondent also rejected the same on the ground that the property was a surplus land and some civil revision petitions pertaining to the said property were dismissed by the High Court. Aggrieved by the refusal to receive tax this writ petition is filed under Article 226 of the Constitution of India.

4. The learned counsel for the petitioners advanced arguments challenging the reasons whereby the 3rd respondent rejected the application filed by the petitioners. It is the specific case of the petitioners that the petitioners' property is not involved in C.R.P.Nos.852 and 915 of 1984 mentioned as in Ext.P8 order and the petitioners are neither the parties to the proceedings nor the persons interested in the proceedings under the C.R.Ps referred above. In short, the sum and substance of the arguments is that the reasons stated in Ext.P8 order is not a matter pertaining to the petitioners' aforesaid property. But the 3rd respondent without conducting proper enquiry or perusing orders passed in the said C.R.Ps rejected the petitioners' application on the misconception that the petitioners property is also included in the property involved in the above C.R.Ps.

5. Going by Ext.P8 order, it could be seen that the said order is not a reasoned order. Though it is stated that the above

said property is also taken as a surplus property, the particulars of the proceedings under which the petitioners property was taken as surplus property is not disclosed in Ext.P8 order. Similarly, though it is stated that C.R.P. Nos.852 and 915 of 1984 filed against those proceedings by which the property was taken as surplus land, were dismissed on 20.8.1987, the particulars of the property and the parties in those revision petitions are not disclosed in Ext.P8 order. In short, Ext.P8 order is passed evasively, without sufficient reasonings. That apart, the petitioners have not been given an opportunity of being heard before passing Ext.P8 order. In the above view, I am inclined to set aside Ext.P8 order passed by the 3rd respondent and I do so.

5. Consequently, the 3rd respondent is directed to restore application dated 19/11/2012 on files and pass orders afresh within a period of three months from today, after affording sufficient opportunity of being heard to the petitioners to substantiate their contentions with documentary evidence.

This writ petition is disposed of accordingly.

Sd/-

(K.HARILAL, JUDGE)

okb.