IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 3858 of 2014 (F)

PETITIONER:

MOHANAN, AGED 52 YEARS,
S/O.RAGHAVAN, ARATHARA, AYYARKULANGARA,
VAIKOM, KOTTAYAM.

BY ADVS.SRI.S.M.PRASANTH
SRI.M.MANOJKUMAR (CHELAKKADAN)
SMT.ASHA BABU
SMT.AMMU CHARLES

RESPONDENTS:

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

2. THE DISTRICT COLLECTOR,
KOTTAYAM-686 001.

3. THE REVENUE DIVISIONAL OFFICER,
PALA, KOTTAYAM-686 575.

4. THE ADDITIONAL TAHSILDAR,
VAIKOM-686 141.

5. THE VILLAGE OFFICER,
NADUVILE VILLAGE, VAIKOM TALUK-686 141.

R4 BY ADV. SRI. K.C. VINCENT, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : TRUE COPY OF THE NON-ENCUMBRANCE CERTIFICATE ISSUED FROM THE SUB REGISTRAR'S OFFICE, VAIKOM.

EXHIBIT P2 : TRUE COPY OF THE TAX RECEIPT ISSUED TO THE PETITIONER.

EXHIBIT P3 : TRUE COPY OF THE COMMUNICATION DT.17-4-2013 RECEIVED BY THE PETITIONER FROM THE 4TH RESPONDENT.

EXHIBIT P4 : TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DT.6-6-2013.

EXHIBIT P5 : TRUE COPY OF THE ORDER DT.13-12-2013 OF THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

rv

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 3858 of 2014

Dated this the 5th day of August, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.

2. Through assessment deed No. 3328/2007/1 of Vaikom Sub registrar's Office, the petitioner purchased an immovable property of 37.200 cents in Survey No. 21/7 of Naduvile village, Vaikom Taluk from one Mr. Sooraj Kumar. It is the contention of the petitioner that he bone fide purchased the property after taking all precautions, including the ascertainment of the encumbrance position of the land.

3. In course of time, when the petitioner applied for mutation of the revenue entries, the 4th respondent refused to comply with the request on the ground that revenue recovery proceedings have been pending against the property. At this juncture, the petitioner approached the second respondent, the appellate authority, who rejected the claim of the petitioner for mutation relying on Section 44 of the Revenue Recovery Act. Aggrieved, the petitioner has

approached this Court.

4. The learned counsel for the petitioner has strenuously contended that the petitioner is a bond fide purchaser and going by the principle of caveat emptor, the petitioner has taken every precaution, while purchasing the property. Since any notice either under Section 7 or under Section 34 of the Revenue Recovery Act could not be ascertained by the petitioner, despite his due diligence, he could not be made to suffer on that count.

5. The learned Government Pleader, on his part, has submitted that the statutory position is very clear as can be seen from Section 44 of the Act. He has further contended that once a notice is served under Section 36 of the Act, in the event of the failure on the part of the debtor to clear the revenue debts, it is deemed that the property has been under attachment, so that there could be no further negotiation concerning the same. He has also submitted that in the case of vendor of the petitioner, the Government has served both Sections 7 and 34 notices.

6. Be that as it may, this Court has, through a catena of judgments, including Joseph Kurian v. Village Officer[1] and

1 2010 (3) KLT 251

Thulasibhai v. State of Kerala[2], has held that mutation does not confer title. It is only a device for the purpose of assessing the land revenue and other incidental purposes, as has been incorporated under Rule 16 of the Transfer of Registry Rules, 1966. The learned counsel for the petitioner has also submitted that the authorities may be directed to mutate the revenue entries, subject to the outcome of further proceedings said to have been initiated against the vendor vis-a-vis the land purchased by the petitioner.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Government Pleader, this Court disposes of the writ petition with a direction to respondents 4 and 5 to mutate the revenue records concerning the land in question in favour of the petitioner, subject to the outcome of the revenue recovery proceedings said to have been initiated against the vendor of the petitioner.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

2 2010 (4) KLT 215