

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No.3930 of 2015 (M)

PETITIONER'S:

1. SHAMSUDEEN,S/O.ABDUL KUNJU,AGED 48 YEARS,
KODACKADU HOUSE,MYLOOR KARA,VARAPETTY VILLAGE,
KOTHAMANGALAM,ERNAKULAM DISTRICT.
2. RAHIYANATH,W/O.SHAMDUDEEN,AGED 48 YEARS,
KODACKADU HOUSE,MYLOOR KARA,VARAPETTY VILLAGE,
KOTHAMANGALAM,ERNAKULAM DISTRICT

**BY ADVS.SRI.ALEXANDER JOSEPH
SRI.T.P.JOSEPH**

RESPONDENT'S:

1. STATE OF KERALA,REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF REVENUE,STATE SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE LAND REVENUE COMMISSIONER,
DEPARTMENT OF REVENUE,STATE SECRETARIAT,
THIRUVANANTHAPURAM-695001.
3. THE DISTRICT COLLECTOR,ERNAKULAM,
CIVIL STATION,KAKKANAD,ERNAKULAM-682030.
4. REVENUE DIVISIONAL OFFICER,MUVATTUPUZHA-686661.
5. TAHSILDAR,KOTHAMANGALAM TALUK,
KOTHAMANGALAM-686691.
6. VILLAGE OFFICER,VARAPETTY VILLAGE,
KOTHAMANGALAM.

***ADDITIONAL R7 TO R11 IMPEADED.**

**ADDL.R7:K.M.SAYYED MOHAMMED,S/O.MAITHEEN,
KOTTAYI HOUSE, VARAPETTY,KOTHAMANGALAM,
ERNAKULAM DISTRICT.**

**ADDL.R8:P.P.JAMAL,S/O.PAREED,PONNIRICKAL HOUSE,
ADIVADU,PALARIMANGALAM VIA,ERNAKULAM DISTRICT.**

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**ADDL.R9:K.M.ABOOBACKER,S/O.MAITHEEN,KOTTAYIL HOUSE,
VARAPETTY,KOTHAMANGALAM,ERNAKULAM DISTRICT.**

**ADDL.R10:K.H.SUDHEER,S/O.HAMZA,KUNJATTU HOUSE,
MYLOOR P.O.,KOTHAMANGALAM,ERNAKULAM DISTRICT.**

**ADDL.R11:K.M.ASSY.S/O.MAITHEEN,KUNJATTU HOUSE,
VARAPETTY,KOTHAMANGALAM,ERNAKULAM DISTRICT.**

**ADDITIONAL R7 TO R11 ARE IMPEADED AS PER ORDER
DATED 30.3.2015 IN I.A NO.4335/2015 IN W.P.(C) NO.3930/2015.**

**R1 TO R6 BY GOVT. PLEADER SRI.M.MUHAMMED SHAFI.
ADDL R7-R11 BY ADV.SRI.P.V.BABY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1:TRUE COPY OF THE ORDER DATED 10/3/2013 OF THE 4TH
RESPONDENT.

EXHIBIT P2:TRUE COPY OF THE ORDER DATED 17/6/2013 OF THE 4TH
RESPONDENT.

EXHIBIT P3:TRUE EXTRACT OF THE THANDAPPERT NO.584 OF VARAPPETTY
VILLAGE.

EXHIBIT P4:TRUE EXTRACT OF THE THANDAPPER NO.1373 OF VARAPETTY
VILLAGE.

EXHIBIT P5:TRUE COPY OF THE REVISION PETITION FILED BY THE
PETITIONERS BEFORE THE 3RD RESPONDENT.

EXHIBIT P6:TRUE COPY OF THE REPORT DATED 30/1/2013 OF THE 5TH
RESPONDENT.

EXHIBIT P7:TRUE COPY OF THE ORDER DATED 23/9/2013 OF THE 3RD
RESPONDENT.

EXHIBIT P8:TRUE COPY OF THE ORDER DATED 24/12/2013 OF THE 3RD
RESPONDENT.

EXHIBIT P9:TRUE COPY OF THE ORDER DATED 10/3/2014 OF THE 3RD
RESPONDENT.

EXHIBIT P10:TRUE COPY OF THE REVISION PETITION DATED 8/45/2014.

EXHIBIT P11:TRUE COPY OF THE JUDGMENT DATED 10/6/2014 IN WPC
NO.14619/2014.

EXHIBIT P12:TRUE COPY OF THE ORDER NO.LRB-15377/14 DATED 19/8/2014 OF
THE 2ND RESPONDENT.

EXHIBIT P13:TRUE COPY OF THE ORDER DATED 18/11/2014 OF THE 4TH
RESPONDENT

RESPONDENT'S EXHIBITS

EXT.R10(a):TRUE PHOTOCOPY OF THE ORDER DATED 16.3.2013 ISSUED BY THE
RDO,MUVATTUPPUZHA.

EXT.R10(b):TRUE PHOTOCOPY OF THE REPORT DATED 27.4.2013 OF THE
TAHSILDAR,OTHAMANGALAM.

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**EXT.R10(c):TRUE PHOTOCOPY OF THE APPLICATION DATED 31.12.2013 BY THE
1ST PETITIONER TO THE TAHSILDAR,KOTHAMANGALAM.**

**EXT.R10(d):TRUE PHOTOCOPY OF THE REPORT DATED 11.2.2014 BY THE
ADDL.TAHSILDAR,KOTHAMANGALAM, TO THE DISTRICT
COLLECTOR, ERNAKULAM.**

**EXT.R10(e):TRUE PHOTOCOPY OF THE NOTICE DATED 23.2.2015 ISSUED BY THE
ADDL.TAHSILDAR,KOTHAMANGALAM.**

//TRUE COPY//

P.S. TO JUDGE

pk

A.M.SHAFFIQUE, J

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W.P.C.No.3930 of 2015

Dated this the 30th day of March 2015

J U D G M E N T

Petitioners have approached this Court challenging Exts.P1, P2 and P13 and seeking for a direction to the 4th respondent, the Revenue Divisional Officer to pass fresh orders in the matter relating to Transfer of Registry Rules.

2. The short facts involved in the writ petition would disclose that the petitioners claimed right and possession in respect of an extent of 1 Acre and 88 cents of land in different Survey Numbers of Myloor kara of Varapetty village of Kothamangalam Taluk. Petitioners have a case that on account of mistake in the revenue records, 54 cents of land was not mutated which remained in Thandaper Nos.584 and 1373 in the name of original owners. First petitioner submitted an application under Rule 28 of the Transfer of Registry Rules and after making necessary enquiries, the property having an extent of 54 cents was mutated in his

name which was later settled in favour of his wife as per settlement deed No.414/08. In the meantime, complaint came to be filed before the 4th respondent who, having enquired into the matter, set aside the mutation in favour of the petitioners. Petitioners carried the matter in revision before the District Collector who passed separate orders by which the matter was remitted back to the Revenue Divisional Officer. Petitioners preferred a further revision before the Land Revenue Commissioner which resulted in Ext.P2 order. The Land Revenue Commissioner, after considering the matter, directed the Revenue Divisional Officer to reconsider the whole issue. Revenue Divisional Officer, having taken into consideration the matter, again remitted the matter to the Tahsildar by way of Ext.P13 order. The matter is now pending before the Tahsildar. According to the petitioners, the short question involved in the issue projected by the petitioners was whether the Revenue Divisional Officer had the jurisdiction to revoke an order passed by the Tahsildar based on a complaint given by

the third party. According to the petitioners, the mutation was effected twelve years back and there is no reason to revoke the same by the Revenue Divisional Officer. That alone was the question to be considered by the Revenue Divisional Officer, whereas, presently the Revenue Divisional Officer had remitted the matter back to Tahsildar for fresh consideration as to whether mutation entry is proper or not.

3. The additional respondents who have been impleaded in the case submits that though the petitioners claim to be in possession of the property, the property is actually a Wakf property for which the petitioners cannot have any independent right. There was a 'Thykavu' in the property and two persons were buried there as well. Petitioners have also not produced any title to the property.

4. The learned Government Pleader submits that as long as the enquiry is in progress, there is no reason for the petitioners to approach this Court. The Tahsildar has to make enquiry based on the available records and if it is found that the petitioners are entitled for mutation as has

been granted earlier, they will be eligible to get the same.

5. The Learned counsel for the petitioners however placed strong reliance of Rule 28 of the Transfer of Registry Rules to contend that even if actual title is not available as long as the 1st petitioner was in possession of the property for the last more than 12 years, he is entitled for mutation of the property in his name.

6. Having regard to the aforesaid submission, it is clear that there is some dispute regarding the right of the petitioners to hold the property. Though it has been raised by certain persons claiming that property in possession of the petitioners is wakf property, the same is required to be considered in accordance with the procedure prescribed. If the parties have any dispute regarding title or possession, the remedy is normally to approach the Civil court for adjudication of the same. If it is a wakf property, the parties claiming the same can also approach the competent authority under the Wakf Act. However, as matters stand now, this is an instance where Tahsildar had already

mutated the property in favour of the petitioners. Same was reviewed by the Revenue Divisional Officer based on certain complaints. Therefore, it is for the Tahsildar to ultimately verify whether complaints raised were genuine or not, or it requires correction of the mutation entry as per the Transfer of Registry Rules. Under such circumstances, I do not think that there is any illegality in the orders so far passed. It is always open for the petitioners to make available proper materials to enable the Tahsildar to pass necessary orders in terms of Rule 28 of the Transfer of Registry Rules. This process shall be done and completed within a period of three months from the date of receipt of a copy of this judgment after hearing all the affected parties who have objected to the transfer of registry.

With the above observation, this writ petition is disposed of.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

