

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON**

**THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936**

**WP(C).No. 4415 of 2015 (B)**  
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**PETITIONER :**  
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**ABRAHAM JAMES,  
S/O.ABRAHAM (ITTIIVIRAH), AGED 75 YEARS,  
THEKKETTATHU HOUSE,  
BHARANANGANAM VILLAGE, MEENACHIL TALUK,  
KOTTAYAM DISTRICT.**

**BY ADV. SRI.P.C.HARIDAS**

**RESPONDENT(S):**  
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- 1. STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT  
DEPARTMENT OF PUBLIC WORKS,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. ASSISTANT EXECUTIVE ENGINEER,  
ROADS SUB DIVISION, PALA-686 575.**
- 3. ASSISTANT ENGINEER,  
P.W.D. ROADS SECTION, ERATTUPETTA-686 121.**
- 4. TALUK SURVEYOR,  
MEENACHIL TALUK OFFICE, PALA-686 575.**
- 5. A.D.GOPALAKRISHNAN NAIR,  
EDATTU HOUSE, BHARANAGANAM P.O.- 686 578.**

**R1 TO R4 BY SR GOVERNMENT PLEADER SRI.JOSEPH GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**WP(C).No. 4415 of 2015 (B)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- EXHIBIT P1: TRUE COPY OF SALE DEED NO.2228/1957 OF POONJAR SRO.**
- EXHIBIT P2: TRUE COPY OF LAND TAX RECEIPT.**
- EXHIBIT P3: TRUE COPY OF THE BUILDING TAX RECEIPT.**
- EXHIBIT P4: TRUE COPY OF THE D & O LICENSE.**
- EXHIBIT P5: TRUE COPY OF THE COMPLAINT DATED 17.11.2014 OF THE 5TH RESPONDENT.**
- EXHIBIT P6: TRUE COPY OF THE NOTICE DATED 18.11.2014 OF THE SECRETARY OF THE BHARANANGANAM GRAMA PANCHAYAT.**
- EXHIBIT P7: TRUE COPY OF THE REPLY TO EXT.P6 DATED 21.11.2014.**
- EXHIBIT P8: TRUE COPY OF THE NOTICE OF R4.**
- EXHIBIT P9: TRUE COPY OF THE NOTICE DATED 3.2.2015 OF THE 2ND RESPONDENT.**

**RESPONDENT(S)' EXHIBITS: NIL**

**/TRUE COPY/**

**P.A.TO.JUDGE**

**sts**

**P.R. RAMACHANDRA MENON, J.**

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**W.P.(C) No.4415 of 2015**  
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**Dated this the 12<sup>th</sup> day of February, 2015**

**JUDGMENT**

The petitioner has approached this Court with the following prayers:

*"i) To issue a writ of certiorari or any other appropriate writ order or direction to the respondents to call for all the records leading up to Ext.P9 and quash the same.*

*ii) To declare that the petitioner is entitled to get conducted an enquiry under S.12 of the Kerala Land Conservancy Act 1957 and an order before proceeding under S.11 of the Act directing him to vacate from the property or to demolish the structures therein.*

*iii) To issue a writ of certiorari or any other appropriate writ order or direction to the respondents 1 to 4 directing them not to proceed any further on Ext.P9, before conducting any enquiry and passing orders under Section 12 of the Kerala Land Conservancy Act and serving the same to the petitioner.*

*iv) To grant such other reliefs which this Hon'ble Court deem just and proper in the facts and circumstances of the case, including the cost of the petitioner."*

2. The learned counsel for the petitioner submits that the petitioner has not encroached into any land belonging to the Government or other authorities and in fact the land concerned, which is the subject matter of the writ petition, exclusively belongs to the petitioner, it being a registered holding. It is

stated that the petitioner was enjoying the said property for quite long and a building was in existence for more than five decades. When the petitioner started some repairs to the said building, the 5<sup>th</sup> respondent, who is in inimical terms with the petitioner, has preferred Ext.P5 complaint before the 1<sup>st</sup> respondent, which led to Ext.P9 proceedings, which has been passed without any regard to the actual facts and figures and also without any relevant provisions of law.

3. Heard the learned Government Pleader as well.

4. Going by the contents of Ext.P9 it is seen that, though it is styled as a notice, it has been issued under Section 11(3) of the Kerala Land Conservancy Act and the petitioner has been required to effect vacant surrender. Admittedly, no opportunity of hearing has been given to the petitioner.

5. In the said circumstances, the 2<sup>nd</sup> respondent is directed to treat Ext.P9 as a notice with liberty to the petitioner to submit statement of objections and to have it considered accordingly. The petitioner is free to file his explanation within 'two weeks' from the date of receipt of a copy of this judgment, upon which, the same shall be considered and appropriate orders shall be

passed in accordance with law, after hearing the petitioner and also the 5<sup>th</sup> respondent herein. This shall be done at the earliest, at any rate, within 'four weeks' thereafter.

The petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the 2<sup>nd</sup> respondent, for further steps.

The writ petition is disposed of.

**P.R. RAMACHANDRA MENON,  
JUDGE**

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