

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 8542 of 2008 (P)

PETITIONER :

**OUSEPH KURIAKOSE, AGED 58 YEARS
S/O. OUSEPH, RESIDING AT PUTHENPURAKKAL HOUSE
MANKULAM P.O., DEVIKULAM TALUK, IDUKKI DISTRICT.**

**BY ADVS.SRI.T.S.JOHN
SRI.SIJU RAJAN
SRI.JESTIN MATHEW**

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
IDUKKI, COLLECTORATE, PAINAVU, IDUKKI.**
- 2. THE TAHSILDAR,
TALUK OFFICE, DEVIKULAM.**
- 3. THE VILLAGE OFFICER,
MANKULAM, DEVIKULAM TALUK.**

R1 TO R3 BY GOVT. PLEADER SMT. SUSHEELA R. BHAT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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...2/-

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF ORDER OF ASSIGNMENT ON REGISTRY DATED NIL, APRIL, 1980 UNDER SIGNATURE SEAL OF THE DISTRICT COLLECTOR, IDUKKI.

EXT.P2 COPY OF REPRESENTATION DATED 7-6-1980 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DISTRICT COLLECTOR.

EXT.P3 COPY OF REMINER DATED 7-3-2008 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.8542 of 2008

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Dated this the 20th day of January, 2015

JUDGMENT

The petitioner has approached this Court seeking for a direction to the 1st respondent/District Collector to consider and pass appropriate orders on Ext.P2 and P3 representations and to undo the correction made on Ext.P2 as 40 Ares and to effect assignment of the entire 1 hectre of the property covered by Survey No.280/1 (Plot No.441) of Mankulam village in Devikulam Taluk of Idukki district.

2. The case of the petitioner is that, he was a landless agricultural labourer who was in possession of nearly one Hectare of property. A residential building was put up and was enjoying the property, effecting cultivation of pepper, tapioca, banana etc. The possession is stated as traceable much prior to 01.01.1977 and by virtue of the enabling provisions of law, he is entitled to have the entire extent assigned in his name. It was accordingly that necessary application was preferred before the 1st respondent and after considering the same, Ext.P1

assignment order was issued; but the actual extent of one Hectare came to be corrected and shown as 40 Ares. This was done at the instance of one officer of the Revenue who was not in terms with the petitioner and this made the petitioner to submit Ext.P2 application, followed by Ext.P3 reminder to redress his grievance. Since nothing has turned out in the positive, the petitioner has approached this Court by filing the writ petition for appropriate reliefs.

3. A statement has been filed on behalf of the 2nd respondent pointing out that the statement of the petitioner is not at all correct. It is stated that out of the total extent identified, the authorities have assigned only an extent of 40 ares as plot No.441/1 which is part of land comprising in old survey No.287/01 of Mankulam village. The balance land is separately numbered as plot No.441/02 which is an unassigned plot and it was never in the possession of the petitioner at any point of time. The version of the respondents is discernible from the contents of paragraphs 4 and 5 of the statement dated 14.01.2015 which are extracted below for the convenience of reference:-

“4. The land set apart for assignment is in Mankulam area. As a part of assignment procedures under KDH (Resumption of Lands) Act, 1971 and rules framed there under, the District Collector assigned one acre of land in plot 441/01 to the petitioner during 1980. The balance extent of land in plot 441 is 0.60 hectare, which is numbered as 441/02. Plot no.441/02 is an unassigned plot. The said plot is not in the possession of the petitioner. The petitioner is in possession and enjoyment of only one acre of land comprised in old survey No.287/1 part of Mankulam village (plot No.441/1). It is seen that the assignment order is seen issued after making correction in the extent of the plot assigned as one acre. Hence the petitioner is eligible to be getting assigned only one acre of land in plot No.441/1 and the District Collector, Idukki, is the assigning authority in this regard.

5. The petitioner is an assignee under KDH (Resumption of Lands) Act, 1971 in Mankulam area. The District Collector, Idukki assigned one acre of land to the petitioner in plot No.441/01 (old survey No.287/01) in Mankulam village as a part of assignment of land resumed under KDH (Resumption of Lands) Act 1971 during 1980. At present, the petitioner is in possession of an extent of one acre of land only comprised in Survey No.287/01 (plot No.441/1) which is assigned to him. It is realised that the petitioner is eligible for assignment of only one acres of land as he is in possession of only one acres of land.”

4. Heard both the sides in detail. Admittedly, Ext.P1 'patta' was assigned to the petitioner, way back in April 1980, which clearly mentions that the extent of assignment was only 40 Ares. The petitioner contends that he had submitted Ext.P2 application on 07.06.1980 for effecting necessary correction; but no proof is produced as to the filing of the same. The petitioner waited for 28 years to submit a reminder by virtue of Ext.P3 on 07.03.2008. But the said representation nowhere does refer to the earlier representation Ext.P2 dated 07.06.1980 allegedly preferred by the petitioner. It is immediately thereafter, i.e., within five days of filing Ext.P3 that the petitioner has approached this Court by filing the present writ petition, seeking further reliefs as aforesaid.

After hearing both the sides and also after considering the materials on record, this Court finds that there is absolutely no merit or bona fides in the contentions taken. There is callous inaction on the part of the petitioner. If at all

any right is there, discretionary jurisdiction of this Court cannot come to the rescue of the petitioner as per the decision **Rabindra Nath Bose and others v. Union of India and others** (AIR 1970 SC 470).

The writ petition stands dismissed accordingly.

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

sj