

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 9652 of 2009 (B)

PETITIONER :

**V.G.TOMY, AGED 38 YEARS,
S/O.LATE GEORGE, VATTANKANDATHIL HOUSE,
ASARIKKADU P.O., PEECHI VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.**

**BY ADVS.SRI.K.S.BABU
SMT.N.SUDHA**

RESPONDENTS :

- 1. SPECIAL TAHSILDAR (LAND ASSIGNMENT),
OFFICE OF THE SPECIAL TAHASILDAR, (LAND ASSIGNMENT)
CHEMPOOKAVU, THRISSUR.**
- 2. DISTRICT COLLECTOR,THRISSUR,
CIVIL STATION BUILDINGS, AYYANTHOLE, THRISSUR-3.**
- 3. STATE OF KERALA,
REP.BY THE CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

WP(C).No. 9652 of 2009 (B)

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF SALE DEED NO. 4716/1996 DT 25/10/1996 OF THE SUB REGISTRY OFFICE, OLLUKARA.**
- P2: COPY OF SALE DEED NO. 4180/1996 DT 24/9/1996 OF THE SUB REGISTRY OFFICE, OLLUKKARA.**
- P3: COY OF THE FORM OF ORDER OF ASSIGNMENT ON REGISTRY DT 30/11/1974 ISSUED BY THE R1.**
- P4: COPY OF RECEIPT NO. 29 DT 15/2/2000 ISSUED BY THE VILLAGE OFFICER, PEECHI TO THE PETITIONER.**
- P5: COPY OF THE JUDGMENT DT 7TH NOVEMBER, 1994 IN O.P. NO. 14740/1994 OF THIS HON'BLE COURT.**
- P6: COPY OF PATTA IN LA(P) 2554/PANANCHERRY DT 1/2/1996 ISSUED BY THE SPECIAL TAHSILDAR, LAND ASSIGNMENT, THRISSUR.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.9652 of 2009

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Dated this the 27th day of January, 2015

JUDGMENT

The petitioner is in possession of 15.02 Ares of land situated in survey No.1397/141/2 of Peechi Village covered by Ext.P1 sale deed dated 25.10.1996. The grievance is with regard to the non-issuance of patta to enjoy the property in a better manner.

2. The sequence of events and flow of title as described in the writ petition shows that the aforesaid property was possessed and enjoyed by one Ealiyamma in favour of whom Ext.P3 order of assingnment of the registry was issued by the 1st respondent as early as on 30.11.1974. But, proper patta was not issued. Subsequently, all the rights and interest on the said property were conveyed by Ealiyamma in favour of another person by name N.R.Sunil as per Ext.P2 sale deed bearing No.4180 of 1996 dated 24.09.1996 of the Sub Registry Office, Ollukkara. It is from the said person that the property was purchased by the petitioner as per Ext.P1 sale deed dated 25.10.1996 of the very same Sub

Registry. It is stated that the amount due to be cleared as mentioned in Ext.P3 stands cleared already and that the petitioner is having every right to have the patta assigned in her favour. Despite filing several representations, no positive relief was extended to the petitioner. Hence the present writ petition, seeking for the following prayers:

- i) Issue a writ of mandamus or other appropriate writ, order or direction directing the 1st respondent to take necessary steps to issue patta to the petitioner in respect of the property having an extent of 15.02 Ares of land comprised in Survey No.1397/141/2 of the Peechi Village covered by Ext.P1.
- ii) To declare that the inaction of the 1st respondent in not issuing the certificate of purchase to the petitioner on the basis of Ext.P1 to P4 in the light of Ext.P5 and P6 is highly illegal, discriminatory and violative of Article 14 of the Constitution of India.
- iii) Award cost of the proceedings.
- iv) Grant such other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the above case.

3. The writ petition was admitted on 03.04.2009. Despite the lapse of more than five years, no counter affidavit has been filed from the part of the respondents so far.

4. Heard the learned Government Pleader as well.

5. During the course of hearing, the learned counsel for the petitioner points out that similarly situated persons had approached this Court by filing O.P No.14740 of 1994, which was disposed of as per Ext.P5 judgment dated 07.11.1994 directing the concerned respondents to do the needful as specified therein. It was accordingly that the matter was considered by the competent authority who issued Ext.P6 patta in favour of the 7th petitioner in Ext.P5 judgment. The learned counsel points out that the property of the petitioner and the property possessed and enjoyed by the said party are situated in the same survey number.

6. The learned Government Pleader points out that there is no specific provision to assign the patta in favour of a 'subsequent transferee' and that, neither the petitioner, nor the predecessor in title, Ealiyamma, was a party to Ext.P5 judgment. The fact remains that there is no plea for the respondents that any of the conditions with regard to Ext.P3 or any provision of law restricting transfer of possession, if any, has been violated by the person by name Ealiyamma, in favour of whom Ext.P3 was issued. In fact, Ext.P3 was issued in the year 1974 and the first

conveyance was effected by the beneficiary as per Ext.P2 in the year 1996, which in turn was purchased by the petitioner as per Ext.P1 again executed in 1996 itself. No provision of law or any binding precedent placing any rider or hurdle in this regard is brought to the notice of this Court. No counter affidavit has been filed as mentioned already, to dispute the factual position, if any. The learned Government Pleader points out that no application has been filed by the petitioner so far and if any application is filed, it can be considered in the light of the relevant provisions of law existing as on date.

7. In the above circumstance, the petitioner is set at liberty to approach the respondents by filing necessary application in the prescribed form within two weeks, also satisfying the legal requirements; upon which the same shall be considered and appropriate order shall be issued, also in the light of Ext.P5 and P6, in terms of the relevant provisions of law in existence as on date, within 'two months' from the date of filing of such application.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

vdv //True Copy// P.A to Judge