

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 7264 of 2014 (G)

PETITIONER:

**KAILASAN, S/O.KRISHNAN NAIR,
EDAKKATHALATH HOUSE,
ELOOR KIZHAKKUMBHAGOM, UDYOGAMANDAL.P.O.**

**BY ADVS.SRI.DINESH R.SHENOY
SMT.DRISYA SURENDRAN
SRI.H.KIRAN**

RESPONDENT(S):

- 1. THE ADDITIONAL TAHSILDAR
TALUK OFFICE, NORTH PARAVUR, PIN-683 513.**
- 2. THE VILLAGE OFFICER
VILLAGE OFFICE, ELOOR VILLAGE, PIN-683 501.**

R1 BY ADV. GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 7264 of 2014 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 - COPY OF SALE DEED NO.5516 OF 2000, ALANGAD S.R.O.**
- EXHIBIT P2 - COPY OF THANDAPER NO.10219 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER.**
- EXHIBIT P3 - COPY OF BASIC TAX RECEIPT DATED 18.10.2000.**
- EXHIBIT P4 - COPY OF POSSESSION CERTIFICATE NO.470/2000 DATED 18.4.2000
ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.**
- EXHIBIT P5 - COPY OF POSSESSION CERTIFICATE NO.7267/2011 DATED 22.11.2011
ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P6 - COPY OF LOCATION CERTIFICATE DATED 17.3.2012
ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P7 - COPY OF BASIC TAX RECEIPT NO.3413360 DATED 9.4.2012**
- EXHIBIT P8 - COPY OF BUILDING PERMIT NO.BA.341/11-12 DATED 21.2.2012 ISSUED
TO THE PETITIONER.**
- EXHIBIT P9 - COPY OF BASIC TAX RECEIPT NO.4247505 DATED 22.9.2011.**
- EXHIBIT P10 - COPY OF TP ACCOUNT OF THE PETITIONER (TP.NO.2298 OF RE-
SURVEY THANDAPER)**
- EXHIBIT P11 - COPY OF RE-SURVEY SKETCH ISSUED BY THE SECOND
RESPONDENT**
- EXHIBIT P12 - COPY OF SURVEY SKETCH OF THE PETITIONER'S PROPERTY.**
- EXHIBIT P13 - COPY OF APPLICATION DATED 15.10.2013 SUBMITTED BY THE
PETITIONER BEFORE THE FIRST RESPONDENT TOGETHER WITH THE
REPORT OF THE 2ND RESPONDENT DATED 28.10.2013.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE

SHAJI P. CHALY, J.

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W.P.(C).No.7264/2014

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Dated this the 4th day of August, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking issuance of writ of a mandamus, directing the respondents to take immediate effective steps to correct the error in the Re-survey and revenue records in the light of report dated 28.10.2013 contained in Ext.P13 and consequential reliefs thereto.

2. Brief facts required for the disposal of the writ petition are as follows:

3. The petitioner is the absolute owner of 15 cents of land in Sy. Nos 233/21 and 233/20-C presently comprised in Re-survey nos.10 and 11, Block No.81 of Eloor Village, as per Ext. P1 sale deed. It was his further contention that he has effected mutation of the property and was in enjoyment of the same and has paid the village tax to the village authorities. It was the case of the petitioner that during the year 2012, when the petitioner approached the Village Officer for payment of village tax

with regard to the property covered under Ext. P1 sale deed, the Village Officer refused to accept the same on the ground that there were certain discrepancies regarding the extent of property covered under Ext.P1 sale deed and therefore tax could not be accepted by the Village Officer. Thereupon, petitioner made Ext.P13 application before the Village Officer to correct the Re-survey numbers of the property covered by Ext.P1 after making due enquiries. Since no action was taken by the respondents, petitioner has filed this writ petition.

4. The first respondent has filed detailed counter affidavit basically contending that the real cause of the petition could not be ascertained from the application of the petitioner or from the report of the Village Officer and therefore the case was handed over to the surveyor on 11.11.2014 for inspection and expert opinion. It was also stated that the Surveyor after site inspection and with the

support of the documents made a report on this matter and submitted the same before the 1st respondent on 28.12.2013. The counter affidavit further stated that the petitioner do not have the whole extend of property covered under Ext.P1 since the portion under Ext.P1 is 'puramboke land'. It was also submitted that in the report so drawn, the Surveyor enunciated that although the Survey number mentioned in the concerned document that is Ext.P1 were 233/20-C and 233/21, a portion of the Survey No.233/19 was also included in the property in actual possession, ie., an extent of 1.10 Ares of land in Survey No.233/19 was deliberately or otherwise transferred through Ext.P1 document. Other contentions are also raised in the counter affidavit as if to appear that there are serious discrepancies crept in Ext.P1 sale deed. Therefore the petitioner was not entitled to get rectification of the Survey number and the mistake occurred in the Re-survey

records. It was also contended that there were chances that the petitioner or his predecessors-in-interest could have been victims of malpractices managed by other persons to whom the property was sold by third persons. Any how, as per the counter affidavit, the petitioner was not entitled to get any relief as per Ext.P13 application submitted by him.

5. Petitioner has filed reply affidavit, refuting the contentions made in the counter affidavit and also contended that before drawing the report as stated in the counter affidavit no opportunity was provided to the petitioner nor no notice was issued to him so as to inform him about the survey of the land or any enquiries made by the respondent and further that petitioner was totally unaware of any enquiries made by the respondent.

6. Heard the learned counsel for the petitioner and the learned Senior Government Pleader.

7. Learned counsel for the petitioner contended

that he was not aware of any report drawn by the respondents ever since the submission of Ext.P13 application. There was no information from the respondents regarding any enquiries made by them. Therefore, basically he contended that if at all there was any report drawn by the authorities concerned, same was drawn behind by his back and without taking into account the attendant documents relating to the subject matter of the case and the report if any drawn was bad in law. He has also brought my attention to Ext.P17, a report drawn by the second respondent dated 13.03.2000, obviously, before the purchase of the property as per Ext.P1, under which it was stated by the Village Officer that even though the extent covered by Ext.P1 document was correct, the properties were lying in different survey numbers other than mentioned.

8. Be that as it may, in my view, pursuant to

Ext.P13 application definitely when the survey or enquiry was conducted by the respondents, a notice should have been provided to the petitioner enabling him to assist the respondents by providing necessary documents and details. That was not done by the respondent and for the first time in the counter affidavit it was stated that the report was drawn and the property of the petitioner includes 'puramboke land' also, which according to me, was not the correct approach.

9. Therefore, without expressing any opinion on merits, I direct the respondents to issue notice to the petitioner on the basis of Ext.P13 application dated 15.10.2013 submitted by the petitioner before the first respondent and take a decision in accordance with law after taking into account, Ext.P1 sale deed and other attendant documents drawn by the second respondent with regard to the property and also taking into account the details

contained under the old survey.

10. Therefore, the following directions are issued to the 1st respondent:

1. To issue notice to the petitioner within a period of 30 days from the date of receipt of a copy of this judgment and conduct enquiry as directed above,

2. Complete the same within a period of 45 days thereafter and

3). on drawing of report a copy shall also be furnished to the petitioner so as to enable him to prosecute remedies if required. I make it clear that I have not expressed any opinion on merits. The observations are made only for the just disposal of the

writ petition.

The writ petition is disposed of accordingly.

SHAJI P. CHALY
JUDGE

skr