IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 8088 of 2015 (I)

PETITIONER(S):

TEJI A.SAHIB,
S/O.AHAMMAD SAHIB, PALACKAL HOUSE,
PADINJATTUMBHAGOM KARA, ATHIRAMPUZHA VILLAGE
KOTTAYAM-686 563.

BY ADVS.SRI.P.VIJAYAKUMAR
SRI.C.R.REGHUNATHAN
SRI.M.V.ASHIM
SRI.R.BALAKRISHNAN
SRI.B.HARRYLAL
SRI.SUVIN.R.MENON

RESPONDENT(S):

1. DISTRICT COLLECTOR,
KOTTAYAM DISTRICT, CIVIL STATION P.O., KOTTAYAM
PIN-686 002.

2. ADDITIONAL TAHSILDAR,
KOTTAYAM TALUK, THIRUNAKKARA, KOTTAYAM H P O
KOTTAYAM DISTRICT, PIN-686 001.

3. VILLAGE OFFICER,
PEROOR VILLAGE, KOTTAYAM-686 637.

4. SHAMMI A.SAHIB,
S/O.AHAMMAD SAHIB, PALACKAL HOUSE,
PADINJATTUMBHAGHOM KARA, ATHIRAMPUZHA VILLAGE
KOTTAYAM-686 563.

R1 TO R3 BY ADV. GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AD

WP(C).No. 8088 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE PATTA 7260 DATED 14.05.1970 ISSUED FROM KOTTAYAM TALUK OFFICE.

EXHIBIT P2- TRUE COPY OF THE GIFT DEED NO.1514 DATED 19.03.1990.

EXHIBIT P3- TRUE COPY OF THE RELEASE DEED NO.4928 DATED 03.11.2007.

EXHIBIT P4- TRUE COPY OF THE TAX RECEIPT DATED 10.06.2013 ISSUED TO GOPALAKRISHNAN.

EXHIBIT P5- TRUE COPY OF THE SALE DEED NO.1764 DATED 11.06.2013 OF THE PRINCIPAL SRO, ETTUMANOOR IN FAVOUR OF 4TH RESPONDENT.

EXHIBIT P6- TRUE COPY OF THE TAX RECEIPT DATED 29.08.2013 ISSUED TO 4TH RESPONDENT.

EXHIBIT P7- TRUE COPY OF THE POSSESSION CERTIFICATE DATED 23.05.2014, ISSUED TO THE 4TH RESPONDENT BY THE 3RD RESPONDENT.

EXHIBIT P8- TRUE COPY OF THE GIFT DEED NO.2891 DATED 14.10.2014 IN FAVOUR OF PETITIONER.

EXHIBIT P9- COMMUNICATION MADE BY 3RD RESPONDENT REFUSING MUTATION DATED 12.02.2015.

EXHIBIT P10- TRUE COPY OF G.O.(M.S)355/97/R.D. THIRUVANANTHAPURAM DATED 20.05.1997 FORWARDED BY THE DISTRICT COLLECTOR, KOTTAYAM.

EXHIBIT P11- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P[C] 29980/2014.

RESPONDENT(S)' EXHIBITS
-------------------------------------- NIL

//TRUE COPY//

P.A. TO JUDGE

AD

K.VINOD CHANDRAN, J.

W.P(C) No.8088 of 2015

Dated this the 27th day of July, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the 3rd respondent is not effecting the mutation of the property having an extent of 4.65 Ares in (Old Sy 507/2B) Re-Survey of Peroor village, Kottayam district, despite the petitioner having produced Ext.P8 gift deed by which the 4th respondent assigned the property to the petitioner.

2. The property was originally assigned in favour of one Krishnan Velu Achari as per Ext.P1 in the year 1970 and the specific condition as per Ext.P1, was that there shall be no alienation of the land for a period of 10 years from the date of occupation. The assignee is said to have expired and the property devolved upon his legal heirs; wife and two children. The mother and daughter is said to have released their share in favour of the son by Ext.P3. Subsequently, the 4th respondent-brother of the petitioner was given sale of the said property by Ext.P5. That was in the year 2013 and the property was mutated as per the Transfer of Registry Rules and the 4th

respondent was paying tax also which is evidenced by Ext.P6.

3. However, on Ext.P8 gift deed being presented seeking mutation, the same was declined on the basis of Ext.P10. Ext.P11 is a judgment in a similar case wherein it was found that the Government order issued subsequently, cannot bind an earlier patta, since the holder would be governed only by the conditions in the patta. Herein also, Ext.P1 had a condition of interdiction from alienation for a period of 10 years. The alienation made by the legal heirs of the original assignee was long after the 10 years stipulated; in the year 2013. The subsequent transferee had also been allowed to pay tax after effecting mutation in the revenue records as per the Transfer of Registry Rules.

4. In such circumstances, there is no reason why the petitioner should be interdicted from paying tax by virtue only of Ext.P10. The property shall be mutated in the name of the petitioner as per Ext.P8 and the petitioner permitted to pay tax in accordance with law.

There shall be a declaration on the above lines and the same shall be done within one month from the date of production of the certified copy of the judgment.

The writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN
JUDGE

AD