

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 11933 of 2012 (N)

PETITIONERS:

G.MATHEWKUTTY, AGED 66 YEARS,
S/O.G.V.MATHAI,
RESIDING AT MUKALAMPLAVIL BUNGLOW, ADOOR PLANNIVIZHA
PATHANAMTHITTA.

BY ADVS.SRI.M.NARENDRA KUMAR
SMT.LAYA SIMON

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY, MINISTRY OF REVENUE,
SECRETARIAT, TRIVANDRUM
PIN-695 001. (ADDRESS OF R1 IS CORRECTED AS STATE OF
KERALA, REPRESENTED BY CHIEF SECRETARY, SECRETARIAT
TRIVANDRUM
PIN : 695001 AS PER ORDER DATED 05/06/2012 IN IA
7085/2012)
2. DIRECTOR OF SURVEY AND LAND RECORDS,
TRIVANDRUM, PIN-695 001.
3. DEPUTY DIRECTOR OF SURVEY AND LAND RECORDS,
COLLECTORATE P.O., PATHANAMTHITTA, PIN-691 523.

BY ADV. GOVERNMENT PLEADER, SRI. T.J. MICHAIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1: COPY FO THE SALE DEED NO.2463/1995 IN RESPOECT OF 49 CENTS OF LAND IN OLD SY.NO.340/9 OF ADOOR VILLAGE IN FAVOUR OF THE PETITIONER.
- EXHIBIT P2: COPY OF THE SALE DEED NO.2464/1995 IN RESPECT OF 78 CENTS OF LAND IN OLD SY.NO.340/7A/2 OF ADOOR VILLAGE IN FAVOUR OF THE PETITIONER.
- EXHIBIT P3: COPY OF THE SALE DEED NO.2465/1995 IN RESPOECT OF 79 CENTS OF LAND IN OLD SY.NO.340/7A/2 OF ADOOR VILLAGE IN FAVOUR OF THE PETITIONER.
- EXHIBIT P4: COPY OF THE DELIVERY KYCHIT DATED 1/12/1989 IN SFC(OP) 44/1977 IN THE COURT OF DISTRICT JUDGE, KOLLAM.
- EXHIBIT P5: COPY OF THE THANDAPER ACCOUNT NO.14744 OF ADOOR VILLAGE IN THE NAME OF THE PETITIONER.
- EXHIBIT P6: COPY OF TAX RECEIPT DATED 18/6/2002 ISSUED BY THE VILLAGE OFFICER, ADOOR IN THE NAME OF THE PETITIONER.
- EXHIBIT P7: COPY THE COMPLAINT DATED 2/2/2008 SUBMITTED BEFORE THE 2ND RESPONDENT BY THE PETITIONER.
- EXHIBIT P8: COPY OF THE ORDER NO.SSI.1996/07 DATED 15/9/2008 PASSED BY THE 3RD RESPONDENT.
- EXHIBIT P9: COPY OF THE ORDER NO.H2.2886/2008 DATED 13/5/2009 ISSUED BY the 2ND RESPONDENT.
- EXHIBIT P10: COPOY FO THE REPORT AND PLAN DATED 16/1/2010 SUBMITTED BY THE 3RD RESPONDENT.
- EXHIBIT P11: COPY OF THE ORDER DATED 15/2/12 ISSUED BY the 2ND RESPONDENT.
- EXHIBIT P12: COPY OF THE REPORT NO.1321/08 DATED 31/8/2011 CITED IN EXT.P11 AS REFERENCE NO.2.
- EXHIBIT P13: COPY OF THE RPORT NO.S2-19911/2010 DATED 22/11/11 CITED IN EXT.P11 AS REFERENCE NO.3.
- EXHIBIT P14: COPY OF THE PROCEEDINGS NO.SSI 1996/07 DATED 24/5/10 OF THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXHIBIT R2 (A): A COPY OF THE REPORT AND THE SKETCH DATED 19.2.2010
- EXHIBIT R2 (B): A COPY OF THE REPORT NO. S2.19911/2010.

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.11933 of 2012

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Dated this the 3rd day of November, 2015

J U D G M E N T

This Writ Petition is filed challenging the legality of Ext.P11 order, passed by the 2nd respondent/the Director of Survey and Land Records, Trivandrum, in derogation of Ext.P9 order passed by himself.

2. The petitioner purchased 2.06 Acres of land as per Exts.P1 to P3 sale deeds, in proceedings SFC (OP) No. 44/1977, of the Court of District Judge, Kollam, initiated by the Kerala Financial Corporation. Consequent on the auction conducted in SFC (OP) No.44/1977, the petitioner got delivery of 2.06 Acres of land as per Ext.P4 delivery kychit. Thus, the petitioner is the absolute owner in possession and enjoyment of 2.06 Acres of land. The petitioner was paying tax after the

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above property was mutated in the name of the petitioner. According to the petitioner, 14 cents of land in Sy. No. 340/7B of Adoor Village is a puramboke land and the same lies on the eastern side of the property covered by Exts.P1 to P3. In the re-survey plan, the Revenue authorities fixed 14 cents in Sy.No. 340/9 instead of Sy.No. 340/7B. Aggrieved by the said mistake in the re-survey, the petitioner approached the 3rd respondent and filed an application for correcting the mistake. But, the same was got dismissed by Ext.P8 order holding that fixation of 14 cents in the re-survey is correct. Aggrieved by Ext.P8, the petitioner preferred an appeal before the 2nd respondent and the 2nd respondent, after hearing the petitioner, allowed the appeal and directed the 3rd respondent to demarcate 14 cents of land from the old Sy.No. 340/7B on a finding that the demarcation presently done from the petitioner's property is not correct. In compliance with Ext.P9 order,

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the 3rd respondent again measured the disputed property and prepared Ext.P10 report and plan, rectifying the mistake, as directed by the 2nd respondent and the same has become final. The grievance of the petitioner is that after 2½ years, the 2nd respondent himself passed another order, contrary to Ext.P9 order passed by himself. Hence, the petitioner sought for issuing a writ of certiorari, order or direction quashing Ext.P11 order, which was passed in derogation to Ext.P9 order.

3. Heard the learned counsel for the petitioner and the learned Government Pleader.

4. Learned counsel for the petitioner advanced arguments challenging the legal validity of Ext.P11 order and the competency of the 2nd respondent to pass such an order repugnant to the earlier order passed 2½ years ago. It is also contended that since the Survey and Boundaries Act, 1923 does not confer power of

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review on the 2nd respondent, the 2nd respondent has no right or power to review the earlier order. In support of the above arguments, the learned counsel cited the decision reported in ***Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd.*** [2005(2) KLT 978 (SC)].

5. Per contra, the learned Government Pleader advanced arguments to justify Ext.P11 order, which is under challenge.

6. The short question that arises for consideration is whether Ext.P11 order is legally sustainable or not. Going by Ext.P9 order, it is seen that on 02.02.2008, the petitioner filed an application for correcting the mistake in the resurvey plan under the provisions of the Survey and Boundaries Act, 1923 before the 3rd respondent and the 3rd respondent passed an Order rejecting the relief sought for in the said application. Aggrieved by the denial of the relief sought for, the petitioner filed an

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Appeal before the 2nd respondent and the 2nd respondent passed Ext.P9 order, directing the 3rd respondent to prepare resurvey plan afresh rectifying the mistakes, after hearing the petitioner and affected parties if any, and verifying the records properly. He was also directed to re-fix the Edavazhi Purampoke of 14 cents of land from old Sy. No. 340/7B as per Settlement Register and other connected records. In compliance with the said order, the 3rd respondent passed Ext.P10 order, correcting the mistake as directed by the 2nd respondent and prepared a location sketch and survey records accordingly. But, without giving an opportunity of being heard to the petitioner, or without making any reference to Ext.P9 order, the 2nd respondent again passed Ext.P11 order, repugnant to the findings in Ext.P9 order passed by himself. It is pertinent to note that reference No.(1) shown in Ext.P11 shows that the basis of the order is the petition filed by the petitioner dated 02.02.2008, which

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was culminated in Ext.P9 order.

7. Apparently, it is seen that the petitioner was not given an opportunity of being heard, before passing Ext.P11 order and the findings are contrary to Ext.P9 order passed by the 2nd respondent as on 13.05.2009, in a Statutory Appeal. Here arises a question whether the 2nd respondent has jurisdiction and power to *suo motu* review the earlier Order passed by himself. Going by the Survey and Boundaries Act, 1923 it is seen that no power has been granted to the 2nd respondent to review the earlier order passed by him. In short, no power of review is not granted to the 2nd respondent. The legal position well settled by the Apex Court in ***Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd.*** [2005(2) KLT 978 (SC)] is that if the power of review is not specifically granted to an Authority under a Statute, the order passed earlier cannot be reviewed on merits and the

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review can be made only if there is any procedural irregularity. Going by Ext.P11 order, it is seen that there is no finding to the effect that the earlier proceedings have been vitiated by any kind of procedural irregularity. If that be so, the 2nd respondent, who is exercising power under the Survey and Boundaries Act, 1923 has no power to review Ext.P9 order passed earlier.

8. In the above view of the matter, Ext.P11 order will stand quashed.

The Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge