IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 8668 of 2015 (G)

PETITIONER:

K.V. BALACHANDRAN,
S/O. VELAYUDHAN ELAYEDOM,
KUTTANAPPILLY HOUSE (SREYAS),
VENNALA PO, KOCHI-682028,
EDAPPALLY SOUTH VILLAGE,
KANAYANNUR THALUK.

BY ADVS.SRI.K.V.JAYACHANDRAN
SRI.RAJU V.MATHEW
SRI.MATHEW ABRAHAM (OLIYIL)

RESPONDENT(S):

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1. THE DISTRICT COLLECTOR, ERNAKULAM,
COLLECTORATE, CIVIL STATION,
KAKKANAD, ERNAKULAM, KOCHI-682030.

2. REVENUE DIVISIONL OFFICER, FORT KOCHI,
ERNAKULAM, KOCHI-682001.

3. THE ADDITIONAL THAHASILDAR,
KANAYANNUR THALUK, THALUK OFFICE,
ERNAKULAM, KOCHI-682011.

4. THE VILLAGE OFFICER,
EDAPPALLY SOUTH VILLAGE,
VENNALA PO, KOCHI-682028.

*ADDL. R5 & R6 IMPLEADED

5. BALACHANDRAN, AGED 54,
S/O.LATE KARUNAKARA PANICKER,
PADIMITTATH HOUSE, WEST KADUNGALLOOR,
ALANGALDU VILLAGE, PARUR THALAUK, PIN - 683 110.

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6. RAJALAKSHMI,
D/O.LATE KARUNAKARA PANICKER,
SREEKOVIL(PADIMITTATH) HOUSE,
WEST KADUNGALLOOR, ALANGALDU VILLAGE,
PARUR THALAUK, PIN - 683 110.

R1 TO R4 BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT
ADDL. R5 & R6 BY ADV. SRI.B.JAYASANKAR

ADDL. R5 & R6 ARE IMPLEADED AS PER ORDER
DATED 10.04.2105 IN IA.4985/2015

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 8668 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1:	**TRUE COPYOF THE BASIC TAX REGISTER NO.2972 OF THE PROPERTIES OF KARUNAKARA PANICKER.**
EXT.P2:	**TRUE COPY OF THE TAX RECEIPT DT.26.1.1996 ISSUED BY VILLAGE OFFICER EDAPPALLY SOUTH VILLAGE.**
EXT.P2 (A):	**TRUE COPY OF THE TAX RECEIPT DT. 1.2.1968 ISSUED BY VILLAGE OFFICER EDAPPALLY SOUTH VILLAGE.**
EXT.P3:	**TRUE COPY OF THE BASIC TAX REGISTER NO 1014 OF PROPERTIES OF THE PETITIONER.**
EXT.P4:	**TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DT. 15.12.2012 OF THE PROPERTIES OF THE PETITIONER.**
EXT.P5:	**TRUE COPY OF THE CERTIFICATE DT.4.9.2008 ISSUED TO THE PETITIONER.**
EXT.P6:	**TRUE COPY OF THE PETITION 30.1.2013 SUBMITTED BEFORE 3RD RESPONDENT.**
EXT.P7:	**TRUE COPY OF CERTIFICATE DT.22.2.2014 ISSUED BY THE 2ND RESPONDENT.**
EXT.P8:	**TRUE COPY OF THE PETITION DT. 17.3.2014 SUBMITTED BEFORE THE REVENUE DIVISIONAL OFFICER.**
EXT.P9:	**TRUE COPY OF THE ORDER OF RDO DT.24.10.2014.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

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P.R. RAMACHANDRA MENON, J.

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W.P.(C)No.8668 OF 2015

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Dated this the 10th April, 2015

<u>J U D G M E N T</u>

The prayers are in the following terms:

> *"i) to issue writ of mandamus or such other appropriate writ order or directions quashing Ext.P7 certificate and P9 order and direct the 3rd and 4th respondents to make appropriate change in the registry and direct the 4th respondent to collect the property tax from the petitioner for 13.10 Ares held by him comprised in Sy. 61/6 and 61/8 of Edappally South Village, Kanayannur thaluk. Or in the alternative to issue writ of mandamus or such other appropriate writ order or direction quashing the mutation effected from Thandaper No.1014 of the petitioner and direct the 4th respondent to receive the property tax in furtherance of Ext.P2 tax receipt ;*
>
> *ii) to allow the petitioner to receive the costs of the proceedings from the respondents;*
>
> *iii) to issue such other appropriate writ order or directions as this Hon'ble Court deems fit in the nature and circumstances of the case"*

2. Refusal on the part of the revenue authorities in

effecting mutation of the properties in the name of the petitioner, because of some discrepancies with reference to survey number and the extent as reflected from the concerned title deeds, compelling the petitioner to have the grievance redressed only subject to execution of a correction deed or by approaching a civil court, made the petitioner to approach this Court.

3. The main defect pointed out is with regard to the property in Sy. No. 61/6, which portion was actually earmarked and set forth as the property covered by a Gift Deed, given by the executant, who was the father of respondents 5 and 6, in favour of the petitioner . As a matter of fact, after the demise of his uncle, i.e., the father of respondents 5 and 6, the petitioner got the property mutated and tax was remitted in terms of the Kerala Land Tax Act. The factual position in this regard is discernible from Ext.P2. Reference is also made to various other documents produced along with the writ petition, including Ext.P4.

4. The learned Counsel also submits that the respondents 5 and 6 have already entered appearance and filed a counter

affidavit, paragraph '2' of which reads as follows:

> *"It is true that partition took place in the family of my father and properties were set apart to my father, my paternal uncle and my paternal aunt. The petitioner obtained the share allotted to my paternal uncle. Now it is seen that the properties possessed by the petitioner is in Sy.61/6-1 and 61/8 having a total area of 13.21 Ares. It is lying as a separate plot and bounded by walls. We have no right over the properties possessed by the petitioner. Going by the Basic tax register of my father there is balance property in that account and it is in possession of the petitioner. We had properties in Sy.61/6 and 61/7 and had mutated our properties and we had been paying tax. Therefore we have no objection in mutating the property possessed by the petitioner in his name.*

5. Heard both the sides.

6. This court finds that the factual position with regard to the rights and interests of the petitioner over the property concerned stands conceded by the respondents 5 and 6 as well , particularly as per their counter affidavit, specifically making it

clear that the respondents 5 and 6 do not have any right or interest over the property concerned and that they do not have any objection in causing the property to be mutated in the name of the petitioner.

7. In the above circumstance, there will be a direction to the concerned respondents/3rd and 4th respondents (Addl. Tahsildar and Village Officer respectively) to re-consider the matter and make necessary changes in the Registry by making endorsement in terms of Transfer of Registry rules so as to enable the petitioner to enjoy the property in Sy.No.61/6, forming the subject matter of the writ petition. The proceedings as above shall be finalised at the earliest, at any rate within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the respondents 3 and 4 for further steps.

P.R.RAMACHANDRA MENON
JUDGE

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