

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 9234 of 2015 (D)

PETITIONER

**M/S. GECO PROPERTIES PVT.LTD.
REPRESENTED BY ITS MANAGING DIRECTOR, JOBY P.GEORGE
S/O.SCARIA GEORGE, PUNNAKUDITYIL, 35/765 A1
NORTH JANATHA ROAD, PALARIVATTAM.**

**BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)**

RESPONDENT(S):

- 1. THE TAHSILDAR, KUNNATHUNADU TALUK
KUNNATHUNADU, ERNAKULAM, PIN: 683 544.**
- 2. THE VILLAGE OFFICER, KUNNATHUNADU VILLAGE,
ERNAKULAM, PIN: 683 544.**
- 3. THE DISTRICT COLLECTOR,
ERNAKULAM, PIN: 682 030.**

R BY GOVERNMENT PLEADER SRI. K.C VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE RELEVANT PAGES OF SALE DEED NO.4142/2012, DATED 19/7/2012.**
- EXT.P2: TRUE COPY OF THE RELEVANT PAGES OF SALE DEED NO.5292/2012, DATED 19/9/2012.**
- EXT.P3: TRUE COPY OF THE RELEVANT PAGES OF SALE DEED NO.5335/2012, DATED 20/9/2012.**
- EXT.P4: TRUE COPY OF THE RELEVANT PAGES OF SALE DEED NO.176/2012, DATED 7/1/2013.**
- EXT.P5: TRUE COPY OF THE RELEVANT PAGES OF SALE DEED NO.1333/2013, DATED 4/3/2013.**
- EXT.P6: TRUE COPY OF APPLICATION DATED 16/7/2013 FOR EFFECTING MUTATION SUBMITTED BY THE PETITIONER**
- EXT.P7: TRUE COPY OF RECEIPT DATED 17/7/2013 ISSUED BY THE 2ND RESPONDENT ACKNOWLEDGING RECEIPT OF EXT.P6**
- EXT.P8: TRUE COPY OF REPRESENTATION DATED 27/8/2014 SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR.**
- EXT.P9: TRUE COPY OF NOTICE DATED 14/2/2012 ISSUED BY THE DISTRICT COLLECTOR TO THE PETITIONER**
- EXT.P10: TRUE COPY OF NOTICE DATED 7/11/2013 ISSUED BY THE DISTRICT COLLECTOR TO THE PETITIONER**
- EXT.P11: TRUE COPY OF PROHIBITION ORDER DT. 29/4/2013 BY THE 2ND RESPONDENT**
- EXT.P12: TRUE COPY OF REPLY DATED 7/12/2013 FILED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR**

**EXT.P13: TRUE COPY OF THE JUDGMENT DATED 15/1/2015 IN WPC
NO.93/2015 OF THIS HON'BLE COURT**

**EXT.P13(A): TRUE COPY OF THE STATEMENT GIVEN BY THE PETITIONER
BEFORE THE 1ST RESPONDENT**

**EXT.P14: TRUE COPY OF THE ORDER DATED 16/3/2015 ISSUED BY THE 1ST
RESPONDENT**

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

P.A TO JUDGE

SMM

P.R. RAMACHANDRA MENON,J

.....
W.P.(C) No.9234 OF 2015
.....

Dated this the 1st day of April, 2015.

J U D G M E N T

The petitioner has approached this Court with the following prayers

“i) Issue a Writ of Certiorari or other appropriate writ, order or direction quashing Exhibit P14;

ii) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 1st respondent to effect mutation in respect of the property covered by Exts.P1 to P5 and also to carry out necessary changes in the BTR and other Village Records in respect of the properties covered by Exts.P1 to P5 forthwith;

iii) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 1st respondent to effect mutation in respect of the properties covered by Exts.P1 to P5 without referring to the Circular of the 3rd respondent bearing No.L.10-16790/12 forthwith;

iv) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 2nd respondent to accept land tax in respect of the properties covered by Exts.P1 to P5 and also to issue possession certificate to the petitioner in respect of the said properties;

v) Issue a Declaration, declaring that the proceedings under the provisions of the Act, 2008 do not stand in the way of effecting mutation of the property covered by Exts.P1 to P5 or issuing possession certificate or accepting land tax;

And

vi) To grant such other reliefs as this Hon'ble Court may deem just and fit in the circumstances of the case.”

2. The grievance of the petitioner is with regard to the instruction, stated as issued by the concerned District Collector, instructing the revenue authorities not to effect mutation or to accept tax in respect of properties, which are coming within purview of Act 28 of 2008. No such instruction could have been legally issued by the concerned District Collector so as to curtail the rights and liberties of the parties concerned, to satisfy the tax in terms of Kerala Land Tax and the right to effect mutation in terms of the Transfer of Registry Rules.

3. Earlier, the petitioner approached this Court by filing W.P(C) No.93/2015, which was disposed of as per Ext.P13 judgment, directing the concerned respondent to consider and pass appropriate orders in the application preferred by the petitioner for effecting mutation and to satisfy the tax within the specified time. It was pursuant to the said verdict, that the matter was finalised by Additional Tahsildar by passing Ext.P14 order, rejecting the request, referring to the fact that the property was a paddy land and the same was filled up contrary to

the provisions of the Act 28 of 2008, which is under challenge in this writ petition.

4. Heard the learned Government Pleader as well.

5. After hearing both sides, this Court finds that, if at all any violation is there in the hands of the petitioner with regard to the alleged illegal filling of the paddy land, it is open for the competent authority to take appropriate steps in accordance with the provisions of the Act . But in so far as the ownership, possession and title are not under dispute, the petitioner is entitled to satisfy tax in respect of the concerned property under the Kerala Land Tax Act, after effecting mutation in terms of the Transfer of Registry Rules.

6. In the above circumstances, Ext.P14 will stand set aside and the 1st and 2nd respondents are directed to effect necessary changes for causing the transfer of registry to be endorsed in the due course in terms of the Transfer of Registry rules. The said respondents shall also accept the tax payable by the petitioner in respect of the concerned property in terms of Kerala Land Tax Act, as and when the same is tendered . It is further made clear

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that this will not bar the way of the third respondent to proceed against the petitioner or the property if any offence has been committed by the petitioner with reference to the provisions of Act 2008. In the above circumstance, the proceedings shall be finalised after affording an opportunity of hearing to the petitioner as well.

The writ petition is disposed of accordingly.

The petitioner shall produce a copy of this judgment along with a copy of the writ petition before the concerned respondent for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE**

smm

