IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 14357 of 2012 (T)

PETITIONER(S):
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1. SOBHANA V.,
   W/O.LATE GANGADHARAN NAIR,
   VAZHAKUTH HOUSE, KANJIRAM,
   POTTASSERY P.O., MANNARKKAD, PALAKKAD.

2. PRASOB,
   S/O.LATE GANGADHARAN NAIR,
   VAZHAKUTH HOUSE, KANJIRAM,
   POTTASSERY P.O., MANNARKKAD, PALAKKAD DISTRICT.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.RASHMI RAVINDRAN

RESPONDENT(S):
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1. TAHSILDAR,
   MANNARKKAD-678 582.

2. THE VILLAGE OFFICER,
   KOTTOPADAM NO.2, VILLAGE, ARIYOOR P.O.,
   MANNARKKAD, PALAKKAD-678 582.

3. THE DISTRICT COLLECTOR,
   PALAKKAD-678 001.

BY SENIOR GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 14357 of 2012 (T)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1. TRUE COPY OF THE PARTITION DEED DATED 3/7/1989 OF SRO MANNARKKAD.

EXHIBIT P2. TRUE COPY OF THE REPRESENTATION DATED 10/2/2009.

EXHIBIT P3. TRUE COPY OF THE REPRESENTATION WITH POSTAL ACKNOWLEDGEMENT DATED 13/09/2011.

EXHIBIT P4. TRUE COPY OF THE JUDGMENT DATED 26/09/2011 IN WPC NO.25474/2011.

EXHIBIT P5. TRUE COPY OF THE ORDER DATED 14/11/2011 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P6. TRUE COPY OF THE APPEAL AND STAY PETITION.

EXHIBIT P7. TRUE COPY OF THE JUDGMENT DATED 13/1/2012 IN WPC NO.1018/2012.

EXHIBIT P8. TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER THROUGH THEIR COUNSEL.

EXHIBIT P9. TRUE COPY OF THE ORDER NO.LRG/1/2012/29004/9 DATED 7/5/2012.

EXHIBIT P10. TRUE COPY OF THE JUDGMENT IN OP 31490/1999 DATED 14/6/2007.

EXHIBIT P11. TRUE COPY OF THE JUDGMENT IN WPC NO.33611/2006.

EXHIBIT P12. TRUE COPY OF THE GAZETTE NOTIFICATION OF THE EVICTION PROCEEDINGS ACT 1999.

EXHIBIT P13. TRUE COPY OF THE STAY OF EVICTION ACT, 2005 DATED 8/11/2006.

RESPONDENTS' EXHIBITS

EXHIBIT R1: TRUE COPY OF THE DIRECTION TO ACCEPT TAX FOR 52 ¾ CENTS DATED 14/11/11.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M.SHAFFIQUE, J

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W.P.C.No.14357 of 2012

Dated this the 9th day of November 2015

J U D G M E N T

The petitioners have approached this Court seeking for a direction to the respondent authorities to receive land tax. Though several attempts were made to call upon the respondents to receive land tax in respect of 53 ¼ cents and 42 ¾ cents in different survey numbers in Kottopadom No.2 village in Mannarkkad Taluk, request has been rejected in terms of Ext.P5 by which the Tahsildar had accepted land tax in respect of 52 ¾ cents whereas land tax was not received in respect of 43 ¼ cents.

2. Learned counsel for the petitioners submits that, by virtue of a partition deed executed as Ext.P1, the petitioners came in possession of the said properties. It is also contended that the petitioners' predecessor had purchased the property from the original declarant, against whom ceiling case was pending and even if the property is treated to be an excess land, petitioners are in possession and enjoyment of the property in terms of the provisions of the Kerala Stay of Eviction Proceedings Act, 2005. The said Act was in force till 2006, by which time,

Section 7E was incorporated under the Kerala Land Reforms Act (hereinafter referred to as the 'KLR Act') which gives benefits to the persons in possession, who had acquired the property by way of sale, agreement or any other mode by payment of valid consideration to get the benefit of deemed tenancy. It is submitted that the said benefit should be available to the petitioners also.

3. Counter affidavit has been filed by the 1st respondent inter alia stating that the Village Officer had reported that out of the 96 cents of land, 42 ¾ cents is included in the excess land ceiling case of Sri.Kunnath Muhammed and the rest 52 ¾ cents is with the possession of the petitioners. Petitioners are heard and documents were verified and orders were issued to accept tax only to 52 ¾ cents. It is stated that the excess land had already been taken possession by the respondent authorities.

4. Having regard to the aforesaid factual disputes involved in the matter, I do not think that the authorities under the Kerala Land Tax Act is entitled to receive tax unless the petitioners are in a position to prove that they are either deemed tenants getting the benefits of Section 7E of the KLR Act or having obtained

purchase certificate in terms of Section 106B of the KLR Act. That apart, neither this Court nor the Tahsildar can decide as to whether the petitioners are deemed tenants as per Section 7E of the KLR Act or the questions of fact can be decided based on the factual materials placed before the competent authorities. Under such circumstances, I do not think that Ext.P5 proceedings approved by the District Collector suffers from any legal infirmity warranting interference by this Court under Article 226 of the Constitution of India.

5. Accordingly, reserving the right of the petitioners to approach the competent authorities for declaration in terms of Section 7E of the KLR Act and thereafter to approach the authorities for payment of tax, this writ petition is disposed of. Petitioner is at liberty to approach the Land Tribunal within a period of two months from the date of receipt of a copy of this judgment.

Interim order granted originally on 20/06/2012 will continue until the proceedings are complete.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr