

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 15652 of 2008 (L)

PETITIONER(S) :

PICHAYYA , S/O. EASWARAN, AGED 55,
H.NO. M-10, KARUPPAN COLONY, WARD NO.2
SURYANELLI P.O. - DIED

PAPPA, W/O. PICHAYYA, AGED 50
H.NO: M-10, KARUPPAN COLONY
WARD NO:2, SURYANELLI P.O

(IMPLEADED AS THE PETITIONER VIDE ORDER DT.27.3.2009 IN
I.A.4349/2009)

BY ADV. SRI.A.X.VARGHESE

RESPONDENT(S) :

1. DISTRICT COLLECTOR, IDUKKI

2. TAHSILDAR,
UDUMBANCHOLA TALUK OFFICE, IDUKKI.

3. VILLAGE OFFICER,
CHINNAKANAL VILLAGE.

R,R1-3 BY SPL. GOVERNMENT PLEADER SMT.SUSHEELA R.BHAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 15652/2008

PETITIONER'S EXTs:

EXT.P1: TRUE COPY OF THE CASTE CERTIFICATE ISSUED BY THE 2ND
RESPONDENT DT.22.2.2008

EXT.P2: -DO- POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER,
CHINNAKANAL

EXT.P3: PHOTO COPY OF THE INTIMATION CARD

EXT.P4: -DO- DT. 14.10.2004

EXT.P5: -DO- FROM THE 1ST RESPONDENTS OFFICE

EXT.P6: -DO- JUDGMENT DT.13.12.2006 IN WPC 40176/2003

EXT.P7: TRUE COPY OF THE ORDER DT.28.3.2008

EXT.P8: DEATH CERTIFICATE OF PICHAYA

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO.15652 OF 2008

Dated this the 6th February, 2015.

JUDGMENT

The petitioner has filed this writ petition challenging Ext.P7 order of the first respondent passed pursuant to the direction issued by this Court in Ext.P6 judgment. The petitioner claims to be a homeless and landless person belonging to a Scheduled Caste community. He also claims to be in possession of an extent of 2 acres of puramboke land comprised in survey No:20/1 of Chinnakanal village. According to the petitioner he has been cultivating the said land with cardamom and other improvements. Though he had sought for assignment of the land to his name, he complains that his application has not been considered. He had represented the matter to the concerned Minister. The Minister had thereupon forwarded his application to the first

respondent. The first respondent had issued Ext.P5 acknowledgement to him. According to the petitioner, had also been directed to appear before the authorities on 23.2.2001 to consider his application. However, in the meantime action was initiated to evict him from the property.

2. The petitioner in the above circumstances approached this Court by filing WPC 40176/2003. In the said writ petition initially there was a direction permitting the petitioner to take crops from cardamom cultivation if any effected by him. Thereafter, by Ext.P6 judgment, the said writ petition was disposed of directing the first respondent to consider the petitioner's claim. Accordingly the matter was considered and by Ext.P7 it has been found that the petitioner was liable to be evicted as an encroacher from the puramboke land.

3. According to Mr.Jojo A.V, counsel for the petitioner the petitioner had submitted an application for assignment in respect of the land. He is residing in the property. He has also improved the property by effecting valuable cultivation

like cardamom. There is no justification for not considering his application for assignment. He therefore seeks the issue of appropriate directions setting aside Ext.P7 order. Reliance is placed on the decision of the Hon'ble Supreme Court in Chameli Singh and others v. State of U.P and another [(1996) 2 SCC 549] to contend that it is the duty of the State to provide home to every person. Without a home, the life of a person would be reduced to mere animal existence, which would be violative of Art.21 of the Constitution.

4. A counter affidavit has been filed on behalf of the respondents. According to the counter affidavit, the petitioner is only an encroacher of puramboke land. He is not residing in the said property. He is residing at Karuppan colony which is 0.5 kms. away from the particular land. He has not improved the property by cultivating the same, as alleged. Upon conduct of a survey, it was found that, the property contained no cultivation except some eucalyptus trees. The petitioner not being a tribal is not entitled to

assignment of any portion of the land. Therefore, it is contended that this writ petition is only to be dismissed.

5. Heard. Though the case of the petitioner is that he is in possession of an extent of 2 acres of land comprised in survey No:20/1 of Chinnakanal village absolutely no evidence has been produced to support his contention. The counsel places reliance on Ext.P2 possession certificate. I notice that the same has been issued to one Smt.Ayamma, w/o. Mariyan. The petitioner's name does not figure therein. According to the petitioner, Ext.P3 is a communication received by him directing him to attend an enquiry on 23.3.2001. However, Ext.P3 order does not disclose the designation of the person who has issued the same or the name of the person to whom it was issued. It is true that the petitioner had submitted a representation to the Minister for backward classes and that the said application had been forwarded to the first respondent for action. According to the counsel for the petitioner, this Court had directed the consideration of his

application for assignment. However, a reading of the operative portion of Ext.P6 judgment does not support any such conclusion. The direction in Ext.P6 reads as follows:-

“There will be a direction to the first respondent to look into the matter with notice to the petitioner and take appropriate action in accordance with law on the application, if any made by the petitioner for assignment within four months from the date of receipt of a copy of the judgment.”

It is clear from the above that the direction was only to take appropriate action on the application “if any” made by the petitioner. It has been found on enquiry that the petitioner is not in possession of the land, in question. He is residing at a place 0.5kms away from the land, in Karuppan colony. Since the possession asserted by the petitioner is disputed by the Government, it is not possible for me to ascertain whether he has possession of the land or whether the possession continues. The petitioner has admittedly not made any application for assignment to the Tahsildar who is the

competent authority under the Land Assignment Act. The first respondent has considered all the relevant aspects of the case and has issued Ext.P7 order. I do not find any infirmity in the said order justifying interference with the same. This writ petition fails and is therefore dismissed.

The counsel for the petitioner submits that if the petitioner prefers an application for assignment under the Land Assignment Act, the same may be considered. If the petitioner submits a proper application under the Land Assignment Act, needless to observe that the concerned authority shall consider the same and pass appropriate orders thereon in accordance with law.

Sd/-
K. SURENDRA MOHAN
Judge

jj

/True copy/

