

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 15963 of 2013 (U)

PETITIONER(S) :

**THOMAS PHILIPOSE, AGED 87 YEARS,
S/O.LATE THOMAS, MUKALUVILA PUTHEN VEEDU, KOTTUKAL,
MANJAPPARA P.O., KOLLAM DISTRICT.**

**BY SRI.K.JAJU BABU (SENIOR ADVOCATE)
ADV. SRI.N.K.KARNIS**

RESPONDENT(S) :

- 1. DIRECTOR OF SURVEY,
THIRUVANANTHAPURAM - 695 001.**
- 2. DISTRICT SURVEY SUPERINTENDENT,
COLLECTORATE, KOLLAM - 691 001.**
- 3. ADDITIONAL TAHASILDAR, TALUK OFFICE,
PATHANAPURAM, PUNALUR, KOLLAM - 689 695.**
- 4. VILLAGE OFFICER, ANCHAL VILLAGE,
ANCHAL, KOLLAM - 691 306.**

*** ADDITIONAL R5 IMPEADED**

- 5. LUBANATH BEEVI, AGED 55 YEARS,
W/O.ABDUL KAREEM , RESIDING AT AJAYA MANZIL,
NEAR EAST H.S., ANCHAL P.O. KOLLAM DISTRICT.**

*** ADDITIONAL R5 IS IMPEADED AS PER ORDER DATED 07.07.2014 IN
I.A.NO.2643/2014.**

**R1 TO R4 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
RADDL. 5 BY ADV. SRI.M.S.RADHAKRISHNAN NAIR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: TRUE COPY OF THE SALE DEED NO.320/1961.**
- EXT.P2: TRUE COPY OF THE SETTLEMENT DEED BEARING NO.2764/61 OF PATHANAPURAM SUB REGISTRAR OFFICE.**
- EXT.P3: TRUE COPY OF THE CERTIFICATE ISSUED FROM THE PANCHAYATH DATED 11.06.2013.**
- EXT.P4: TRUE COPY OF THE LAND TAX RECEIPT DATED 09.06.1976.**
- EXT.P5: TRUE COPY OF THE LAND TAX RECEIPT DATED 06.12.2005.**
- EXT.P6: TRUE COPY OF THE COMPLAINT DATED 08.02.2012 OF THE PETITIONER BEFORE THE DISTRICT COLLECTOR, KOLLAM.**
- EXT.P7: TRUE COPY OF THE LOCATION SKETCH OF THE PROPERTIES.**
- EXT.P8: TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 11/06/2012.**
- EXT.P9: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 09/07/2012.**
- EXT.P10: TRUE COPY OF APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXT.P11: TRUE COPY OF JUDGEMENT IN W.P.(C).NO.1809/2013.**
- EXT.P12: TRUE COPY OF ORDER DATED 17.05.2013 OF 1ST RESPONDENT.**
- EXT.P13: TRUE COPY OF THE LAND TAX RECEIPT ISSUED BY THE ANCHAL VILLAGE OFFICE DATED 20.05.1986.**
- EXT.P14: TRUE COPY OF THE LAND TAX RECEIPT ISSUED BY THE ANCHAL VILLAGE OFFICE DATED 02.01.1990.**
- EXT.P15: TRUE COPY OF THE LAND TAX RECEIPT ISSUED BY THE ANCHAL VILLAGE OFFICE DATED 27.09.1995.**
- EXT.P16: TRUE COPY OF THE LAND TAX RECEIPT ISSUED BY THE ANCHAL VILLAGE OFFICE DATED 19.12.2003.**
- EXT.P17: TRUE COPY OF THE CERTIFICATE DATED 23.08.2014 ISSUED BY THE ASSISTANT ENGINEER, ELECTRICAL SECTION, ANCHAL.**
- EXT.P18: TRUE COPY OF THE CERTIFICATE ISSUED BY ANCHAL GRAMA PANCHAYAT DATED 12.09.2014.**

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RESPONDENT(S)' EXHIBITS :

EXT.R5(A): TRUE COPY OF THE PETITION SUBMITTED BEFORE THE R.D.O.

EXT.R5(B): TRUE COPY OF THE OLD SURVEY PALN OF SY.NO.449.

**EXT.R5(C): TRUE COPY OF THE RESURVEY PLAN OF BLOCK NO.33 FILED
NO.548.**

//TRUE COPY//

PA.TO JUDGE.

Msd.

A.M. SHAFFIQUE, J.

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W.P. (C) No. 15963 of 2013

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Dated this, the 26th day of October, 2015

J U D G M E N T

Petitioner had approached this Court challenging Exts.P8, P9 and P12 and for a direction to the respondents to permit the petitioner to remit tax for 15 cents of property in Old Sy.No.446/10/21 of Anchal Village as per Thandaper No.15468 and to correct the mistake in the resurvey records.

2. Petitioner submits that he purchased 15 cents in the aforesaid survey number. At the time of resurvey, property had been reduced to 11.5 cents. He therefore lost 3.5 cents which is now treated as a pathway/road. According to the petitioner, the manner in which survey had been conducted was wrong and therefore it requires rectification of resurvey particulars. Though appeal was filed before the appellate authority challenging the survey particulars, it came to be rejected, against which this writ petition is filed.

3. Counter affidavit has been filed by the 1st respondent *inter alia* stating that the resurvey particulars had been

completed after conducting field inspection and verification of records. It was found that the petitioner was entitled for possession and enjoyment of 4.65 ares of land in Block No.33, Re.Sy.No.548/2 as per TP No.4376. It is stated that resurvey was conducted after notice to the petitioner and calling upon him to be present on 20/3/2013 with relevant documents to prove his claim. Since he failed to appear, resurvey was conducted rejecting his claim and Ext.P12 order was passed.

4. It is also stated that as per Old Sy.No.446/10/21 of Anchal Village, petitioner was remitting tax for the 15 cents of property before the implementation of resurvey. During resurvey, initially the purmaboake land was demarcated and surveyed and thereafter the private holdings were surveyed. It is based on old survey records, documents and possession of the property that the survey had been conducted.

5. Learned senior counsel for the petitioner would however submit that the survey was conducted without notice to him as he was in North India during the relevant time. It is stated that the survey is conducted without any basis as his title documents were not considered at the time of resurvey.

6. Be that as it may, having regard to the fact that resurvey of the property has become final and the appeal filed by the petitioner had been rejected, the remedy of the petitioner is to file a suit as provided under Section 14 of the Kerala Survey and Boundaries Act, 1961. When the dispute is with reference to the extent of property, the determination of boundary and whether the petitioner was in possession of any puramboke land etc., these are all matters which could be agitated and the resurvey particulars can be corrected only if the petitioner will be in a position to get a decree in the suit. That apart, the petitioner can as well file a suit for declaration of title if he has title over the puramboke land. As the remedy of the petitioner is to file a suit either under Section 14 of the Act or by exercising his common law right, I am of the view that the challenge to the resurvey particulars is not required to be entertained in this writ petition.

Accordingly, reserving right of the petitioner to approach the Civil Court for appropriate reliefs, this writ petition is disposed of. It is made clear that the period spent by the petitioner before this Court for agitating the orders passed by the authorities shall be excluded for computing the period of limitation. The interim order

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granted by this Court restraining dispossession of the petitioner shall be kept in abeyance for a period of three months to enable the petitioner to approach the Civil Court for appropriate reliefs.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
27/10/2015

//True Copy//

P.S to Judge