

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 17492 of 2010 (J)

PETITIONERS:

1. **VIVIAN JOLLY**
TC 11/1868 (1),
HAPPY HOMES, TILAK NAGAR, PAROTTU KONAM,
NALANCHIRA P.O., THIRUVANANTHAPURAM-15.
2. **MRS.MABLE JOLLY,**
T.C.11/1868(1), HAPPY HOMES, TILAK NAGAR,
PAROTTU KONAM,NALANCHIRA P.O.,
THIRUVANANTHAPURAM-15.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

1. **STATE OF KERALA**
REPRESENTED BY SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. **DISTRICT COLLECTOR,**
THIRUVANANTHAPURAM.
3. **REVENUE DIVISIONAL OFFICER,**
THIRUVANANTHAPURAM.
4. **ADDITIONAL TAHSILDAR,**
TAHSILDAR'S OFFICE, THIRUVANANTHAPURAM.
5. **VILLAGE OFFICER,**
PETTAH VILLAGE OFFICE,
PETTAH, THIRUVANANTHAPURAM.

R1-R5 BY GOVERNMENT PLEADER SRI. P.V. ELIAS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE JUDGMENT DATED 18-10-1996 IN OS No.1937/1989 ON THE FILES OF THE MUNSIFF COURT, THIRUVANANTHAPURAM.
- EXT- P2- TRUE COPY OF THE GIFT DEED No.3386/2006 DATED 09-08-2006.
- EXT- P3- TRUE COPY OF THE APPLICATION DATED 29-08-2006 ALONG WITH FORM No.1.
- EXT- P4- TRUE COPY OF THE PETITION FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT DATED 22-12-2006.
- EXT- P5- TRUE COPY OF THE NOTICE DATED 18-06-2008 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT.
- EXT- P6- TRUE COPY OF THE ORDER DATED 06-08-2008 ISSUED BY THE 2ND RESPONDENT WITH FILE No.B9-87393/08.
- EXT- P7- TRUE COPY OF THE MEMORANDUM OF COMPLAINT FILED BY THE PETITIONERS BEFORE THE LOK AYUKTA AS COMPLAINT No.969/2008.
- EXT- P8- TRUE COPY OF THE STATEMENT FILED BY THE DISTRICT COLLECTOR.
- EXT- P9- TRUE COPY OF THE REPLY AFFIDAVIT FILED BY THE PETITIONER.
- EXT- P10- TRUE COPY OF THE ORDER DATED 02-11-2009 IN COMPLAINT No.969/2008 ON THE FILES OF THE LOK AYUKTA.
- EXT- P11- TRUE COPY OF THE OBJECTION FILEX TO THE PROCEEDINGS UNDER THE ACT.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

C.K. ABDUL REHIM, J.

W.P.(c) No. 17492 OF 2010-J

DATED THIS THE 4th DAY OF MARCH, 2015.

J U D G M E N T

The petitioners are husband and wife. Challenge is against Ext.P6 order passed by the 2nd respondent dismissing an application submitted by the 1st petitioner seeking to effect mutation of 10 cents of property which is comprised in Sy. No.1792/2 of Petta Village in Thiruvananthapuram District, in favour of the 2nd petitioner. The petitioners are also challenging Ext.P10 order passed by the Kerala Lok Ayukta dismissing a complaint filed by the petitioners challenging Ext.P6 order.

2. Averments in the writ petition is to the effect that, the property in question belonged to one Sri. Celestine Fernandez, who is the brother of the 1st petitioner's father. In 1956 Sri. Celestine Fernandez agreed to sell the property to the 1st petitioner and on that basis the entire sale consideration was paid to him. But before execution of the sale deed Sri. Celestine Fernandez, who was a citizen of

Malaysia, was summoned by the Royal Air Force to Singapore and he had left the country after leaving all the original title deeds with the 1st petitioner. Sri. Celestine Fernandez died in Singapore in the year 1958 in an Air crash. Thereafter the property was dealt with by the 1st petitioner keeping it in possession and by paying the Basic Tax in the name of Sri. Celestine Fernandez. It is stated that, there was an attempt by certain persons to encroach into the land which was resisted by the 1st petitioner through a civil suit filed as O.S. No.1937/1989, before the Munsiff Court, Thiruvananthapuram. Exhibit P1 judgment would indicate that the civil court had granted a decree of permanent prohibitory injunction in favour of the 1st petitioner restraining the defendants therein from trespassing into the property. Thereafter, in the year 2006, the 1st petitioner executed a settlement deed gifting the property in question in favour of the 2nd petitioner as per Ext.P2. The 2nd petitioner thereafter submitted Ext.P3 application before the 5th respondent seeking to effect the

transfer of registry in her favour. Making an allegation that the 5th respondent had demanded illegal gratification for effecting the mutation, the petitioners submitted Ext.P4 complaint before the 3rd respondent. According to the petitioners, since the 3rd respondent had not taken any action based on Ext.P4, the petitioners have approached the 2nd respondent. The 2nd respondent conducted a hearing on the matter as evidenced from Ext.P5 notice and issued Ext.P6 order dismissing the application finding that the petitioners have not produced any document to prove ownership over the land. It is evident from Ext.P6 that the Tahsildar concerned had reported that the petitioners have not produced any documents to prove that the 2nd petitioner has got right over the property, such as, Death Certificate of the original owner, Legal Heirship Certificate, Relationship Certificate etc. Aggrieved by Ext.P6 the petitioners have approached the Kerala Lok Ayukta. In Ext.P10 order the Lok Ayukta found that the petitioners have failed in substantiating their case that they became

the legal owners of the property. No document was produced to prove their title. It was categorically found that, no reliance can be placed on Ext.P2 document, because the 1st petitioner was lacking legal title over the property and that the original owner Sri. Celestine Fernandez had not executed any sale deed in favour of the 1st petitioner. It was specifically found that ownership of the property was not devolved upon the 1st petitioner and the mere payment of land tax cannot be taken as proof of title. Having found that respondents 2 & 3 had acted only in accordance with statutory provisions, the allegations were discarded. Therefore the complaint was dismissed.

3. Contention of the petitioners are that, the application for transfer of registry was submitted only under Rule 28 of the Transfer of Registry Rules, 1966. Therefore the application ought to have been considered based on the provisions contained in the Rule 28 and rejection of the application based on the finding that the petitioners have failed in producing the document of title,

cannot be sustained. In support of the above contention the petitioners are relying on the contents of the covering letter submitted along with the application for mutation (covering letter of Ext.P3). In the said letter the 2nd petitioner had specifically mentioned that she is eligible to get the mutation effected under Rule 28. But it is to be noted that, in the application submitted in the prescribed format, the 1st petitioner had specifically shown the number of Ext.P2 document. Further it is evident that the copy of Ext.P2 document was submitted along with the application.

4. In the counter affidavit filed on behalf of the 2nd respondent it is mentioned that Sri. Celestine Fernandez has not transferred his right, title and ownership over the property to anybody and the attempts of the 1st petitioner was only to occupy the above said property through unlawful methods. Since Ext.P2 settlement deed was executed by the 1st petitioner without having any title over the property the 5th respondent had rejected the application for mutation. But it is stated that the 2nd petitioner had

submitted an application before the 2nd respondent under Rule 28, which was also dismissed by the 2nd respondent. According to the 2nd respondent, it was an appeal which was dismissed through Ext.P6 order, which was filed against the order of the 3rd respondent.

5. It is evident that the petitioners have agitated the matter before the Lok Ayukta on the basis that there was an agreement for sale entered by Sri. Celestine Fernandez with the 1st petitioner and he was in possession of the property based on such an agreement. It is pertinent to note that the petitioners have never agitated the issue before the Lok Ayukta based on any specific contention that the application for mutation was under Rule 28. Under such circumstances this court is of the considered opinion that the application for transfer of registry was never pursued based on provisions contained under Rule 28. The matter was also not agitated before the Lok Ayukta based on any contentions under Rule 28. Therefore this court do not find any reason to interfere with the impugned orders. But at

the same time the question remains as to whether the 2nd petitioner is entitled to get mutation effected in her favour, under the provisions of Rule 28, based on any claim of adverse possession.

6. Rule 28 of the Transfer of Registry Rules 1966 provides that if it is proved in a summary enquiry that parties having no document of title are in actual, continuous, and uninterrupted possession as reputed owners of the land in question for 12 years or more, the transfer of Registry can be made after complying with due notice and other formalities provided in Note (ii) to Rule 10. It further provides that, actions contemplated under the said Rules can be taken by the Revenue Officers, either suo motu or on application presented by the parties concerned. It also provides that, with respect to the proof of possession, evidence of the kist receipts or testimony of the Village Officer can be accepted. But it is provided that absence of any such proof shall not be considered entirely to invalidate the claim and oral evidence of possession can also be

accepted. For an entitlement for getting the transfer of Registry under Rule 28, it is for the person making the application to prove that they do not have any document of title and that they were in adverse possession on actual, continuous and uninterrupted basis for a period of 12 years or more. As already observed, since the petitioners have set up their claims based on Ext.P2 and also on other factual contentions of sale by Mr.Celestine Fernandez, it cannot be construed that the petitioners had tendered any proof before the authority concerned to establish their claim under Rule 28. However, if the petitioners have got any consistent case that they are entitled to get the Transfer of Registry effected under Rule 28, it is left open to them to approach the competent authority in the Revenue Department with any fresh application in that respect.

7. Therefore, while dismissing this writ petition, declining interference with respect to Ext.P6 and P10 orders, liberty is reserved in favour of the petitioners to approach the competent authority in the Revenue

Department with application for effecting Transfer of Registry under Rule 28 of the Transfer of Registry Rules 1966. Needless to observe that if any such application is received, the competent authority shall deal with the same in accordance with the relevant statutory procedure. A decision shall be taken on such application based on fresh evaluation of all the relevant aspects totally untrammelled by any of the findings contained in Ext.P6 order of the 2nd respondent or in Ext.P10 order passed by the Kerala Lok Ayukta, without any further delay.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG/MJL

True copy

P.A. to Judge