

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 14324 of 2014 (M)

PETITIONER:

ANILA MURALI
W/O.MURALI, 12 A, E.S.I QUARTERS
ERNAKULAM NORTH, KOCHI 18

BY ADVS.SRI.M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SEI.M.VARGHESE VARGHESE
SMT.UMA R.KAMATH
SMT.S.SANDHYA
SRI.BEPIN PAUL
SRI.SHALU VARGHESE

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT , SECRETARIAT
THIRUVANANTHAPURAM 695 001
2. THE DISTRICT COLLECTOR,
IDUKKI DISTRICT, COLLECTORATE, KUYILIMALA
IDUKKI, PIN 685 602
3. THE SPECIAL DEPUTY TAHSILDAR(CARDAMOM SETTLEMENT)
TALUK OFFICE, DEVIKULAM, IDUKKI PIN 685 613
4. THE VILLAGE OFFICER,
PALLIVASAL VILLAGE, MUNNAR IDUKKI 685 612
- * 5. K.K SANKARAN,S.O,KUNJAN,KALLUPARAMBIL
HOUSE,POTHAMEDU,MUNNAR P.O,IDUKKI 685 612 (DELETED)

[R6 TO R9 RE-NUMBERED AS R5 TO R8 AS PER ORDER DATED 29.10.2014 IN
I.A. NO.14608/14.]

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5. K.S MOHANAN,
S/O.K.K SANKARAN, KALLUPARAMBIL HOUSE, POTHAMEDU
MUNNAR P.O, IDUKKI 685 612
6. K.S AJITHKUMAR,
S/O.K.K SANKARAN, KALLUPARAMBIL HOUSE, POTHAMEDU
MUNNAR P.O, IDUKKI 685 612
7. K.S SURESH BABU,
S/O..K.K SANKARAN, KALLUPARAMBIL HOUSE, POTHAMEDU
MUNNAR P.O, IDUKKI 685 612
8. K.S VIJAYAN,
S/O.K.K SANKARAN, KALLUPARAMBIL HOUSE, MANNAMKANDAM
ADIMALY.PO., IDUKKI 685 617

R5, R6 & R8 BY ADV. SRI.N.M.VARGHESE
SPECIAL GOVERNMENT PLEADER SMT. SUSHEELA R. BHAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: A TRUE COPY OF THE TAX RECEIPT DATED 24-01-1992 IN THE NAME OF THE PETITIONER'S MOTHER

EXHIBIT P2: TRUE COPY OF THE REPORT SUBMITTED BY THE 3RD RESPONDENT ALONG WITH MAHAZAR OF THE SAID LAND

EXHIBIT P3: TRUE COPY OF RECEIPT DATED 10-10-2001 ISSUED BY ASST.SETTLEMENT OFFICER,KUMILY

EXHIBIT P4: TRUE COPY OF THE RECEIPT ISSUED FOR THE YEAR 2002-2003

EXHIBIT P5: TRUE COPY OF THE RECEIPT ISSUED FOR THE YEAR 2003-2004

EXHIBIT P6: TRUE COPY OF THE RECEIPT ISSUED FOR THE YEAR 2005-06

EXHIBIT P7: TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 27-09-2003 ISSUED BY THE SECRETARY,PALLIVASAL GRAMA PANCHAYAT

EXHIBIT P8: TRUE COPY OF THE POSSESSION CERTIFICATE DATED 10-12-2004 ISSUED BY DEPUTY COLLECTOR,IDUKKI

EXHIBIT P9: TRUE COPY OF THE JUDGMENT DATED 14-08-2012 IN WPC NO 16941/2012

EXHIBIT P10: TRUE COPY OF THE ORDER DATED 07-08-2013 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P11: TRUE PHOTOCOPY OF THE RECEIPT DT.15.11.1993 ISSUED BY 3RD RESPONDENT TO THE PETITIONER FOR PAYMENT OF RS.243/- TOWARDS L.C. DUES AND FINE IN LC CASE NO.51/1993.

EXHIBIT P12: TRUE PHOTOCOPY OF THE APPLICATION FILED BY THE PETITIONER IN FORM NO.4 FOR OBTAINING KUTTAKA PATTOM FOR CARDAMOM LAND.

EXHIBIT P13:TRUE PHOTOCOPY OF THE ORDER NO.LC 162/97 DT.11.06.1997 OF THE 3RD RESPONDENT.

EXHIBIT P14: TRUE PHOTO COPY OF THE RECEIPT FOR PAYMENT OF FINE AND PROHIBITORY ASSESSMENT IN PURSUANCE OF EXHIBIT P13 ORDER IN LC 162/1997 FOR RS.670/-

EXHIBIT P15: TRUE PHOTOCOPY OF THE MEMO FOR COLLECTING RS.4109/- FROM THE PETITIONER TOWARDS PREMIUM FOR KUTTAKA PATTOM LAND OF 2.03 ACRES (0.82.18 HECTRES)

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EXHIBIT P16: TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE ASSISTANT SETTLEMENT OFFICER (CS), KUMILY DT.11.10.2001 DIRECTING THE PETITIONER TO REMIT PATTOMFOR THE LAND AT THE RATE OF RS.250/- PER HECTRE.

EXHIBIT P17: TRUE PHOTO COPY OF THE PATTOMOF THE LAND FOR THE YEAR 2001-02 IN PURSUANCE OF EXHIBIT P16 PROCEEDIGS FOR RS.208/-AS PER RECEIPT DT.4.1.2002 FROM THE PALLIVASAL VILLAGE.

EXHIBIT P18: TRUE PHOTO COPY OF THE NOTICE OF HEARING DT.19.4.2013 BEARING NO.68247/R2/12/REV AND RECEIVED BY THE PETITIONER ON 24.04.2013 AND REQUIRING THE PETITIONER TO APPEAR FOR A HEARING AT 11.30 AM ON 30.4.2013 BEFORE THE 1ST RESPONDENT.

EXHIBIT P19: PHOTOCOPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA DT.7.3.2011 IN W.P.C. NO.6996/2011 WHEREBY THE VERY SAME REPRESENTATION DT.7.12.2011 SOUGHT FOR TO BE DISPOSED OF B Y EXHIBIT P9 JUDGMENT WAS EITHER REJECTED BY THIS HON'BLE COURT.

EXHIBIT P20: TRUE PHOTOCOPY OF THE ADVOCATE COMMISSIONER REPORT DT.8.8.2014 WITH THE TALUK SURVEYOR SKETCH IN SA NO.838/2009 IN O.S. NO.96/2005 BEFORE THE MUNSIFF COURT, DEVIKULAM.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). No.14324 of 2014

Dated this the 9th day of October, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Ext.P10 order passed by the 1st respondent ordering resumption of land occupied by the petitioner as per Ext.P15 proceedings dated 10.10.2001 of respondent No.3.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner is a native of Pallivasal Village in Idukki District and she is in possession of 2.03 acres of cardamom Kuthakapattom land in Survey No.1314 of the Pallivasal Village. The above land was originally leased out in favour of one Palaniamma W/o.Subramaniam Chettiar in the year 1962 under Cardamom Lease Rules 1961. The above property was transferred to the name of petitioner's mother Pankajakshi by agreement dated 15.10.1965. From that date onwards property was in the possession of petitioner's mother and it has been used for cardamom cultivation. Kuthakapattom tax was regularly

remitted in the name of Smt.Pankajakshi from that date onwards and in order to establish the same Ext.P1 tax receipt dated 24.01.1992 is produced in this proceedings. Petitioner's mother died on 11.7.1992. Before that in the year 1990 itself property was transferred to petitioner's name and she also used the property for cardamom cultivation. Kuthakapattam tax was being paid by the petitioner from that date onwards. While so, L.C. No.162/1997 was registered against the petitioner for unauthorized occupation of the aforesaid land by the 3rd respondent. Third respondent inspected the property and filed a report stating that petitioner is in possession of the property and she is cultivating the property with cardamom and therefore, she is entitled to get Kuthakapattam in respect of the aforesaid landed property which communication is produced in this writ petition as Ext.P2. Thereupon petitioner filed a request for assignment of the said land in her favour under Cardamom Lease Rules, 1961. Accordingly, as per order dated 11.06.1997 in L.C. No.162/1997 3rd respondent issued proceedings directing gthe petitioner to pay fine and prohibitory assessment at the rate of Rs.70 per year, per acre for the period of occupation as provided

under Section 8 of the Kerala Land Conservation Act, 1957. As per Ext.P3, petitioner has complied with the said direction and thereafter she has been continuously paying tax in respect of the property till 2006-2007 evidenced by Exts.P4 to P6. On request by the petitioner, statutory authorities have issued Exts.P7 and P8 proceedings dated 27.9.2003 and 10.12.2004 respectively, whereby the possession of the petitioner is affirmed thereunder.

4. While so, respondents 5 to 8, brothers of the petitioner and father staying near to petitioner's property attempted to trespass into the property and thereupon petitioner was constrained to file O.S. No.96/2005 before the Munsiff's Court, Devikulam seeking an order of injunction against respondents 5 to 8. It is informed that the said suit is still pending consideration before the said court. It is the further contention of the petitioner that, thereafter respondents 5 to 8 approached this Court by filing W.P.(C) No.16941/2012 challenging Ext.P8 possession certificate which is corresponding to Ext.P5 in the said writ petition and claiming joint ownership over the property. By Ext.P9 judgment dated 14.08.2012, this Court disposed of the matter without issuing notice to the petitioner, directing the 1st

respondent to consider Ext.P13 representation filed by the petitioners therein and to dispose of the same.

5. In implementation of Ext.P9 judgment, 1st respondent issued Ext.P18 notice to the petitioner inviting her for a hearing on 30.04.2013. It is the further contention of the petitioner that even though such a notice was received by the petitioner since the details of the necessity of hearing was not stated thereunder, she was not aware of the nature of the proceedings contemplated by Ext.P18 notice. However, petitioner personally appeared before the 1st respondent for hearing but she could not defend the case properly since she had no prior information about the nature of issue pending before the 1st respondent. Even though petitioner has explained the real facts before the 1st respondent, the details put forth by the petitioner was not verified by the 1st respondent by scrutinizing the files relating to the issue. Any how by Ext.P10 impugned order dated 07.08.2013, 1st respondent declared that petitioner is in unlawful possession and directed the 2nd respondent to recover possession of the property assigned to her. It is thus challenging Ext.P10 order petitioner has filed this writ petition.

6. Third respondent has filed a counter affidavit refuting the statements and allegations made in the writ petition. It is stated that Ext.P15 proceedings was issued in favour of the petitioner not in accordance with law and moreover violative of the provisions contained under the Cardamom Lease Rules 1961. Apart from the same, it is also contended that the petitioner is in unlawful possession of the property since she was not put in possession lawfully. So also, in the counter the dispute between the petitioner as well as the respondents 5 to 8 are also narrated.

7. Petitioner has filed a reply reiterating her stand in the writ petition and further contending that even prior to the L.C. proceedings recited in the writ petition, another L.C. proceedings was initiated by Ext.P11 and thereby the petitioner seeks to quash Ext.P10 order, which is objected to by the learned Special Government Pleader. Even though service of notice to respondents 5 to 8 are completed and they are appearing through an Advocate before this Court, they have not filed any counter nor is present before this court today.

8. Heard learned counsel for the petitioner Sri.M.P.Ramnath and Learned Special Government Pleader

Smt.Susheela R. Bhat appearing for respondents 1 to 4.

9. Learned counsel for the petitioner contended that Ext.P18 notice issued by the 1st respondent pursuant to the direction contained in Ext.P9 judgment of this Court did not contain any details so as to enable the petitioner to appear before 1st respondent and contest the proceedings after understanding the same. It is also the contention of the learned counsel that petitioner had appeared in person and submitted the entire history of the case but without evaluating the true factual position, 1st respondent has repelled her claim. That apart, learned counsel contended that petitioner came to know about the nature of the proceedings as per Ext.P18 at the hearing venue alone and therefore she could not present her case forcefully by relying of the documents in her favour. Learned counsel also contends that if sufficient opportunity was granted by the 1st respondent taking into account the fact that petitioner was not aware of the nature of the proceedings for which she was invited, petitioner could have convinced the authority that she is in lawful possession of the property pursuant to appropriate proceedings issued by the competent

authorities. Further learned counsel contended that 5th respondent has instituted W.P.(C) No.6996/2011 before this Court and secured Ext.P19 judgment wherein this Court repelled the contention of the 5th respondent and dismissed the claim repelling disposal of Ext.P8 representation dated 7.2.2011, which is corresponding to Ext.P13 in Ext.P9 judgment. Learned counsel points out that since in Ext.P19 judgment the request of the 5th respondent was repelled by this Court, by suppressing that material fact, 5th respondent and others have filed writ petition No.16941/2012 and secured Ext.P9 judgment.

10. Learned counsel also contended that Ext.P19 judgment of this Court has become final and therefore, by suppressing the findings rendered by this Court in Ext.P19 judgment, Ext.P9 was secured and that too for the disposal of the very same application dated 7.2.2011, which was repelled by this Court in Ext.P19 judgment. It is also the contention of the learned counsel that having secured necessary proceedings from the competent statutory authorities petitioner secured a loan for agricultural purpose for the very same property from a bank. Learned counsel also contends that, taking into account these totality of

circumstances it is conclusively established that petitioner is in absolute possession and enjoyment of the property in question.

11. On the other hand, Learned Special Government Pleader contended that proceedings secured by the petitioner from the competent authorities is not in accordance with the Rules provided for the lease of cardamom plantation area and therefore, the proceedings in favour of the petitioner are illegal. Learned Special Government Pleader further contended that even if the petitioner is in possession of required proceedings issued by the competent authorities, same was not issued after conducting necessary enquiry under the Rules. Any how it is admitted that the proceedings relied on by the petitioner and issued by the competent authority in her favour are issued by the respective competent statutory authority. Therefore, Learned Special Government Pleader canvassed to dismiss the writ petition, the same being without any merit.

12. I considered the rival submissions made at the Bar and find that even though in Ext.P19 judgment a learned Single Judge of this Court repelled the claim raised by the 5th respondent for disposal of Ext.P8 representation dated 7.2.2011

filed by him before the 1st respondent, approaching this Court by filing yet another writ petition and securing Ext.P9 judgment seeking disposal of the very same representation was a grave illegality. Even though a hearing opportunity was provided to the petitioner by issuing Ext.P18 notice pursuant to Ext.P9 judgment, no materials were provided to enable her to present before the authority her case in a convincing manner. I find force in the said contention.

13. I also find that in Ext.P10 impugned order the issuance of the proceedings in favour of the petitioner is admitted by the 1st respondent but at the same time it is held that the same is not issued in accordance with law. According to me, once it is admitted that the proceedings are issued by the competent authority in favour of the petitioner, same is an official act taken care of under Section 114(e) of the Evidence Act. Therefore, a duty was cast upon the appropriate authority to prove that while exercising the statutory function the competent authority has not followed the procedure laid down under the Rules and therefore, such proceedings were bad.

14. Moreover, Ext.P18 notice was issued by the 1st

respondent without containing any material as to why the petitioner was asked to be present before the 1st respondent. When a notice of hearing is issued by any statutory authority it is fair and proper that the materials required to understand the nature of proceedings is provided in the notice. In the absence of such relevant materials for understanding the case for which a person was invited for hearing, same will be violative of principles of natural justice. Therefore, I find that Ext.P18 notice was not in accordance with law and is also violative of the principles of natural justice.

15. In such circumstances, I cannot comprehend the contentions put forth by the Learned Special Government Pleader seeking dismissal of the writ petition.

16. Taking into account the entire factual situation, evidence on record and the circumstances involved in the case, I am of the considered opinion that legal and factual issues will have to be sorted out by the 1st respondent by providing proper and suitable opportunity to the petitioner as well as all parties concerned. In that view of the matter, I set aside Ext.P10 impugned order passed by the 1st respondent and direct the 1st

respondent to issue fresh notice to all the parties concerned and take a decision afresh after providing fullest opportunity to the respective parties to establish their case and take a decision independently of the observations contained in this judgment. But however taking into account the legal circumstances involved in Exts.P19 and P9 judgments rendered by this Court and the observations made above.

Writ petition is allowed as above.

SHAJI P. CHALY
JUDGE

smv
09.10. 2015