

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 16988 of 2013 (W)

PETITIONERS:

1. MANI, AGED 56 YEAR,S
D/O. KARIMBIL KELAN, KARIMBIL VEETIL,
THOTTAKADU, KUMARANELLOOR VILLAGE,
MARANCHATTI, KOZHIKODE TALUK.
2. CHIRUTHA KARIMBIL, AGED 53 YEARS,
D/O. KARIMBIL KELAN, KARIMBIL VEETIL, THOTTAKADU,
KUMARANELLOOR VILLAGE, MARANCHATTI,
KOZHIKODE TALUK.
3. SAROJINI, AGED 50 YEARS,
D/O. KARIMBNIL KELAN, KARIMBIL VEETIL, THOTTAKADU
KUMARANELLOOR VILLAGE, MARANCHATTI,
KOZHIKODE TALUK.
4. THIRAMALA, AGED 49 YEARS,
D/O. KARIMBIL KELAN, KARIMBIL VEETIL, THOTTAKADU
KUMARANELLOOR VILLAGE, MARANCHATTI,
KOZHIKODE TALUK.
5. KELAN @ CHARIYA KELAN, AGED 48 YEARS,
D/O. KARIMBIL KELAN, KARIMBIL VEETIL, THOTTAKADU
KUMARANELLOOR VILLAGE, MARANCHATTI,
KOZHIKODE TALUK.

BY ADV. SRI.K.SHIBILI NAHA

RESPONDENTS:

1. STATE OF KERALA,
REP.BY SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. DISTRICT COLLECTOR,
KOZHIKODE-673 001.

3. REVENUE DIVISIONAL OFFICER,
KOZHIKODE-673 001.

4. DISTRICT SURVEY SUPERINTENDENT ,
KOZHIKODE-673 001.

5. ADDITIONAL TALUK SURVEYOR ,
KOZHIKODE-673 001.

6. THE ADDITIONAL TAHSILDAR ,
KOZHIKODE-673 001.

7. THE VILLAGE OFFICER,
KUMARANELLOOR VILLAGE, KOZHIKODE-679 552.

8. KOORAPPALLIL MATHEW JOSEPH,
S/O. JOSEPH, KOORAPPILLIL VEEDU, PUTHOORPOYIL,
MARANCHETTI, KOOMBARA P.O.,
KOZHIKODE DISTRICT-673 604.

9. BABU MATHEW,
S/O. KOORAPPILLIL MATHEW JOSEPH,
KOORAPPILLIL VEEDU,
PUTHOORPOYIL, MARANCHETTI, KOOMBARA P.O.
KOZHIKODE DISTRICT-673 604.

R1 - R7 BY GOVERNMENT PLEADER SRI. V.K. RAFAEK
R8,R9 BY ADV. SRI.PHILIP ANTONY CHACKO
ADV. SRI.P.M.SEBASTIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 16-11-2015, ALONG WITH WPC. 30916/2013, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 16988 of 2013 (W)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : COPY OF THE COMPLAINT SUBMITTED BY THE 2ND PETITIONER BEFORE THE DISTRICT COLLECTOR.

EXT.P2 : COPY OF THE COMMUNICATIOIN DTD.11.3.2013.

EXT.P3 : COPY OF THE EXTRACT OF THE BASIC TAX REGISTER EVIDENCING REMITTANCE OF BASIC TAX BY THE SON OF 8TH RESPONDENT ON 17.12.2003.

EXT.P4 : COPY OF THE REPRESENTATION SUBMITTED BY THE 5TH PETITIONER BEFORE THE 6TH RSEPDNDENT DTD.17.4.2011.

EXT.P5 : COPY OF THE REPRESENTATION SUBMITTED BY THE ADIVASI MAHA SABHA DISTRICT COMMITTEE ON 4.6.2013.

EXT.P6 : COPY OF THE FIR IN CRIME NO.397/2013.

EXT.P7 : COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DTD.10.6.2013.

EXT.P8 : COPY OF THE REPRESENTATION SUBMITTED BY THE 2ND PETITIONER BEFORE THE DISTRICT COLLECTOR ON 18.6.2013.

EXT.P9 : COPY OF THE REPRESENTATION SUBMITTED BY 2ND PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P10: COPY OF THE NOTICE DTD.28.6.2013.

EXT.P11: COPY OF THE AFFIDAVIT SUBMITTED BY THE 4TH PETITIONER BEFORE THE POLICE INSPECTOR OF MUKKAM ON 28.5.2013.

EXT.P12 - TRUE COPY OF THE INFORMATION OBTAINED FROM THE 7TH RESPONDENT UNDER THE RIGHT TO INFORMATION ACT.

EXT.P13 - TRUE COPY OF THE EXTRACT OF ADMISSION REGISTER EVIDENCING DATE OF BIRTH OF SRI. BIJU MATHEW OBTAINED UNDER THE RIGHT TO INFORMATION ACT.

RESPONDENT(S) ' EXHIBITS

EXHIBIT R-8-1(A): TRUE COPY OF THE DOCUMENT NO. 1495 OF 1973 OF THE ADDITIONAL SUB REGISTRY, KOZHIKODE EVIDENCING THE 8TH RESPONDENT PURCHASE OF 1 ACRE OF LAND FROM KARIMBIL KELAN.

EXHIBIT R-8-1(B): TRUE COPY OF THE LAND TAX RECEIPT DATED 13.5.13 OF BOOK NO.08644, I.NO.0864335 ISSUED TO THE 8TH RESPONDENT K.J.MATHEW, BY VILLAGE OFFICER, KUMARANELLOOR VILLAGE OFFICE.

EXHIBIT R-8-1(C): TRUE COPY OF THE POSSESSION CERTIFICATE DATED 29.5.13 ISSUED TO THE 8TH RESPONDENT BY THE VILLAGE OFFICER, KUMARANELLOOR VILLAGE OFFICE.

EXHIBIT R-8-1(D): TRUE COPY OF THE CERTIFICATE DATED 11.7.13 ISSUED BY THE SECRETARY, KARASSERY SERVICE CO-OPERATIVE BANK LTD, NO.D.2628, MUKKOM TO THE 8TH RESPONDENT.

EXHIBIT R-8-2: TRUE COPY OF THE COPY OF THAT PETITION DATED 26/11/2008 FILED BY KELAN @ CHERIYA KELAN (5TH PETITIONER) AND OTHERS.

EXHIBIT R-8-3(A): TRUE COPY OF THE LETTER DATED NIL SENT BY THE DISTRICT SURVEY SUPERINTENDENT, KOZHIKODE TO THE REVENUE DIVISIONAL OFFICER, KOZHIKODE (3RD RESPONDENT) ISSUED TO THE 9TH RESPONDENT, UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT R-8-3(B): TRUE COPY OF THE SKETCH DATED 21.12.12 SENT BY THE DISTRICT SURVEY SUPERINTENDENT, KOZHIKODE TO THE REVENUE DIVISIONAL OFFICER, KOZHIKODE (3RD RESPONDENT) ISSUED TO THE 9TH RESPONDENT, UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT R-8-4(A): TRUE OF THE LETTER DATED 10.12.12 SENT BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT, ISSUED TO THE 9TH RESPONDENT UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT R-8-4(B): TRUE COPY OF THE SKETCH DATED NIL SENT BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT, ISSUED TO THE 9TH RESPONDENT UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT R-8-5: TRUE OF THE LETTER DATED 22.2.13 SENT BY THE 2ND RESPONDENT TO THE PRINCIPAL SECRETARY REVENUE (E) DEPARTMENT, THIRUVANANTHAPURAM ISSUED TO THE 9TH RESPONDENT, UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT R-8-6: TRUE COPY OF THE PETITION DATED 29.12.12 SENT BY THE 8TH RESPONDENT TO THE 2ND RESPONDENT FOR FIXING THE BOUNDARY OF THE 1 ACRE OF LAND, HE HAD PURCHASED FROM KARIMBIL KELAN.

EXHIBIT R-8-7(A): TRUE COPY OF THE NOTICE DATED 15.4.13 ISSUED BY THE DISTRICT SURVEY SUPERINTENDENT, KOZHIKODE TO THE RESPONDENT 8TH, FIXING THE DATE FOR INSPECTION AND DEMARCATION OF THE PROPERTY OF THE PETITIONERS AND 8TH AND 9TH RESPONDENTS TO 23.4.13.

EXHIBIT R-8-7(B): TRUE COPY OF THE NOTICE DATED 10.6.13 ISSUED BY THE DISTRICT SURVEY SUPERINTENDENT, KOZHIKODE TO THE 8TH RESPONDENT, FIXING THE DATE FOR INSPECTION AND DEMARCATION OF THE PROPERTIES OF THE PETITIONERS AND 8TH AND 9TH RESPONDENTS TO 21.6.13.

EXHIBIT R-8-7(C): TRUE COPY OF THE PETITION DATED 10.6.2013 FILED BY THE DISTRICT SURVEY SUPERINTENDENT, KOZHIKODE BEFORE THE STATION HOUSE OFFICER, MUKKOM POLICE STATION, MUKKOM REQUESTING FOR POLICE AID ON 21.6.2013.

EXHIBIT R-8-7(D): TRUE COPY OF THE NOTICE DATED 28.6.13 ISSUED BY THE SURVEY SUPERINTENDENT KOZHIKODE TO THE 8TH RESPONDENT FIXING THE DATE FOR INSPECTION AND DEMARCATION OF THE PROPERTY OF THE PETITIONERS AND 8TH AND 9TH RESPONDENT TO 5.7.13.

EXHIBIT R-8-7(E): TRUE COPY OF THE PETITION DATED NIL FILED BY THE DISTRICT SURVEY SUPERINTENDENT, KOZHIKODE BEFORE THE STATION HOUSE OFFICER, MUKKOM POLICE STATION, MUKKOM REQUESTING FOR POLICE AID ON 5.7.13.

EXHIBIT R-8-8: TRUE COPY OF THAT COMPLAINT DATED 26.5.13 FILED BY THE 9TH PETITIONER BEFORE THE SUB INSPECTOR OF POLICE, MUKKOM POLICE STATION, MUKKOM, OBTAINED UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT R-8-9: TRUE COPY OF THE FIRST INFORMATION REPORT NUMBER 12 OF 2008 DATED 10.1.08 UNDER SECTIONS 144,146,427, 506 (II) R/W. 149 IPC FILED BY THE OFFICER IN CHARGE OF THE MUKKOM POLICE STATION BEFORE THE HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT 11ND THAMARASSERY.

EXHIBIT R-8-10: TRUE COPY OF THAT FINAL REPORT NO.170/09 DATED 13.6.09 FILED BY THE SUB INSPECTOR OF POLICE, MUKKOM POLICE STATION BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT 11ND THAMARASSERY.

EXHIBIT R-8-11: TRUE COPY OF THAT PETITION DATED 7.6.13 FILED BY THE 8TH RESPONDENT BEFORE THE HOME MINISTER, TRIVANDRUM.

EXHIBIT R-8-12: TRUE COPY OF THE PATTAYAM NO.376 OF 1978 DATED 22/3/1978 IN THE S.M.C. PROCEEDINGS NO.247 OF 1978 ISSUED BY THE MUKKOM LAND TRIBUNAL TO THE 8TH RESPONDENT.

EXHIBIT R-8-13: TRUE COPY OF THAT PATTAYAM NO.2506 OF 1976 DATED 21/9/1976 IN THE S.M.C. PROCEEDINGS NO.2632 OF 1976 ISSUED BY THE MUKKOM LAND TRIBUNAL-I TO THE 8TH RESPONDENT KOORAPILLIL JOSEPH MATHEW ALIAS KORAPILLIL MATHEW JOSEPH.

EXHIBIT R-8-14: TRUE COPY OF THAT DOCUMENT NO.4078 OF 1994 DATED 30/12/1994 EXECUTED BY 8TH RESPONDERNT IN FAVOUR OF BIJU MATHEW.K. GIVING HIS SON 2 ACRES OF LAND.

EXHIBIT R-8-15: TRUE COPY OF THAT SAKSHIPATHRAM DATED 28/11/2014 ISSUED BY THE VILLAGE OFFICER, KUMARANELLOOR.

//true copy//

P.S. to Judge

K. HARILAL, J.

W.P. (C) Nos.16988 & 30916 of 2013

Dated this the 16th day of November, 2015

JUDGMENT

Since the parties, subject matter and the matter in issue involved in both the writ petitions are one and the same, these writ petitions are heard together and disposed of accordingly.

2. It is the case of the petitioners in W.P.(c) No.(C) No.16988/13 that the 8th respondent is in unlawful possession of 1 Acre of property, falling in unsurveyed category of Kumaranelloor Village, which originally belonged to the petitioners and they are entitled to restoration of that property, under the provisions of the Kerala Restriction on Transfer by-out Restoration of Land to Scheduled Tribes Act, 1999 (for short 'the Act'). Even though they have filed a complaint

seeking restoration of the said land before the 3rd respondent, the 3rd respondent, in turn, directed the 5th respondent to measure out and demarcate the property. But, the 5th respondent was obstructed by the 8th respondent. Thereafter, the petitioners approached the 2nd respondent and submitted Ext.P1 complaint seeking restoration of land. The 4th respondent, thereafter, filed a false report favouring the 8th respondent, without properly measuring the property. That apart, on the basis of that false report, the 4th respondent issued Ext.P10 notice with an intend to fix boundaries on the basis of the false report prepared and submitted by him to the 3rd respondent. Even after the receipt of such a false report from the 4th respondent, the 3rd respondent has not passed a final order on the application filed by the petitioners under the said Act.

3. Feeling aggrieved by the false report filed by the 4th respondent, the 2nd petitioner made Ext.P8 representation to the 2nd respondent requesting to

issue a direction to the 4th respondent to desist from such attempts to fix the boundary at the interest of the 8th respondent. Thus, the proceedings are still pending before the 2nd and 3rd respondents. Despite such pendency of the matter before the higher authorities, the 4th respondent is taking hasty steps to demarcate the property and to put boundary stones in total defiance to the pendency of the proceedings before the higher authorities and the same is evidenced by Ext.P10, according to the petitioners.

4. Per contra, the case of the 8th respondent, which stands disclosed in W.P.(c) No.30916/2013 is that he had purchased one acre of land as per document No.1495 of 1973 from one Karimbil Kelan, the father of the 5th petitioner and in addition to that, he is having 4 ½ Acres of land adjacent to it, as per Patta No.376/1978 and both these properties are lying contiguously in the unsurveyed area in Kumaranelloor Village. According to him, he is not in possession and enjoyment of any land owned or possessed by the

petitioners or their predecessors, in excess of one acre purchased from the father of the 5th petitioner. Therefore, the claim raised against the 8th and 9th respondents are unfounded and baseless.

5. The 3rd respondent filed a counter affidavit stating that on the complaint filed by the petitioners, as per his direction, the 4th respondent, the District Surveyor, measured the property in the presence of the petitioners and the 8th respondent and since there was no measurement in the documents, and the land being an surveyed land, the 4th respondent took measurement as per the direction of both parties and in that survey, the petitioners, who claim restoration of one acre of property, were found in possession of 1.35 Acres i.e., the petitioners in W.P.(c) No.16988/13 are found possessing 35 cents in excess and the 8th respondent was not found in possession of excess land and on the basis of that measurement, the 4th respondent filed a report to the District Collector and thereby, the proceedings on the complaint filed by the

petitioners attained finality.

6. In view of the rival contentions stated above, the question to be considered is, whether there is any circumstance warranting interference of this Court under Art.226 of the Constitution of India, with the proceedings pending before the 3rd respondent.

7. Even though, the petitioners contended that the 8th respondent has taken away from them one acre of property which actually belongs to them, no document is seen produced to show the actual total extent of the property which they had possessed. So also, there is no pleadings as to the total extent of property which they owned or possessed. In short, no document has been produced to establish the total extent of property which the petitioners or their predecessors had and possessed earlier.

8. But, on the other hand, Exts.P1 to P8 produced by the 8th respondent disclose the details of the entire transfer of property which stands in their possession and enjoyment now. Exts.P1 to P8 clearly establish

the title and possession over the said property. It is pertinent to note that the petitioners pretended ignorance of Exts.P3 to P5, wherein the petitioners also are parties and which attained finality. According to Ext.P5 report filed by the District Collector to the Principal Secretary (Revenue), the petitioners were in possession of total extent of 2.28 Acres by virtue of Patta No.27 issued by the Land Tribunal, Mukkom, and out of that, the petitioners sold away one acre to the 8th respondent by document No.1495/1978 and the remaining property to be found in possession is only 1.28 Acres. Out of that 1.28 Acres, the petitioners sold away 21 cents to Devaki, Krishnankutty, Jagadeesh, Anil etc., and 5 cents to one Geetha and the balance to be found in possession of the petitioners is 1.02 Acres only. But, the petitioners were found in possession of 1.37 Acres i.e., they were found in possession of 35 cents in excess.

9. But, on the other hand, the 8th respondent was not found in possession of any excess land and the

property, which was found in their possession was supported by the title deeds. It is pertinent to note that the petitioners have not challenged the genuineness and credibility of this report in this writ petition and they have willfully suppressed the said report prepared and sent by the District Collector, the 2nd respondent herein, to the Principal Secretary (Revenue), Government of Kerala. I do not find any reason to disbelieve Ext.P5 report in the absence of any challenge against it from the petitioners in W.P.(c) No.16988/2013.

10. Needless to say, Exts.P3 to P5 in W.P.(c) No.30916/2013 would disclose the lack of bona fides on the part of the petitioners. The petitioners miserably failed to produce any material to show that the 8th respondent is in possession of any land, which actually belongs to them. It follows that the claim for restoration of one acre is unfounded and lacks bona fides. On the other hand, Exts.P1 to P1(D) in W.P.(c) No.30916/2013 would establish the 8th respondent's

title and possession over 5.50 Acres of property and he is not in possession of any excess land of the petitioners.

Consequently, W.P.(c) No.16988/2013 will stand dismissed and it is declared that the 8th respondent is entitled to get the boundary fixed in accordance with the measurement made by the 4th respondent which is specified in Ext.P5 report in W.P.(c) No.30916/13 sent by the District Collector to the Principal Secretary (Revenue) and the respondents 2 to 4 are directed to act accordingly and W.P.(c) No.30916/2013 will stand allowed. It is also declared that the respondents 1 to 5 in W.P.(c) No.30916/2013 have no right to cause any obstruction to the enjoyment of the above said 5.50 Acres of property, by the petitioners therein.

W.P.(c) No.30916/13 is allowed and W.P.(c) No.16988/13 is dismissed.

Sd/-

(K. HARILAL, JUDGE)

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//true copy// P.S. to Judge