

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 15091 of 2015 (J)

PETITIONER:

**S.KRISHNAMURTHY, AGED 44 YEARS,
S/O. SIVARAJAN, RESIDING AT TC 30/877,
KUZHIVILAKAM PUTHEN VEEDU, KANNAVILA ROAD,
VANCHIYOOR VILLAGE, PETTAH, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.M.R.SUDHEENDRAN
SMT.A.AFREEZAA KHAN**

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT,
SECRETARIAT, TRIVANDRUM-695001.**
- 2. THE SECRETARY,
DEPARTMENT OF REVENUE (E) SECTION,
THIRUVANANTHAPURAM-695001.**
- 3. THE DIRECTOR OF ARCHAEOLOGY
SREEPADAM PALACE, FORT P.O., THIRUVANANTHAPURAM-23.**
- 4. THE DISTRICT COLLECTOR,
TRIVANDRUM-695001.**
- 5. THE SUB REGISTRAR,
SUB REGISTRARS OFFICE, THIRUVANANTHAPURAM-695001.**

BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

WP(C).No. 15091 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- COPY OF THE SETTLEMENT DEED NO. 1091/2001.

EXHIBIT P2- COPY OF THE APPLICATION DATED 18-10-2011.

EXHIBIT P3- COPY OF THE REPLY DATED

EXHIBIT P4- COPY OF THE FAX MESSAGE DATED 10-9-2012.

EXHIBIT P5- COPY OF THE LETTER DATED 27-12-2012 OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS

EXHIBIT R3(A)- TRUE COPY OF THE REQUEST FROM MR.V.T.SHIBU

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 15091 of 2015 (J)

Dated this the 14th day of July, 2015

J U D G M E N T

The petitioner, an owner of a property, seeks a definitive action on the part of the respondents under the Kerala Ancient Monuments and Archaeological Sites and Remains Act, 1968 (for brevity 'Act of 1968').

2. The grievance of the petitioner ventilated in the writ petition is that the petitioner had purchased 4.258 cents of land, comprised in Survey No. 1758/15 of Vanjiyoor Village, Thiruvananthapuram District, with a residential building, as per Settlement Deed No.1091/2001 of S.R.O. Thiruvananthapuram. However, when the petitioner tried to sell the property, he was informed that there was an order preventing the transfer of the said land and building.

3. Ext.P4 is an order issued by the Archaeological Department dated 10.9.2012, which reflects the intention of the Department to take over the subject property which originally was the house in which Dr.Palpu, a social reformer of repute, was born. As early as in 2012 the Department is said to have made a request to the Government for acquisition of the property. The order at Ext.P4 was issued, since, in the year 2012 there was an alleged attempt by one of the descendants of the said Dr.Palpu to alienate the property. The petitioner asserts that he is not a descendant of Dr.Palpu and he had obtained the property by virtue of Ext.P1 settlement deed. Ext.P5 is a Government Order in pursuance of Ext.P4. It is an admitted fact that even now nothing has been done in pursuance of the intention of the Department.

4. The acquisition of rights, in a protected monument, is as per Section 5 of the Act of 1968, which provides for compensation also on such acquisition being

made. The power of Government to declare ancient monuments etc to be a protected monument is under Subsection (4), which, as an initial measure, requires a notification with two months' notice of their intention to declare inter alia such ancient monument as a protected monument.

5. In the present case, even now, the learned Government Pleader submits that the process is on. The process cannot be thus kept pending for long years bringing in serious consequences on the owner of the property, whether it be a descendant of the deceased reputed person or a subsequent purchaser from a descendant. Here, the Government had expressed its intention to acquire the property as early as in 2012, on a request made by the Archaeological Department. No notification has come in the last about three years.

6. Though not in the same context, sufficient support can be garnered from the decisions reported in **Raju S. Jethmalani and Others v. State of Maharashtra and Others - 2005 (11) SCC 222** and **Muhammed Subair v. Corporation of Kozhikode - 2015 (2) KLT 757**. In the instant case, the issue is with respect to a notification to be issued by the Government, to preserve the residence of a social reformer of repute, as an ancient monument. In **Raju S. Jethmalani** (supra) the Hon'ble Supreme Court found that the land belonging to private persons cannot be included in a development plan unless the land is acquired by the State Government or Local Self Government Institutions. It was held that in effectuating a public purpose, if a development plan is drawn up, then the land owner cannot be deprived from using the property for reason of the implementation being dragged on. **Muhammed Subair** also found that no property right can be interdicted on a mere proposal to acquire lands for a

public purpose. Hence, even when public purpose is involved and there was a development plan also in force, the delay in implementation of such development plan could not be a reason to deprive private individuals from enjoying their property to its full extent, which also includes the right to alienate.

7. A counter affidavit has been placed on record in which a request from one private individual dated 10.09.2012 has been placed on record. However, even the affidavit indicates that preliminary notification to declare the property as a protected monument is still pending before the Department of Archeology, when it is indicated that the issue was initiated way back in 2009. The counter affidavit further states that the petitioner can sell the property to a third party provided no damage is caused to the structure. Such a condition would be as much as interdicting the sale of the property itself.

8. If, as submitted by the Government, the Government is of the view that Dr. Palpu's birth place has historical importance and that there is a duty and responsibility on the Department of Archeology to protect and maintain the site, then it has to be done after issuing a notification under the Act and taking over the property by resort to established procedure under law. The issue cannot be kept in limbo merely on the assertion as to the Government's intention to so notify and acquire the property for preservation as an Archaeological monument.

9. In such circumstance, if at all the Government wishes to bring the subject property under the Act of 1968 then, necessarily a notification ought to be issued within a period of three months from the date of receipt of the certified copy of this judgment. If such notification is issued, then necessarily the petitioner would have to be heard on any objection he wishes to make. If no such

notification is issued, the petitioner would be entitled to deal with the property as he deems fit.

The writ petition is disposed of making it clear that this Court has not expressed on the merits of the intention of the Government to so acquire the property and bring it under the Act of 1968 to maintain it as a protected property.

Sd/-
K.VINOD CHANDRAN,
JUDGE