IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 15634 of 2015 (D)

PETITIONER :

SANTHAKUMARI AMMA, AGED 65 YEARS,
W/O. RAMACHANDRA KURUP,
RESIDING AT AYIRUMUTTATHU HOUSE, KARAKKADMURI,
MULAKUZHA VILLAGE, CHENGANNUR TALUK,
ALAPPUZHA DISTRICT

BY ADVS.SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN

RESPONDENTS :
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1. **THE STATE OF KERALA**
   REPRESENTED BY ITS SECRETARY, REVENUE DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001

2. **THE DISTRICT COLLECTOR,**
   ALAPPUZHA - 682 001

3. **THE REVENUE DIVISIONAL OFFICER,**
   CHENGANNUR - 689 121

4. **THE ADDITIONAL TAHASILDAR,**
   MAVELIKARA - 690 101

5. **THE VILLAGE OFFICER,**
   PERINGALA, MAVELIKARA - 690 101

6. **ARYA DEVI, D/O. SREEDEVI PILLAI,**
   RESIDING AT KARUR KIZHAKKATHIL HOUSE, EREZHAMURI,
   PERINGALA VILLAGE, MAVELIKARA, ALAPPUZHA 690 101

7. **NISHA SOMAN, @ SMITHA,**
   D/O. ARYA DEVI RESIDING AT KARUR KIZHAKKATHIL HOUSE,
   EREZHAMURI, PERINGALA VILLAGE
   MAVELIKARA, ALAPPUZHA - 690 101

R6 & R7 BY ADVS. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR
R1 TO R5 BY GOVERNMENT PLEADER SRI. GIKKU JECOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE TAX RECEIPT DATED 28/5/2985.

EXT.P1A: TRUE COPY OF THE TAX RECEIPT DATED 23/2/1991.

EXT.P1B:- TRUE COPY OF THE TAX RECEIPT DATED 19/3/1992.

EXT.P2: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR.

EXT.P3: TRUE COPY OF THE REPORT OF THE ADDL. TAHASILDAR TO THE RDO.

EXT.P4: TRUE COPY OF THE LETTER DATED 25/10/2012 FROM THE DISTRICT COLLECTOR TO THE ADDL. TAHASILDAR.

EXT.P5: TRUE COPY OF THE ORDER DATED 27/10/2012 OF THE ADDITIONAL TAHASILDAR MAVELIKARA.

EXT.P5A: TRUE COPY OF THE TAX RECEIPT DATED 4/4/2013.

EXT.P5B: TRUE COPY OF THE TAX RECEIPT DATED 5/4/2014.

EXT.P6: TRUE COPY OF THE PLAINT IN OS NO.442/2012 BEFORE THE MUNSIFFS COURT KAYAMJULAM FILED BY THE RESPONDENT.

EXT.P7: TRUE COPY OF THE COUNTER CLAIM FILED BY THE PETITIONER IN OS NO.442/2012.

EXT.P8: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE REVENUE DIVISIONAL OFFICER ON 30/9./2014.

EXT.P9: TRUE COPY OF THE ORDER NO.G.185/14/.K.DIS DATED 9/3/2015 THE 3RD RESPONDENT

RESPONDENT(S)' EXHIBITS :

EXT.R6(A): COPY OF DEED NO. 1774.1976 OF BARANICKAVU SRO.

EXT.R6(B): COPY OF DEED NO.2092/1985 OF BHARANICKAVU SRO.

EXT.R6(C): COPY OF LAND TAX RECEIPT DT 26/7/1999 FOR THE PERIOD 1999 TO 2000.

EXT.R6(D): COPY OF LAND TAX RECEIPT DT 8/3/2011 FOR THE PERIOD 2001-02 TO 2010-11.

EXT.R6(E): COPY OF ORDER RNO. A5 9977/10 DT 14/7/2011 OF THE R4.

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EXT.R6(F):	COPY OF ORDER NO. PVA-G-3602/2012 DT 17/10/2012 OF THE R3.
EXT.R6(G):	COPY OF APPEAL DT 2/2/2013 FILED BEFORE THE R2.
EXT.R6(H):	COPY OF JUDGMENT DT 29/.11/2013 OF THIS HONOURABLE COURT IN WPC 29439/2013.

//TRUE COPY//

P.A. TO JUDGE

bp

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 15634 of 2015

Dated this the 11th day of December, 2015

JUDGMENT

The petitioner has approached this Court, aggrieved by an order passed by the Revenue Divisional Officer, Chengannur, in appeal, filed by the party respondents against the order of the transfer of registry effected in her favour. By the impugned order, the Revenue Divisional Officer has set aside the transfer of registry effected in favour of the petitioner.

2. As seen from various proceedings, the petitioner has originally approached the Tahsildar for effecting transfer of registry in her favour based on the document No.1774/1976 in respect of the property situated in Re-survey Nos.140/7, 140/8 and 140/9 of Peringala Village in Mavelikara Taluk. This was declined by the Tahsildar stating that there is a

dispute raised by the party respondents in respect of the property situated in Re-survey No.140/9 and therefore, it can be only resolved through the Civil Court. Thereupon, the petitioner went in appeal before the Revenue Divisional Officer. The Revenue Divisional Officer, by an order dated 12/10/2012, affirmed the order of the Tahsildar.

3. It appears that, again the petitioner approached the District Collector. The District Collector thereafter, directed the Tahsildar to take necessary action based on Ext.P3 report. Ext.P3 report has been made by the Tahsildar subsequent to the disposal of the appeal by the Revenue Divisional Officer. After adverting to the report, the Tahsildar effected the transfer of registry in favour of the petitioner. This was challenged by the party respondents. In appeal, the Revenue Divisional Officer has set aside the proceedings stating that dispute can only be resolved through Civil Court without adverting to the merits of the claim of both parties.

4. The learned counsel for the petitioner submits that

the Tahsildar has given all reasons to find that the property is situated in Re-survey No.140/9 belongs to the petitioner and therefore, the Revenue Divisional Officer could not have upset such finding without any valid reasons. On the other hand, the learned counsel for the party respondents would submit that the petitioner has approached for transfer of registry on earlier occasion and earlier proceedings have come to an end, and therefore, it cannot be re-opened.

5. It is to be noted that the transfer of registry is for fiscal purposes. No right of the party can be determined or decided through the transfer of registry. It is only creating an account with the State, the transfer of registry is being effected through the process of Transfer of Registry Rules. No doubt, in cases where right and the interest of the party cannot be decided, certainly, it can be declined by the authorities. However, merely because, there exists any dispute, that does not mean the authority shall relegate the matter to a Civil Court. Herein this case, the Tahsildar has

prepared a report and has adverted certain materials referred in it. It is open for the Revenue Divisional Officer to find that those materials relied by the Tahsildar is insufficient or not sufficient to carry out the transfer of registry in respect of the property situated in Re-survey No.140/9. Apparently, the Revenue Divisional Officer has been influenced by the fact that, since there is a dispute regarding title, it can be resolved only through the process of Civil Court. This is prima facie incorrect in the sense that, since the Tahsildar has made a detailed report, whether it can be relied as correct or not has to be examined by exercising the power of appellate authority. Therefore, this Court is of the view that, the appellate authority has erred in its exercise of jurisdictional power, by relegating the parties to resolve the dispute through the process of the Civil Court, without upsetting the factual findings adverted in the report of the Tahsildar and consequential order.

6. The learned counsel for the party respondents

argued that since the proceedings have already come to an end, the petitioner cannot reopen the proceedings and it is untenable. It is already noted in the process of transfer of registry, none of the right of the party is being adjudicated or decided. The transfer of registry is being effected only for the purpose of creating an account for fiscal purposes and not beyond that. In that view of the matter, it is always open for any authority to vary its own order on production or supplementing necessary materials to review the earlier order. The action of the Revenue Officials in this regard, can be only considered as mode of exercise of administrative function rather than a quassi judicial function.

7. However, the Revenue Divisional Officer finds that if any serious disputed question of title involves, it is open for him to relegate the matter to the Civil Court after upsetting the findings of the Tahsildar. Therefore, the Revenue Divisional Officer shall reconsider the matter afresh. Certainly, any decision taken by the Revenue Divisional

Officer would be subject to the outcome of the Civil Suit. A fresh decision shall be taken by the Revenue Divisional Officer, after hearing both parties, within a period of two months.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

bpr