

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 20692 of 2012 (J)

PETITIONER(S):

**MUTHU BEEVI,
NAWAS MANZIL, VENG P.O., SASTHAMKOTTA.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE COMMISSIONER OF LAND REVENUE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 3. DISTRICT COLLECTOR,
COLLECTORATE, KOLLAM-691001.**
- 4. REVENUE DIVISIONAL OFFICER,
KOLLAM-691001.**
- 5. TAHSILDAR,
TALUK OFFICE, KUNNATHOOR, KOLLAM 690520.**
- 6. R.GOPAKUMAR,
'NIRMALYAM', EDAVANASSERY, MYNAGAPPALLY P.O.,
KOLLAM-690519.**

R1-5 BY GOVERNMENT PLEADER SRI.GIKKU JACOB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT-P1. A TRUE COPY OF PATTa NO.LA 20/85 DATED 17.03.1986.
- EXHIBIT-P2. A TRUE COPY OF THE LAND TAX RECEIPT DATED 09.10.2009.
- EXHIBIT-P3(a).A TRUE COPY OF THE COMPLAINT MADE BY THE 6TH RESPONDENT TO 2ND RESPONDENT ON 06.07.2009.
- EXHIBIT-P3(b).A TRUE COPY OF THE COMPLAINT MADE BY THE 6TH RESPONDENT TO 2ND RESPONDENT ON 19.03.2007.
- EXHIBIT-P3(c).A TRUE COPY OF THE COMPLAINT MADE BY THE 6TH RESPONDENT TO 2ND RESPONDENT ON 30.07.2009.
- EXHIBIT-P3(d).A TRUE COPY OF THE COMPLAINT MADE BY THE 6TH RESPONDENT TO HON'BLE REVENUE MINISTER ON 13.07.2009.
- EXHIBIT-P3(e).A TRUE COPY OF THE COMPLAINT MADE BY THE 6TH RESPONDENT TO 2ND RESPONDENT ON 21.07.2007.
- EXHIBIT-P4. A TRUE COPY OF ORDER NO.6666/09/B DATED 18.11.2009 OF THE 4TH RESPONDENT.
- EXHIBIT-P5. A TRUE COPY OF MEMORANDUM OF APPEAL DATED 03.02.2010 FILED BEFORE THE 3RD RESPONDENT.
- EXHIBIT-P6. A TRUE COPY OF THE COMMUNICATION BY ASST.ENGINEER PWD SASTHAMKOTTA.
- EXHIBIT-P7. A TRUE COPY OF THE ORDER NO.LI-8390/2010 DATED 02.01.2012 OF THE 3RD RESPONDENT.
- EXHIBIT-P8. A TRUE COPY OF THE REVISION PETITION DATED 17.02.2012 FILED BEFORE THE 2ND RESPONDENT.
- EXHIBIT-P9. A TRUE COPY OF THE ORDER NO.LR (J9)-7100/2012 DATED 04.07.2012 OF THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P(C).No. 20692 of 2012

Dated this the 15th October, 2015

JUDGMENT

The petitioner was assigned with a Government land as per Exhibit P1 patta having an extent of 3.750 cents. This was not under any beneficial scheme. Exhibit P1 patta was issued in the year 1986. The patta was cancelled as per Exhibit P4 order of the Revenue Divisional Officer dated 18.11.2009 stating that this was assigned without following the procedure as contemplated under Rule 12 of the Kerala Land Assignment Rules. It is also noted in Exhibit P4 that this land is required for future expansion of the road.

2. In the counter affidavit filed on behalf of the fifth respondent it is stated that there was a procedure irregularity in the matter of assignment, as there was no publication of notice under Rule 12(1) of the Kerala Land Assignment Rules. It is also stated that the said land is required for future expansion of PWD road, therefore, the

respondents justified cancellation of the patta in terms of Rule 8(3) of the Kerala Land Assignment Rules.

3. It is to be noted that once the land is assigned in absolute terms, the ownership passes to the assignee. Therefore, it can be cancelled only based on the Rules as envisaged under the Kerala Land Assignment Rules. Rule 8(3) of the Kerala Government Land Assignment Rules, 1960 contemplates cancellation, which reads as under:

"8. Conditions of assignment on registry.-

xx xx

(3) The registry shall be liable to be cancelled for contravention of the provisions in sub-rule (1) or sub-rule (2). The registry may be cancelled also, if it is found that it was grossly inequitable or was made under a mistake of facts or owing to misrepresentation of facts or in excess of the limits of the powers delegated to the assigning authority or that there was an irregularity in the procedure. In the event of cancellation of the registry, the assignee shall not be entitled to compensation for any improvements he may have made on the land. The authority competent to order such cancellation shall be the authority which granted the registry, or one superior to it:

Provided that no registry of land shall be cancelled without giving the party or parties

affected thereby, a reasonable opportunity of being heard.

Provided further that no assignment of land shall be cancelled if the annual family income of the transferee occupant does not exceed ₹10,000 (Rupees ten thousand only) and who does not own or possess any landed property, anywhere in the State:

Provided also that in the case of a transfer of land covered by the above proviso the assignee shall not be eligible for further assignment of land anywhere in the State."

4. It is stated in Rule 8(3) that the cancellation can be on the following ground: It is inequitable or under mistake of facts or on account of misrepresentation of facts or in excess of the limits of the powers or there was irregularity in the procedure.

5. Therefore, the question is whether there was any irregularity in the procedure under Rule 12 to vitiate any process of granting patta to the petitioner.

6. This land was assigned in the year 1986. The cancellation was in the year 2009. The mandate of Rule 12 is only to invite objection from interested persons in relation to assigning the land. Therefore, when plural

interest or competing interest would exist in respect of the land, necessarily, before assignment of land, that aspect has to be considered. This essentially would arise only when a land is assigned under any beneficial scheme, such as agricultural, assignment of land to landless people etc. The mandate of Rule 12 is to subserve the above objectives. Herein it is apparent that this was assigned for beneficial enjoyment of other land of the petitioner. Therefore, the assignment itself was in absolute terms. In such situation, Rule 12 would not have any application.

Therefore, this Court is of the view that there was no material irregularity to impeach the assignment in favour of the petitioner. Accordingly, the orders impugned are set aside.

The Writ Petition is disposed of as above.

**A.MUHAMED MUSTAQUE
JUDGE**