

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 19969 of 2011 (U)

PETITIONER(S):

**MOHAMMED SHAFI, S/O.MOIDUTTY,
KANNANTHODY HOUSE, MANNARKKAD COLLEGE POST,
MANNARKKAD TALUK.**

**BY ADVS.SRI.N.SUKUMARAN (SR.)
SRI.S.SHYAM
SRI.BOBBYMATHEW KOOTHATTUKULAM
SMT.BABY VINEETHA**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
PALAKKAD, PIN-678 001.**
- 2. TAHSILDAR, MANNARKKAD TALUK, MANNARKKAD,
PALAKKAD, PIN-678 582.**
- 3. ADDITIONAL TAHSILDAR, MANNARKKAD TALUK,
PALAKKAD, PIN-678 582.**
- 4. VILLAGE OFFICER, VILLAGE OFFICE,
MANNARKKAD.1 VILLAGE, PIN-678 582,
MANNARKKAD TALUK, PALAKKAD.**

BY GOVERNMENT PLEADER SMT.LILLY LESSLIE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE BASIC TAX RECEIPT DATED 31/4/2008 FOR THE YEAR 2008-2009.

EXT.P2. TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE 4TH RESPONDENT DATED 13/7/2007.

EXT.P3. TRUE COPY OF THE PERMIT ISSUED BY THE MANNARKKAD GRAMA PANCHAYATH DATED 14/9/2007.

EXT.P4. TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 29/1/2009.

EXT.P5. TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST EXT.P4 DATED 6/3/2009.

EXT.P6. TRUE COPY OF THE REPORT OF THE TALUK SURVEYOR, MANNARKKAD DATED 6/5/2008.

EXT.P7. TRUE COPY OF THE CERTIFICATE ISSUED BY THE 4TH RESPONDENT DATED 2/3/2009.

EXT.P8. TRUE COPY OF THE JUDGMENT OF THIS COURT DATED 31/7/2009 IN WPC NO.21616/2009.

EXT.P9. TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 23/10/2009.

EXT.P10. TRUE COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DATED 23/1/2010.

EXT.P11. TRUE COPY OF THE REPLY TO EXT.P10 DATED 28/1/2010.

EXT.P12. TRUE COPY OF THE CERTIFICATE ISSUED BY THE 4TH RESPONDENT DATED 6/2/2010.

EXT.P13. TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 10/2/2010.

EXT.P14. TRUE COPY OF THE INFORMATION ON EXT.P13 GIVEN BY THE 1ST RESPONDENT DATED 2/4/201.

EXT.P14(A). TRUE COPY OF THE ORDER FORWARDED ALONGWITH EXT.P14 ON THE 1ST RESPONDENT DATED 23/10/2009.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ANU SIVARAMAN, J.

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W.P.(C).No.19969 of 2011

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Dated this the 14th day of September, 2015

JUDGMENT

This writ petition is filed with the following prayers:-

"A. Call for the records relating to Exts.P1 to P7 and P9 to P14(a) from the Respondents and quash Ext.P12 by the issue of a writ of certiorari or other appropriate writ direction or order;

B. Issue a writ of mandamus commanding the 4th respondent to issue a possession certificate to the effect that the petitioner is in possession of 8 cents of land comprised in Sy.No.120/2A of Mannarkkad Village of Mannarkkad Taluk in Palakkad District within a reasonable time to be fixed by this Honourable Court."

2. The petitioner submits that he is the owner in possession of 8 cents of property in Sy.No.120/2A of Mannarkkad I Village, Mannarkkad Taluk, Palakkad District. The petitioner had obtained permit from the Grama Panchayat for construction of a two storeyed building in the property. He had also obtained Ext.P2 possession certificate and had proceeded with the construction as permitted by the local authority. Thereafter, by Ext.P4 order dated 29.01.2009, the 3rd respondent had issued orders cancelling Ext.P2 possession certificate already granted. The contention in the complaint preferred by one Sivarajan is to

the effect that there was a Panchayat road included in Sy.No.120/2A in which the petitioner's property is situated. The petitioner had preferred Ext.P5 appeal against Ext.P4 order cancelling the possession certificate. He had also produced Ext.P6 certificate issued by the Taluk Surveyor stating that there is 8 cents of property in Sy.No.120/2A and the entire property is in the ownership and possession of the petitioner. The Village Officer has also certified that there is no public pathway in the property comprised in Sy.No.120/2A. Thereafter, Ext.P9 order was issued by the District Collector, Palakkad, after hearing the parties and verifying the file of the 3rd respondent as well as the field map, toposketch etc. The District Collector found that there was nothing to show that the petitioner has encroached into Panchayat land or there was any difference in the extent of the property in the possession of the petitioner. In the above circumstances, Ext.P4 order was set aside and the Village Officer was directed to issue fresh possession certificate to the petitioner on the basis of the property actually in the petitioner's possession, after verifying the village records.

3. Thereafter, it is submitted that on 23.01.2010, Ext.P10 was issued to the petitioner requiring him to point out the boundaries of his property for field verification. Though the petitioner submitted Ext.P11 reply expressing his willingness to be present at the time of the field verification, it is asserted by the petitioner that no field verification was conducted pursuant to Ext.P10. On 06.02.2010 Ext.P12 possession certificate was issued to the petitioner wherein the extent of the property in his possession is recorded as 6 cents and 200 sq.links. This is purportedly issued in pursuance to Ext.P9 order of the District Collector. Though this order was challenged before the District Collector again by the petitioner in appeal, the District Collector has issued Ext.P14 order stating that orders have already been issued by Ext.P9 and no further steps are required to be taken by him in this regard. Aggrieved by the action of the Village Officer in limiting the possession certificate to an extent of 6 cents and 200 sq.links, the petitioner has preferred this writ petition.

4. Heard Sri.N.Sukumaran, learned Senior Counsel appearing for the writ petitioner and Smt.Lilly Leslie, learned

Government Pleader appearing for the respondents. It is the specific case of the petitioner that the entire extent of 8 cents comprised in Sy.No.120/2A of Mannarkad I Village is in his possession by virtue of valid documents of title. This is not disputed by the respondents also. It is on the basis of the complaint raised by a neighbour that there was encroachment into the Panchayat land and that there was a Panchayat road in the properties owned by the petitioner that steps were taken to cancel the possession certificate already granted to the petitioner. By Exts.P6 and P7 issued by the Taluk Surveyor and the Village Officer himself respectively it stands established that the entire extent of 8 cents of land comprised in Sy.No.120/2A is in the ownership of the petitioner by valid title deeds and that there is no public pathway in the property. It was on the basis of these documents as well as toposketch and the field map of the property that Ext.P9 order was passed by the District Collector. It is also the specific case of the petitioner that though Ext.P10 notice was issued, no field verification has been conducted pursuant to the same though the petitioner expressed

willingness to be present with records, if informed.

5. In the above circumstances, the issuance of Ext.P12 possession certificate showing the extent of property as 6 cents and 200 sq.links is not supported by any material. As a matter of fact, the District Collector having passed Ext.P9 order to the effect that there was no justification for the finding that the property in the petitioner's possession was less than the entire extent of 8 cents comprised in Sy.No.120/2A, the Village Officer could not have issued a certificate in the nature of Ext.P12, unless he had a specific case, on verification of the records as well as on the conduct of the field verification that the property comprised in Sy.No.120/2A is less than 8 cents in extent.

6. In the above circumstances, Ext.P12 stands set aside. The 2nd respondent is directed to cause a field verification to be conducted by the Taluk Surveyor in the property of the petitioner on the basis of the title deeds as well as the documents relied on by the District Collector in Ext.P9 order. If it is found in the field verification that the petitioner is in possession of the property of 8 cents as recorded in his

document as well as going by the field map and toposketch as also the files of the 3rd respondent, possession certificate shall be issued to the petitioner forthwith. The field verification, as directed above, shall be conducted within a period of two months from the date of receipt of a copy of the judgment and possession certificate shall be issued within a further period of one month thereafter.

The writ petition is disposed of as above.

Anu Sivaraman, Judge

sj