IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 27263 of 2006 (U)

PETITIONERS :
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1. JAISON JOSEPH,
   REP. BY POWER OF ATTORNEY HOLDER SEBASTIAN JOSEPH
   THOTTASSERY HOUSE, KURUSUMMOODU, CHETHIPUZHA VILLAGE
   CHANGANACHERRY TALUK, KOTTAYAM DISTRICT.

2. JAYAN JOSEPH,
   REP. BY POWER OF ATTORNEY HOLDER JAIMY JOSEPH
   KONDODICKAL HOUSE, MUTTAMBALAM, MUTTAMBALAM VILLAGE
   KOTTAYAM DISTRICT.

3. K.J.MATHEW,
   KONDODICKAL KAVUMKAL, THOTTIKKAD P.O.
   KOTTAYAM DISTRICT.

   BY ADVS.SRI.P.RAVINDRAN (SR.)
   SRI.HARIKRISHNAN RAVINDRAN

RESPONDENTS :
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1. THE DISTRICT COLLECTOR,
   KOTTAYAM.

2. THE TAHSILDAR,
   KOTTAYAM.

3. THE VILLAGE OFFICER,
   MUTTAMBALAM VILLAGE, MUTTAMBALAM, KOTTAYAM.

   R BY GOVERNMENT PLEADER SRI.SAIDALAVI K.K

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF THE AGREEMENT DATED 12.7.1973

EXT.P2 : TRUE COPY OF THE POSSESSION CERTIFICATE DATED 27.7.1988

EXT.P3 : TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.1731/1988

EXT.P4 : TRUE COPY OF THE ASSIGNMENT DEED OF THE MOTHER OF THE 1ST PETITIONER DATED 2.9.1991

EXT.P4(a) : TRUE COPY OF THE ASSIGNMENT DEED OF THE 2ND PETITIONER DATED 2.9.1991

EXT.P4(b) : TRUE COPY OF THE ASSIGNMENT DEED OF THE 3RD PETITIONER DATED 2.9.1991

EXT.P5 : TRUE COPY OF THE TAX RECEIPTS NO.6945 DATED 29.11.91

EXT.P5(a) : TRUE COPY OF THE TAX RECEIPTS NO.6946 DATED 29.11.91

EXT.P5(b) : TRUE COPY OF THE TAX RECEIPTS NO.6947 DATED 29.11.91

EXT.P6 : TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.3597/1995

EXT.P6(a) : TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.3599/1995

EXT.P6(b) : TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.3598/1995

EXT.P7 : TRUE COPY OF THE PROPERTY TAX RECEIPTS ISSUED BY THE KOTTAYAM MUNICIPALITY

EXT.P7(a) : TRUE COPY OF THE PROPERTY TAX RECEIPTS ISSUED BY THE KOTTAYAM MUNICIPALITY

EXT.P7(b) : TRUE COPY OF THE PROPERTY TAX RECEIPTS ISSUED BY THE KOTTAYAM MUNICIPALITY

EXT.P8 : TRUE COPY OF THE REPRESENTATIONS SUBMITTED BY THE 1ST PETITIONER MOTHER AND 3RD PETITIONER DATED 21.5.96

EXT.P9 : TRUE COPY OF THE REPRESENTATIONS SUBMITTED BY THE 1ST PETITIONER MOTHER AND PETITIONERS 2 & 3 DATED 25.10.96

EXT.P10 : TRUE COPY OF THE REPLY ISSUED BY THE 1ST RESPONDENT DT.8.7.97

EXT.P11 : TRUE COPY OF THE JUDGMENT IN O.P.18090/97 DATED 13.10.05

EXT.P12 : TRUE COPY OF THE SKETCH APPROVED BY THE MUNICIPAL CORPORATION

EXT.P13 : TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 26.8.06

EXT.P14 : PHOTOSTAT COPY OF THE BASIC TAX REGISTER

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EXT.P15 : TRUE COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR, KOTTAYAM DATED 27.7.1988

EXT.P15(a) : TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, MUTTAMBALAM DATED 7.10.1991

EXT.P16 : TRUE COPY OF THE LETTER OF THE MUNICIPAL COUNCIL, KOTTAYAM DATED 7.8.1968

EXT.P17 : TRUE COPY OF THE COMMUNICATION DATED 19.6.1969

EXT.P18 : TRUE COPY OF THE COMMUNICATION DATED 23.02.2013

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.27263 of 2006

Dated this the 12th day of February, 2015

J U D G M E N T

The petitioners are joint owners of a total extent of 26 cents of land comprised in Survey No.50/2C of Muttambalam Village in Kottayam Taluk. The property originally belonged to one Mathan. The land had been leased to M/s.Caltex (India) Ltd. for the purpose of conducting a Petroleum Retail Outlet in the year 1970. The company had entrusted the said property to the 3rd petitioner and the 2nd petitioner's father to conduct the petroleum retail outlet. Accordingly, they were conducting the petroleum outlet from the year 1973 onwards.

2. After the death of the original title holder Mathan, the property was purchased by the 1st petitioner's mother along with petitioners 2 and 3. While so, the mother passed away and the 1st petitioner also became a joint owner of the property, by succession.

3. As already stated above, the properties were purchased as per Ext.P4 series title deeds. Thereafter, mutation of Revenue records was effected in the names of the petitioners by Ext.P5 series. The petitioners were also paying tax in respect of the property thereafter. While so, it was noticed that there was a reduction in the extent of land that was shown in the tax receipts. Instead of 03 ares and 51 square metres shown in Ext.P5, the extent was seen reduced to 02

ares and 51 square metres. The petitioners complained about the reduction in extent, which is Ext.P8 dated 21.05.1996 but, there was no action thereon. The petitioners then approached this Court by filing W.P.(C).No.18090/1997. The said writ petition was disposed of by Ext.P11 judgment directing the 1st respondent to consider the complaint, if necessary after conducting a fresh survey measurement of the land. Accordingly, the matter was reconsidered and by Ext.P13 order dated 26.08.2006, the 1st respondent has held that the petitioner has no property in Survey No.50/2C of Muttambalam Village. According to the 1st respondent, the property in Survey No.50/2C is puramboke land. The property of the petitioner is in all probability comprised in Survey No.50/3, according to the 1st respondent. The petitioners have filed this writ petition challenging Ext.P13.

4. According to Sri.P.Ravindran, Senior Counsel who appears for the petitioners, Ext.P12 is the copy of a survey sketch that was produced before the Municipality by the erstwhile owner of the property, at the time of leasing the property to M/s.Caltex (India) Ltd. for starting a petroleum outlet. The said survey sketch is in respect of the property comprised in Survey No.50/2 of Vijayapuram Village. According to the Senior Counsel, it is the said village that was divided to form the Muttambalam Village. The learned Senior Counsel also places reliance on Ext.P2 certificate dated 27.07.1988 issued to

Sri.Mathan showing that, he was the owner of an extent of 40 cents and 327 square links of property in Survey No.52/2C. After sale of the property to the petitioners, Mathan had been issued with another certificate showing the balance property that was remaining in his ownership and possession, which is Ext.P15(a) dated 07.10.1991. In the face of these documents according to the learned Senior Counsel it is idle to contend that the property in Survey No.50/2C is puramboke land. It is not clear on the basis of what documents, the above conclusion has been arrived at. It is pointed out by the learned Senior Counsel that, though the petitioner had submitted an application under the Right to Information Act, 2005 seeking issue of a copy of the survey plan on the basis of which the measurement was conducted, by Ext.P18 it has been informed that no survey plan is available in respect of Survey No.50/2C. Therefore, it is not clear on what basis, the measurement that is alleged to have been conducted, was actually conducted.

5. A counter affidavit has been filed on behalf of the 1st respondent. According to the counter affidavit, what is stated is that, a re-survey was conducted after issue of the tax receipts that are relied upon by the petitioner. It is stated that according to the survey records, the old survey number 50/2C is Government purmaboke land. Therefore, according to the 1st respondent, the petitioners' property

can only be in Survey No.50/3 and Re-survey No.30 in Block No.50 of Muttambalam Village. It is also stated that the 1st respondent has acted in compliance with the directions of this Court.

6. Heard. A perusal of Ext.P13 order of the 1st respondent shows that the said authority had called for a report from the Deputy Director (Survey). His report has been extracted in the order. The report as such is not made available before me for perusal. It is stated in Ext.P13 that, as per the old survey sketches and other Revenue records, the property was measured. Thereupon, it was found that the property comprised in Survey No.50/2C was Government road puramboke. It is not clear as to what are the "old survey sketches and revenue records", on the basis of which the measurement was conducted. There has necessarily to be a Field Measurement Book in respect of the survey number concerned. It is on the basis thereof that a measurement has to be conducted. Assuming that the measurement has conducted on the basis of old survey sketches and other Revenue records, one fails to understand how the old records produced in this case show the property as belonging to Sri.Mathan, the original owner and thereafter the petitioners. Ext.P2 is a certificate issued by the Tahsildar on 27.07.1988. According to the certificate, Sri.Chacko Mathan is the owner of 40.327 cents of land in Survey No.50/2C of Muttambalam Village. Ext.P3 Encumbrance Certificate also shows that

the property was belonging to Sri.Mathan. It is also shows that the land was leased out to M/s.Caltex (India) Ltd. As per Ext.P4 series, the properties were sold to the petitioners. Mutation has been effected and Ext.P5 series show that tax was being received in respect of an extent of 3.51 ares of land in Survey No.50/2C which represents the portion of land owned by each of the petitioners. Ext.P6 is another Encumbrance Certificate issued to the petitioners. Ext.P12 is the copy of a survey sketch. An objection is taken by the learned Government Pleader that, the same has not been authenticated by the Revenue authorities. Ext.P12 shows that, it has been approved by the Municipal Commissioner, Kottayam on 06.05.1968. There is no explanation as to how the above documents had come into existence, if the old survey sketches and the other Revenue records show the property to be Government puramboke land.

7. The contention of the learned Government Pleader is that, the tax receipts produced by the petitioners related to the period before the re-survey was conducted. There is nothing on record to show that any change had taken place on re-survey, for the survey number would have been changed and the re-survey number would have been allotted to the property. No reference to any re-survey number is made in any of the proceedings, not even in Ext.P13. Added to the above state of confusion is the information supplied to the petitioners

by Ext.P18 where the Public Information Officer has informed that, the survey sketch in respect of Survey No.50/2C of Muttambalam Village is not available. If the information is correct, one fails to understand on what basis the alleged measurement was conducted by the Deputy Director of Survey and Land Records of which reference is made in Ext.P13. The only conclusion possible in the above state of affairs is that, the measurement that is alleged to have been conducted on the basis of which Ext.P13, is unsatisfactory. It is only appropriate that, a fresh measurement is conducted, if no survey records are available with the 2nd respondent, at least on the basis of the original of Ext.P12 to be obtained from the Municipality. The survey records necessarily have to be available in the office of the 2nd respondent. Therefore, it is only appropriate that a proper measurement is conducted without further delay and the dispute resolved within a time frame.

In the above view of the matter, Ext.P13 is unsustainable. The same is therefore, set aside. The 1st respondent is directed to have the property of the petitioners comprised in Survey No.50/2C of Muttambalam Village (former Vijayapuram Village) identified, measured and demarcated on the basis of the old survey records and the Field Measurement Book available in the office of the 2nd respondent. If the survey number shown in the original title deeds is wrong, the same shall be corrected appropriately and the petitioners shall be permitted to remit tax in the corrected survey numbers with arrears, if any. The 1st respondent shall do the needful in the matter to have the measurement conducted and the matter resolved finally within an outer limit of three months of the date of receipt of a copy of this judgment.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV