

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 19400 of 2015 (Y)

PETITIONER :

THE KANNUR BUILDING MATERIALS (MARKETING)
CO-OPERATIVE SOCIETY LTD.,
PAPPINISSERY - 670 561, KANNUR DISTRICT,
REPRESENTED BY SMT. SHIMINA.V, D/O. KANNAN,
AGED 29 YEARS, THE SECRETARY,
THE KANNUR BUILDINGS MATERIALS (MARKETING),
CO-OPERATIVE SOCIETY LTD, PAPPINISSERY - 670 561.

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
TAXES (B) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM -695 001.
2. THE DISTRICT COLLECTOR OF KANNUR,
COLLECTORATE, KANNUR - 670 001.
3. THE SPECIAL DEPUTY TAHSILDAR (REVENUE RECOVERY),
TALIPARAMBA P.O, PIN - 670 141.
4. THE VILLAGE OFFICER,
PERINTHATTA VILLAGE, P.O. ERAMAM DESAM,
PAYYANNUR - 670 307.
5. THE VILLAGE OFFICER,
ERAMAM VILLAGE, P.O. ERAMAM DESAM, PAYYANNUR,
PIN - 670 307.

*ADDL.R6 IMPEADED

*ADDL.R6: THE GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT, KANNUR.

*IS SUO MOTU IMPEADED AS ADDITIONAL 6TH RESPONDENT AS PER
ORDER DATED 23/07/2015 IN IA.NO.10140/2015.

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE ORDER DATED 17/10/2012 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS)-II, COMMERCIAL TAXES, KOZHIKODE.
- EXHIBIT-P2- TRUE COPY OF THE FORM 10 DEMAND NOTICE DATED 30/05/2014 ISSUED BY THE THIRD RESPONDENT.
- EXHIBIT-P3- TRUE COPY OF THE FORM-1 DEMAND NOTICE DATED 18/06/2014 ISSUED BY THE THIRD RESPONDENT.
- EXHIBIT-P4- TRUE COPY OF THE MODIFICATION ORDER DATED 24/09/2014 ISSUED BY THE SECOND RESPONDENT.
- EXHIBIT-P5- TRUE COPY OF THE REPRESENTATION DATED 18/09/2014 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.
- EXHIBIT-P6- TRUE COPY OF THE ORDER DATED 25/09/2014 ISSUED BY THE FIRST RESPONDENT.
- EXHIBIT-P7- TRUE COPY OF THE ORDER G.O(P).NO.399/2014/FIN. DATED 19/09/2014.
- EXHIBIT-P8- TRUE COPY OF THE APPLICATION DATED 26/12/2014 FILED BY SRI.M.V. KUNHIRAMAN TO THE STATE PUBLIC INFORMATION OFFICER ATTACHED TO THE OFFICE OF THE FIRST RESPONDENT.
- EXHIBIT-P9- TRUE COPY OF THE REPLY DATED 07/01/2015 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER ATTACHED TO THE OFFICE OF THE FIRST RESPONDENT.
- EXHIBIT-P10- TRUE COPY OF THE APPLICATION DATED 24/12/2014 FILED BY SRI.M.V. KUNHIRAMAN TO THE STATE PUBLIC INFORMATION OFFICER ATTACHED TO THE OFFICE OF THE THIRD RESPONDENT.
- EXHIBIT-P11- TRUE COPY OF THE REPLY DATED 12/01/2015 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER ATTACHED TO THE OFFICE OF THE THIRD RESPONDENT.
- EXHIBIT-P12- TRUE COPY OF THE SKETCH PLAN ISSUED BY THE FOURTH RESPONDENT IN RESPECT OF THE IMMOVABLE PROPERTY OWNED AND POSSESSED BY THE PETITIONER IN R.S NO. 132/1A OF PERINTHATTA VILLAGE.
- EXHIBIT-P13- TRUE COPY OF THE CERTIFICATE ISSUED BY THE FOURTH RESPONDENT IN RESPECT OF THE IMMOVABLE PROPERTY OWNED AND POSSESSED BY THE PETITIONER IN R.S 132/1A OF PERINTHATTA VILLAGE.

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EXHIBIT-P14- TRUE COPY OF THE CERTIFICATE OF ENCUMBRANCE DATED 10/04/2015 IN RESPECT OF THE IMMOVABLE PROPERTY OWNED AND POSSESSED BY THE PETITIONER IN R.S.NO. 132/1A OF PERINTHATTA VILLAGE.

EXHIBIT-P15- TRUE COPY OF THE REPRESENTATION DATED 28/04/2015 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXHIBIT-P16- TRUE COPY OF THE REPLY DATED 19/05/2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXHIBIT-P17- TRUE COPY OF THE LETTER DATED 13/7/2015 ISSUED BY THE GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, KANNUR TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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A. MUHAMED MUSTAQUE, J

W.P.(C).No. 19400 of 2015

Dated this the 23rd day of July, 2015

JUDGMENT

The petitioner is a Co-operative Society. The petitioner has certain tax liability with the Tax Department. The petitioner already approached the Government. It appears that in spite of the order of stay, the attachment effected through the revenue recovery proceedings to recover the tax arrears still persist on the property. The petitioner submits that the attachment cannot prevail in view of the stay order.

2. The petitioner, in the meanwhile, approached the Geologist for quarrying permit. This was not considered for the reason that there is an attachment.

3. The attachment cannot divest the right of the petitioner as being the owner of the soil. The petitioner is entitled to do whatever the activity in respect of the property. Further, it is to be noted that the Government already stayed the recovery of the tax arrears.

4. In that view of the matter, this Court is of the view that notwithstanding the attachment effected in the property,

the Geologist is bound to consider the application in accordance with law. Accordingly, the following directions are issued :

- i) Ext. P17 issued by the Geologist, is set aside.
- ii) The Geologist is directed to reconsider the matter in accordance with law, ignoring the attachment effected by the state revenue.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE

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