

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 23184 of 2013 (W)

PETITIONER:

P.K.SURESHKUMAR, AGED 46 YEARS
S/O.PUTHIYAVEETIL KRISHNAN PILLAI, SANKARAPILLY KARA
MUTTOM VILLAGE, THODUPUZHA TALUK
MUTTOM PO, PIN-685 587, IDUKKI DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S) :

1. THE STATE OF KERALA
REP. BY THE SECRETARY TO THE GOVERNMENT
REVENUE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE ADDL. TAHSILDAR
THODUPUZHA TALUK OFFICE,
IDUKKI DISTRICT 685 001.

3. THE VILLAGE OFFICER
MUTTOM, IDUKKI DISTRICT - 685 001.

4. THE DISTRICT COLLECTOR
COLLECTORATE, IDUKKI DISTRICT - 685 001.

R1-R4 BY GOVERNMENT PLEADER SRI NOUSHAD THOTTATHIL
SPECIAL GOVERNMENT PLEADER SUSHEELA BHATT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 - A TRUE COPY OF THE DOCUMENT BEARING NO.2256/96 DATED 6-9-96 OF THE THDOUPUZHA SRO.

EXT.P2 - A TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE THIRD RESPONDENT DATED 14-10-2011.

EXT.P3 - A TRUE COPY OF THE TAX RECEIPT IN THE NAME OF THE PETITIONER DATED 27-10-2012.

EXT.P4 - A TRUE COPY OF THE PREVIOUS TAX RECEIPT DATED 13-10-2011 IN THE NAME OF THE PETITIONER.

EXT.P5 - A TRUE COPY OF THE JUDGMENT IN WPC.NO.16053/09 DATED 11-6-09 OF THIS HON'BLE COURT.

EXT.P6 - A TRUE COPY OF THE STOP MEMO ISSUED BY THE THIRD RESPONDENT DATED 18-1-2013.

EXT.P7 - A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FOURTH RESPONDENT DATED 12-10-2011.

EXT.P8 - A TRUE COPY OF THE ACKNOWLEDGMENT CARD TO EXT.P7.

EXT.P9 - A TRUE COPY OF THE JUDGMENT IN WPC.NO.4320 OF 2013 DATED 22-2-2013 OF THIS HON'BLE COURT.

EXT.P10 - A TRUE COPY OF THE ORDER PASSED BY THE 4TH RESPONDENT DATED NIL.

RESPONDENT(S) ' EXHIBITS

EXT.R2(a): TRUE COPY OF THE JUDGMENT DT.11.7.2000 IN O.S.NO.192/98 OF THE MUNSIF COURT, THODUPUZHA.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.23184 of 2013-W

Dated this the 11th day of June, 2015

JUDGMENT

The petitioner has filed this Writ Petition aggrieved by Ext.P10 order by which mutation in respect of the property having an extent of 12.5 cents of property of land in old survey No.506/6-2 of Muttom Village covered by Ext.P1 document No.2256/96 dated 6.9.1996 in his name has been cancelled.

2. The petitioner's case is that the property was purchased by him and it is in his possession right from the date of purchase as per Ext.P1 and he has been remitting the tax regularly. But Ext.P6 stop memo was issued by the Village Officer on 18.01.2013 directing him to stop the illegal constructions carried out by him, saying that the said property is included in the land acquired for the purpose of MVIP, as per K3-1655/09 dated 17.08.2011 of the Additional Tahsildar, Thodupuzha. According to the petitioner, he has made the constructions on the basis of valid title and he has got every right over the property. But the respondents have not

considered his claim even after submitting several petitions. He had earlier approached this Court in W.P(C) No.4320/2013, in which this Court by Ext.P9 judgment dated 22.2.13 directed the respondents to consider his objections. But according to him, even though he was heard, no measurement was made in his presence. Moreover, it is stated that there was no proceedings for cancellation of mutation. According to him when he had submitted Ext.P7 representation, it was only appropriate for the respondents to consider his claims after measuring the property with the help of survey authorities in his presence.

3. The 2nd respondent has filed a counter affidavit, pointing out that the property over which the petitioner claims title and possession is a part of 50.88 Ares of land in old Survey No.506/6 of one Sankarapilla, S/o.Raman Pilla, Puthiyaveettil and the same was acquired for Muvattupuzha Valley Irrigation Project (MVIP) on 26.12.1978 and this land has since then been transferred as MVIP poramboke. It is stated that due to mistake in resurvey records an extent of 5.60 ares of land was put forward to the resurvey records as block No.7 in Resurvey No.427/9 of Muttom Village with the thandaper holder as Sankarapilla, S/o.Ramanpilla, Parakkattil House, Sankarapilly

kara as per T.P.No.817. But it was later found that the said Sankarapilla of Parakkattil House passed away on 8.6.1983. It is stated that Ext.P1 title deed was seen created mistakenly from the thandaper No.817 of the above Sankara Pillai and he got transfer of registry of an extent of 5.60 Ares of land in Resurvey 427/9 in block No.17 using the said fraudulent deed. It is stated that the document dated 6.9.96, by which the property is stated to have been purchased from Sri Sankarapilla, who died on 8.6.1983 is found to be a fraudulent document, on verification. The respondents have also produced a judgment dated 11.7.2000 in O.S.192/98 of the Munsiff Court, Thodupuzha in which the petitioner was a party. The said suit was filed by the legal heirs of the aforesaid Sankarapilla of Parakkattil House against the petitioner and another. It was alleged therein that there was some impersonation of deceased Sankarapilla, which resulted in fraudulent sale deed. There the suit was decreed cancelling the document No.2256/96. It is on the basis of the said sale deed which was cancelled as per Ext.R2(a) judgment that the petitioner is claiming his title and the mutation in respect of the said property.

4. But the learned counsel for the petitioner submits that

the said judgment is never executed and he continues to be in possession. The limited relief sought by the petitioner is to direct the respondents to measure the property in his presence. The learned Special Government Pleader Smt.Suseela Bhat seriously opposes the claims of the petitioner.

In the light of the above circumstances, this Writ Petition is disposed of directing the respondents to conduct a survey of the property in respect of which Ext.P6 stop memo has been issued, with notice to the petitioner, within a period of two months and to take an appropriate decision thereon.

Sd/-
(P.V.ASHA, JUDGE)

rtr/