

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 23885 of 2011 (I)

PETITIONER:

**SREERANGAN,
AGED 53 YEARS,
S/O.CHANDRAHASAN, THIPARAMBIL, AZHEEKAL P.O.
ALAPPAD, KARUNAGAPPALLY, KOLLAM DISTRICT.**

BY ADV. SRI.VINCENT JOSEPH

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. DISTRICT COLLECTOR,
COLLECTORATE, KOLLAM-691 001.**
- 3. PRINCIPAL SECRETARY,
DISASTER MANAGEMENT (TRP CELL), SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 4. ALAPPAD GRAMA PANCHAYAT,
CHERIAZHEEKAL P.O.,ALAPPAD
KOLLAM DISTRICT,
REPRESENTED BY ITS SECRETARY
PIN-690 573.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI. P.V.ELIAS
R4 BY ADV. SRI.P.K.VJAYAMOHANAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-03-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS

- | | |
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| EXT- P1- | TRUE COPY OF THE IDENTITY CARD ISSUED BY KARUNAGAPALLY TAHSILDAR TO THE PETITIONER. |
| EXT- P2- | TRUE COPY OF THE IDENTITY CARD ISSUED BY KANJIRAPPALLY TAHSILDAR. |
| EXT- P3- | TRUE COPY OF THE TAX RECEIPT ISSUED BY THE ALAPPAD VILLAGE OFFICER DATED 18-11-2010. |
| EXT- P4- | TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, ALAPPAD DATED 26-02-2010. |
| EXT- P5- | TRUE COPY OF THE NOTICE DATED 27-10-2009 BY THE 4TH RESPONDENT. |
| EXT- P6- | TRUE COPY OF THE LETTER DATED 04-11-2009 SENT TO THE 4TH RESPONDENT BY THE PETITIONER. |
| EXT- P7- | TRUE COPY OF THE JUDGMENT DATED 25-01-2011 IN WPC No.2253/2011 OF THIS COURT. |
| EXT- P8- | TRUE COPY OF THE LETTER DATED 17-02-2011 SENT BY THE 4TH RESPONDENT. |
| EXT- P9- | TRUE COPY OF THE PETITION FILED BY THE PETITIONER'S SISTER MRS.SREEDEVI BEFORE THE 4TH RESPONDENT DATED 21-02-2011. |
| EXT- P10- | TRUE COPY OF THE SALE DEED No.3675/97 DATED 21-11-1997 REGISTERED WITH OACHIRA SRO. |
| EXT- P11- | TRUE COPY OF THE CERTIFICATE DATED 21-03-2011 ISSUED BY THE VILLAGE OFFICER, ALAPPAD. |
| EXT- P12- | TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER'S WIFE MRS.SUNITHA BEFORE THE 4TH RESPONDENT. |
| EXT- P13- | TRUE COPY OF THE REPLY DATED 26-07-2011 SENT BY THE 4TH RESPONDENT TO THE PETITIONER'S WIFE. |
| EXT- P14- | TRUE COPY OF THE PETITION S.T. No.1310/2011 IN THE FILES OF JFCM COURT-I, KARUNAGAPPALLY.. |
| EXT- P15- | TRUE COPY OF THE PETITION S.T. No.1911/2012 IN THE FILES OF JFCM COURT-I, KARUNAGAPPALLY.. |

RESPONDENTS' EXHIBITS

EXT- R4 (a)- TRUE COPY OF THE APPLICATION DATED 21-10-2003 OF THE PETITIONER BEFORE THE 4TH RESPONDENT FOR ASSESSMENT OF BUILDING.

EXT- R4 (b)- TRUE COPY OF THE APPLICATION DATED 21-10-2003 OF THE PETITIONER BEFORE THE 4TH RESPONDENT FOR POSSESSION CERTIFICATE.

EXT- R4 (c)- TRUE COPY OF THE AGREEMENT DATED 29-09-2008 EXECUTED BY THE PETITIONER IN FAVOUR OF THE SECRETARY OF THE 4TH RESPONDENT GRAMA PANCHAYAT.

EXT- R4 (d)- TRUE COPY OF THE UNDERTAKING EXECUTED BY THE PETITIONER BEFORE THE SECRETARY OF THE 4TH RESPONDENT GRAMA PANCHAYAT AGREEING TO DEMOLISH THE BUILDING No.AP V/423.

EXT- R4 (e)- TRUE COPY OF THE APPLICATION OF THE PETITIONER BEFORE THE SECRETARY OF THE 4TH RESPONDENT GRAMA PANCHAYAT INFORMING THE DEMOLITION OF THE BUILDING No.AP V/423.

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 23885 OF 2011-I

DATED THIS THE 25th DAY OF MARCH, 2015.

J U D G M E N T

Case of the petitioner as stated in the writ petition in brief is that, he is a resident of Ward No.5 of Alappad Grama Panchayat and is a victim of the Tsunami which occurred during the year 2004. Dispute is with respect to entitlement of the petitioner for the benefits provided under the 'Special Package of Housing Scheme" (hereinafter referred as the 'Scheme') for getting an amount of Rs.3,00,000/- allocated to Tsunami affected residential houses, for the purpose of demolition and reconstruction. Exhibits P1 & P1 (a) documents were produced to show that the petitioner's family was shifted to a rescue camp. Exhibit P2 is a list of beneficiaries selected under the scheme in which the petitioner's name was included at Sl. No.99. House number of the petitioner shown in Ext.P2 is 423 and the survey number of the property shown as 124/3/2. Case of the petitioner is that the house number mentioned in Ext.P2 against the name of the petitioner is by way of a

mistake and instead of 423 the number ought to have been 112 (5/32F). Exhibit P4 (a) certificate issued by the Village officer is produced to show that the petitioner is the owner of 4.05 ares of property comprised in Re-sy No.124/3/2 and the property contains a residential house bearing No.112 (5/32F). Exhibit P4 is a similar certificate issued to the effect that the petitioner's sister Smt. Sreedevi is the owner of 4.98 ares of property comprised in Sy. No.124/3/4 and the house building situated therein is bearing No.AP 5/423. According to the petitioner he had approached the authorities of the 4th respondent panchayat to get Ext.P2 list corrected by rectifying the house number as 112 (5/32F) instead of 423. When such request was not considered the petitioner has approached this court in a writ petition filed earlier. In Ext.P7 judgment this court observed that the grievance of the petitioner is regarding delay occurred in correcting the alleged mistake in Ext.P2 beneficiary list. Finding that representation submitted seeking correction is pending before the 4th respondent, this court directed to take steps for correction of the mistake and to take steps for

disbursing benefits due to the petitioner. Consequent to Ext.P7 judgment the Secretary of the 4th respondent panchayat had issued Ext.P8 letter to the petitioner intimating that the benefit under the scheme is allotted with respect to house in the ownership of the petitioner bearing No.AP 5/423 and apart from the said house there is no residential building available in the name of the petitioner, as per the property tax assessment register. Hence it is intimated that the panchayat has no objection in granting the benefit for reconstruction of house No.AP 5/423. It is aggrieved by the stand taken by the 4th respondent in Ext.P8, this writ petition is filed, seeking direction to release the amount under the scheme for construction of the residence situated in Re-sy No.124/3/2 in Alappad Village.

2. The petitioner had produced Ext.P9 which is an application submitted by his sister before the 4th respondent panchayat stating that house No.AP 5/423 belongs to her and that the petitioner has no right over the said building. According to her the assessment of the said building

endorsed in the name of the petitioner is a mistake which need to be corrected. Therefore she had applied for such correction. In support of such contention she had produced Ext.P10 sale deed as well as ExtP11 certificate issued by the Village Officer concerned. But it is sated that the 4th respondent, without considering the request made by the sister of the petitioner, had taken coercive steps to realise property tax due with respect to house No.423 from the petitioner and prosecution steps in this regard was initiated. The petitioner had also produced Exts.P12 & P13 to show that the assessment records pertaining to the year 2001-2004 kept in the Grama Panchayat would indicate that the petitioner was the owner of a house bearing No.AP 4/32B.

3. Specific case of the petitioner contained in Ext.P6 representation was that he is residing in a house owned by his sister on rental basis, which is situated in Sy. No.124/3/4. According to him, till the disaster of Tsunami in December, 2004, he was residing in a house situated in Sy. No.124/3/2 and the said house was bearing No.112

(5/32F). It is stated in Ext.P6 that the said house was partly reconstructed, but the panchayat has not given any assistance under the scheme. According to the petitioner the beneficiary list was prepared finding that the petitioner is eligible for getting benefit for the said house. But while preparing the said list house number was mistakenly shown as 423 instead of 112 (5/32F)

4. In the counter affidavit filed on behalf of 4th respondent it is contended that, as per that assessment register and records available with the panchayat the petitioner is having an RCC building bearing No.5/423 and the said house was never hit by Tsunami. Therefore the petitioner is not entitled to claim any benefit under the scheme in question According to the 4th respondent the benefit under the scheme can be given only to the person owning residence which had sustained damage in Tsunami and which necessitated demolition and reconstruction. It is specifically stated that house No. 112 (V/32F) belongs to one Sri.Brahmadas, Sumesh Bhavan, Srayikkad. It is further mentioned that the petitioner had submitted application for

assessment of a building constructed in the year 2001-2002 through Ext.P4 application, dated 21-10-2003 and the said building was assigned with No.AP 5/423. The petitioner had also obtained Possession Certificate for getting electric connection as evidenced from Ext.R4 (b). According to the 4th respondent the above said building is still existing and it was never hit by Tsunami. It was emphatically denied that the petitioner is owning a house with No.112 (5/32F). It is also contended that the house No.423 is situated in Sy. No.124/3/2 as per the records available in the panchayat. Ext.P4 & P4 (a) certificates issued by the Village Officer is described as fraudulent and as one creating confusion. It is further pointed out in the counter affidavit that, pursuant to inclusion of the name of the petitioner in Ext.P2 beneficiary list he had executed Ext.R4 (c) agreement dated 29-02-2008 and Ext.R4 (d) undertaking to demolish and reconstruct the house bearing No.AP 5/423. Subsequently he had submitted another intimation before the panchayat as per Ext.R4 (e) informing that residential building bearing No.AP 5/423 was already demolished and that the petitioner had remitted tax

with respect to the said building till the year 2008-2009. It is contended by the 4th respondent that the inclusion of the petitioner in the list will not entitle for the benefits under the scheme and the building belonging to the petitioner No.AP 5/423 in which he is residing is an RCC building and it was never hit by Tsunami and he cannot avail any benefit under the scheme. It is stated in the counter affidavit that, prior to the Tsunami the petitioner was residing in a building bearing No.112 (5/32F) and he has reconstructed the above building and on the basis of his own application building No.AP 5/423 was assigned to him.

5. On an analysis of the factual matrix based on the rival contentions raised by the petitioner and the 4th respondent, it is evident that the petitioner had failed to prove that he was the owner of a residential building bearing No.112 (5/32F) situated in the property comprised in Sy. No.124/3/2 and that the said house was destroyed in Tsunami which occurred during December 2004. Eventhough the Village Officer in Ext.P4 (a) certificate had mentioned that house No.AP 112 (5/32F) is situated in 4.05

ares of property comprised in Sy. No.124/3/2 belonging to the petitioner, there is nothing to show that such a building stands registered in the records of the panchayat in the name of the petitioner. On the contrary, specific case of the 4th respondent panchayat is that, building bearing No.112 (5/32F) stands assessed in the name of one Sri.Brahmadas. Further, Ext.R4 (a) would indicate that a newly constructed building was assessed in the name of the petitioner by assigning building No.5/423, during the year 2003. Even Ext.P13 document produced by the petitioner would only indicate that, there existed a building bearing No.AP 4/32B assessed in the name of the petitioner during the period between 2001-2004. It is pertinent to note that pursuant to inclusion of name of the petitioner in Ext.P2 beneficiary list he had executed Ext.R4 (c), (d) & (e) documents before the panchayat to the effect that building No.AP 5/423 was demolished and making undertaking to the effect of reconstructing the same.

6. Therefore this court is of the considered opinion that the petitioner could not prove through any convincing

materials that there existed a house bearing No.112 (5/32F) situated in the property comprised in Sy. No.124/3/2, which was hit by Tsunami and that he is entitled to assistance under the scheme in question for demolition and reconstruction of such building. Therefore this court is of the opinion that the 4th respondent panchayat was right in rejecting the claim of the petitioner for effecting the correction in the beneficiary list. The decision taken and intimated through Ext.P8 does not warrants interference in this writ petition.

Resultantly, the writ petition fails and the same is hereby dismissed.

Sd/-
C.K. ABDUL REHIM
JUDGE

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True copy

P.A. to Judge