

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 26136 of 2010 (N)

PETITIONER :

**SMT. MANORAMA T.V.,
W/O. U. PARAMASIVAN, AGED 38 YEARS,
NEW LINES LOCKHART, DEVIKKULAM P.O.,
PIN 685 613.**

BY ADV. SRI.N.M.VARGHESE

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
REVENUE (R) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001**
- 2. THE DISTRICT COLLECTOR,
IDUKKI DISTRICT, COLLECTORATE, KUYILIMALA
IDUKKI – 685 602.**
- 3. THE TAHSILDAR,
DEVIKULAM TALUK
TALUK OFFICE, DEVIKULAM-685 613.**

R1 TO R3 BY SPL. GOVT. PLEADER (REVENUE) SMT. SUSHEELA R. BHAT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : PHOTOCOPY OF CERTIFICATE OF POSSESSION NO. 132/98 DATED 16.1.1998 ISSUED IN THE NAME OF THE PETITIONER.
- EXT.P2 PHOTOCOPY OF RELEVANT PAGES OF THE RATION CARD OF PETITIONERS FAMILY.
- EXT.P3 PHOTOCOPY OF ELECTORAL IDENTITY CARD OF THE PETITIONER.
- EXT.P4 PHOTOCOPY OF GOVERNMENT ORDER (MS) NO. 394/08/REV. DATED 20.11.2008.
- EXT.P5 PHOTOCOPY OF APPLICATION FOR ASSIGNMENT SUBMITTED BY THE PETITIONER DATED 20.12.2008.
- EXT.P6 PHOTOCOPY OF PROCEEDINGS NO. C4-9274/2009 DATED 25.8.2009 ISSUED BY THE 2ND RESPONDENT.
- EXT.P7 PHOTOCOPY OF MEMORANDUM OF APPEAL DATED 5.1.2010 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P8 PHOTOCOPY OF JUDGMENT OF THIS HON'BLE COURT PASSED IN WP(C) NO. 604/2010 DATED 13/1/2010.
- EXT.P9 PHOTOCOPY OF ORDER IMPUGNED NO. G.O.(RT) 2781/10/RD DATED 9.6.2010 PASSED BY THE 1ST RESPONDENT.
- EXT.P10 A PHOTOCOPY OF ORDER NO. C4-9274/2009 DATED 12-11-2009 PASSED BY THE 2ND RESPONDENT.

(Contd...)

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EXT.P11 A PHOTOCOPY OF NEWS ITEM PUBLISHED IN THE MATHRUBHUMI
DAILY DATED 23.8.2014.

EXT.P12 A PHOTOCOPY OF JUDGMENT OF THIS HONOURABLE COURT
PASSED IN WP(C) NO. 969/2013 DATED 22.11.2014.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.26136 OF 2010

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Dated this the 19th day of February, 2015

JUDGMENT

Rejection of the application preferred by the petitioner for assignment of the land in question, by the 2nd respondent, as per Ext.P10 order (produced along with I.A. No.731/2015) and confirmation of the same by the 1st respondent in appeal as per Ext.P9 order, form the subject matter of challenge in this writ petition.

2. The petitioner was born and brought up in 'Kannan Devan Hills Village' in Devikulam Taluk and an extent of 5 cents of property comprised in survey No.20/1 of KDH village was in possession of the petitioner's family. The possession of the same was originally with the father of the petitioner and after his demise, it came to the hands of the petitioner. Reference is made to Ext.P1 possession certificate dated 16.01.1998 issued by the concerned Village Officer in this regard. In the course of further proceedings to have the land assigned in the name of the petitioner, Ext.P5 application was filed on 20.12.2008. Since

there was delay in considering the same, the petitioner approached this Court by filing W.P.(C) No.9274/2009, which was disposed of directing the District Collector to have the matter considered and finalized. It was accordingly, that the proceedings were finalised by the District Collector by passing Ext.P10 order dated 12.11.2009, whereby the claim was rejected, holding that there was absolutely no merit or bonafides and further that the petitioner was not eligible to have the assignment.

3. The petitioner preferred an appeal before the 1st Respondent vide Ext.P7 and thereafter approached this Court by filing W.P.(C) No.604/2010. Pursuant to Ext.P8 judgment dated 13.01.2010, the appeal was considered by the Government, leading to Ext.P9 order dated 09.06.2010, whereby the finding and reasoning given by the District Collector was upheld and the appeal was dismissed. This in turn is under challenge in this writ petition.

4. When the matter came up for consideration on 18.08.2010, the petitioner was required to move after producing a copy of the order passed by the District Collector. The said order has been produced by the petitioner now as

Ext.P10, along with I.A. No.731/2015, after five years.

5. The learned counsel for the petitioner submits that the matter is to be considered in view of the change in policy of the State Government, with intent to assign property to the eligible settlers. The basis for the said submission is some news item appeared in a daily, a copy of which has been produced as Ext.P11.

6. Heard the learned Special Government Pleader as well, who rebuts the version.

7. On going through the contents of Ext.P10 order passed by the District Collector, it is seen that the petitioner has been recorded as a 'recent encroacher' in the property concerned. The petitioner's husband is stated as working as an 'L.P. School Assistant' in the Government L.P. School, Devikulam and they were living in the quarters bearing No.1350, situated in the land in question. Subsequently, the building got dilapidated and was demolished by the concerned authorities. It was thereafter that the encroachment was made to the land in question. It is pointed out that there is no provision in KDH (Resumption of Land) Act, 1971 to regularise encroachment on the Government land and that, by virtue of

the mandate in Section II of the KDH (Resumption of Land) Act, 1971, the encroachers upon Government land after the appointed date i.e. 21.01.1971 are to be summarily evicted, who are also liable to be proceeded against by way of prosecution proceedings.

8. The District Collector has observed in Ext.P10 that, in spite of the opportunity given to the petitioner, no document was ever produced to establish the right, if at all any, over the property and that the possession certificate produced by the petitioner was totally invalid as not based on any legally acceptable material. Even going by the contents of Ext.P1 possession certificate dated 16.01.1998, what has been certified therein is that the petitioner was then in possession of the property concerned. The said certificate never says about the time from when the property was in possession of the petitioner or to the effect that the property was in possession of the petitioner prior to the appointed date.

9. The factual position was appreciated again by the 1st respondent/Government pursuant to Ext.P8 judgment. It has been asserted therein, that the petitioner does not come within the purview of eligible hands for assignment, also for the

reason that she had encroached after the appointed date and further that the encroacher was not within the prescribed income limit.

10. The learned Special Government Pleader points out in response to the submission by the learned counsel for the petitioner, that the petitioner was never in possession of the land prior to the appointed date. This Court finds that no document has been produced before this Court as well, to substantiate the alleged possession by the petitioner. That apart, as pointed out by the learned Special Government Pleader, Ext.P5 application preferred by the petitioner is dated **20.12.2008**. The year of possession shown against column No.8 is clearly mentioned as **1998**. Similarly, the annual income has been shown as against column No.12 as **Rs.18,000/-**, whereas the maximum annual income for having the benefit of assignment as per Rules is stated as only **Rs.3,000/-** which has not been enhanced so far.

After hearing both the sides, this Court finds that there is absolutely no merit or bonafides in the writ petition and the petitioner has miserably failed in establishing her cause.

The writ petition fails and the same is dismissed accordingly.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

//true copy//

P.S. to Judge

St/-