IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 38275 of 2003 (F)

PETITIONER(S):

PAULY K. AYYAMBILLIL,
RESIDING AT AYYAMBILLIL HOUSE,
THURAVOOR KARA, KULANGARA VILLAGE,
ALUVA TALUK, ERNAKULAM DISTRICT

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENT(S):

1. THE VIALLGE OFFICER, PALLIVASAL VILLAGE

2. THE TAHSILDAR, DEVIKULAM TALUK

3. THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, TRIVANRUM

BY ADV. GOVERNMENT PLEADER RINNY STEPHEN CHAMAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C. NO. 38275/2003

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE SALE DEED DATED 12-7-2002 EXECUTED IN FAVOUR OF THE PETITIONER

EXT.P2: TRUE COPY OF THE BUILDING TAX ASSESSMENT REGISTERS KEPT IN THE OFFICE OF THE PALALIVASAL PANCHAYATH FOR THE PERIOD FROM 1968-99 TO 1972-73

EXT.P3: TRUE COPY OF THE BUILDING TAX ASSESSMENT REGISTERS KJEPT IN THE OFFICE OF THE PALLIVASAL PANCHAYATH FOR THE PERIOD FROM 1973-74 TO 1977-78

EXT.P4: TRUE COPY OF THE BUILDING TAX ASSESSMENT REGISTERS KEPT IN THE OFFICE OF THE PALLIVASAL PANCHAYATH FOR THE PERIOD FROM 1983-84 TO 8-7-1988

EXT.P5: TRUE COPY OF THE BUILDING TAX ASSESSMENT REGISTERS KEPT IN THE OFFICE OF THE PALLIVASAL PANCHAYATH FOR THE PERIOD FROM 1988-89 TO 1992-93

EXT.P6: TRUE COPY OF THE BUILDING TAX ASSESSMENT REGISTERS KEPT IN THE OFFICE OF THE PALLIVASAN PANCHAYATH FOR THE PERIOD FROM 1993-94 TO 2002-2003.

EXT.P7: TRUE COPY OF THE PROCEEDINGS NO. L.C. 1/2002 DATED 17-8-2002 ISSUED BY THE TAHSILDAR

EXT.P8: TRUE COPY OF THE RECEIPT BO. 246675 DATED 24-09-2002 EFFECTING THE PAYMENT

EXT.P9: TRUE COPY OF THE APPLICATION DATED 29-7-2002 SUBMITTED BY THE PETITIONER TO THE TAHSILDAR

EXT.P10: TRUE COPY OF THE CERTIFICATE ISSUED TO THE ASSIGNER BALAKRISHNA PILLAI DATED 13-3-1997

XT.P11: TRUE COPY OF THE NOTICE NO. 407/2003 DATED 25-08-2003 ISSUED BY THE VILLAGE OFFICER, PALLIVASAL TO THE PETITIONER

SECOND RESPONDENT EXTS:

EXT.R2(A): A COPY OF THE REPORT FROM THE TAHSILDAR, DEVIKULAM DATED 17-2-2003

EXT.R2(B): A COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR DATED 16-8-2001

A.M. SHAFFIQUE, J.

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W.P. (C) No. 38275 of 2003 - F

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Dated : 9th day of March, 2015

JUDGMENT

Petitioner challenges Ext. P11 notice dated 25-08-2003, issued by the Village Officer, Pallivasal, calling upon the petitioner to surrender possession of an extent of 03.64 Ares of land in Sy. No. 225/1 coming under Block No. 11 of Pallivasal Village, within seven days on receipt of the said notice, failing which, it was mentioned that appropriate action will be taken in the matter. It is, inter alia, stated that the property has not been vacated despite Ext. P7 order dated 17-08-2002, issued by the Tahsildar, Devikulam.

2. Petitioner challenges Ext. P11 and alternatively he seeks consideration of Ext. P9 application submitted by him before the

Tahsildar. Petitioner also submits that he had purchased the aforesaid land having an extent of 10 cents as per document No. 1845/2002 of SRO Devikulam, and he was paying building tax in respect of the building situated in the said property. Tahsildar has taken proceedings under the Kerala Land Conservancy Act which ultimately resulted in Ext. P7 order dated 17-8-2002 wherein it was declared that the property involved was Government purambokku land. It is clearly indicated that the encroachment has been made against the provisions of Section 5 of the Kerala Land Conservancy Act. Hence, he was imposed with fine of Rs. 1,000/- as Prohibitory Assessment for the occupation for the period from 1952-53 to 2002-2003 under Section 8 of the Act. By Ext. P7, he was called upon to vacate the land within a period of 15 days on receipt of Ext. P7 order. It is pursuant to Ext. P7, that Ext. P11 notice had been issued.

3. Counter affidavit has been filed by the 2nd respondent,

inter alia, stating that the property is Government purambokku. land which is not assignable, as it is forming part of National High Way. It is stated that northern boundary of the property is NH 49 and all other three sides are steep cuttings. The encroachment of the road purambokku will obstruct the expansion of NH 49. It is further stated that Ext. P1 sale deed is ab initio void , as it relates to Government land. Having regard to the aforesaid factual situation, and the fact that already proceedings had been initiated under the Land Conservancy Act, the petitioner cannot claim any benefit.

4. Petitioner contends that he has valid title to the property. In fact, he had already filed Ext. P9 application seeking assignment of the said land which further indicates that the property does not belong to him. As per Ext. P1, a document produced by him indicates that he had purchased the land from one Balakrishnan Nair. However, verification made by the

revenue authorities indicated that the said property is Government purambokku which is borne out from the records as well. He was only paying tax for the building. The property was not mutated in his name. Under such circumstances, it is always open for the Revenue Authorities to take proceedings under the Land Conservancy Act.

In the result , I do not find any merit in this Writ Petition and the same is, liable to be dismissed. Accordingly, this Writ Petition is dismissed, without prejudice to the right of the petitioner to take any other proceedings as envisaged under law.

Sd/- A.M. SHAFFIQUE
(Judge)

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P.S.toJudge