

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 26669 of 2012 (G)

PETITIONER:

ANNAMMA MOSA, AGED 82 YEARS
W/O.MATHAI MOSA, MUNDAKKAL HOUSE, 200 ACRE KARA
MANNAMKANDOM P.O., DEVIKULAM TALUK, IDDUKI DISTRICT.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENT(S) :

1. THE STATE OF KERALA
REP.BY THE PRINCIPAL SECRETARY, REVENUE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.

2. THE LAND REVENUE COMMISSIONER,
LAND REVENUE COMMISSIONER OFFICE,
PUBLIC OFFICE BUILDINGS, MUSEUM P.O.
THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR,
COLLECTORATE, PAINAVU, IDUKKI-685603.

4. THE SPECIAL TAHSILDAR, (LA)
TALUK OFFICE, DEVIKULAM, IDUKKI-685561.

5. THE VILLAGE OFFICER,
MANNAMKANDAM VILALGE, ADIMALI, IDUKKI-685561.

Addl.6. GOPALAN
S/O.KESAVAN, RESIDING AT PUTHENPURAYIL, 200 ACRE
MANNAMKANDAM.P.O., ADIMALI, IDUKKI DISTRICT -685561.

(ADDL. R6 IS IMPEADED AS PER ORDER DATED 02.09.2013 IN IA
11590/2013.)

Addl.7. SAMUEL
S/O.ISAHAK, RESIDING AT PAREKKUDIYIL HOUSE
200 ACRE MANNAMKANDAM.P.O., DEVIKULAM TALUK, ADIMALI
IDUKKI DISTRICT -685561.

Addl.8. P.I.THANKACHAN, AGED 50 YEARS,
S/O.ISAHAK, RESIDING AT PAREKKUDIYIL HOUSE
200 ACRE MANNAMKANDAM.P.O., DEVIKULAM TALUK, ADIMALI
IDUKKI DISTRICT -685561.

Addl.9. MATHEWS, AGED 50 YEARS,
S/O.ULAHANNAN, ONAMTHURUTHIYIL HOUSE
200 ACRE MANNAMKANDAM.P.O., DEVIKULAM TALUK, ADIMALI
IDUKKI DISTRICT -685561.

Addl.10. BABY, AGED 50 YEARS
S/O.THOMAS, PARAYIL HOUSE, 200 ACRE MANNAMKANDAM.P.O.
DEVIKULAM TALUK, ADIMALI, IDUKKI DISTRICT -685561.

Addl.11. JIJIL
S/O.ANTONY, KALAPPURATHOTTIYIL HOUSE
200 ACRE MANNAMKANDAM.P.O., DEVIKULAM TALUK, ADIMALI
IDUKKI DISTRICT -685561.

Addl.12. SAJI, AGED 50 YEARS,
S/O.RAMAKRISHNAN, RESIDING AT POKKATTU HOUSE
200 ACRE MANNAMKANDAM.P.O., DEVIKULAM TALUK, ADIMALI
IDUKKI DISTRICT -685561.

Addl.13. NARAYANAN
S/O.RAMAN, KOTTAYKKAKATHU HOUSE
200 ACRE MANNAMKANDAM.P.O., DEVIKULAM TALUK, ADIMALI
IDUKKI DISTRICT -685561.

Addl.14. SHIBU, AGED 39 YEARS,
S/O.KRISHNANKUTTY, RESIDING AT PARACHALIL HOUSE
200 ACRE MANNAMKANDAM.P.O., DEVIKULAM TALUK, ADIMALI
IDUKKI DISTRICT -685561.

Addl.15. AJI, AGE 42 YEARS,
S/O.KESAVAN, MECHERIYIL HOUSE
200 ACRE MANNAMKANDAM.P.O., DEVIKULAM TALUK, ADIMALI
IDUKKI DISTRICT -685561.

(ADDL. R7 TO R15 ARE IMPEADED AS PER ORDER DATED
21/07/2014 IN IA 8268/2014.)

R1-R5 BY SPECIAL GOVERNMENT PLEADER SMT.SUSHEELA BHATT
R6 BY ADV. SRI.AJITH KRISHNAN
RADDL.R6-R14 BY ADV. SRI.PRAKASH P.GEORGE
RADDL.R6-R14 BY ADV. SRI.SADER E.REAZ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF LAND ACQUISITION DUES.

EXT.P2: TRUE COPY OF THE COMMUNICATION ISSUED BY THE ASSISTANT COLLECTOR, DEVIKULAM, DATED 14.10.1976.

EXT.P3: TRUE COPY OF THE ORDER DT.14.2.1978 ISSUED BY THE 3RD RESPONDENT.

EXT.P4: TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER'S DAUGHTER BEFORE THE SECRETARY LAND BOARD, THIRUVANANTHAPURAM.

EXT.P5: TRUE COPY OF THE RECEIPT SHOWING THE RESURVEY CHARGE REMITTED BY THE PETITIONER'S HUSBAND ON 7.11.1986.

EXT.P6: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.P7: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

6TH RESPONDENT'S EXHIBITS

EXT.R6(a): TRUE COPY OF THE PATTA ISSUED BY THE SPECIAL TAHSILDAR, DEVIKULAM IN FAVOUR OF THIS RESPONDENT'S FATHER.

EXT.R6(b): TRUE COPY OF THE NOTICE ISSUED BY THE SPECIAL TAHSILDAR, DEVIKULAM IN THE NAME OF THIS RESPONDENT'S FATHER.

EXT.R6(c): TRUE COPY OF THE NOTICE ISSUED BY THE OFFICE OF THE 1ST RESPONDENT TO THIS RESPONDENT'S FATHER.

EXT.R6(d): TRUE COPY OF THE DECREE PASSED IN OS.NO.38/1976 BY THE MUNSIFF'S COURT, DEVIKULAM IN FAVOUR OF THIS RESPONDENT'S FATHER.

6-14 RESPONDENTS' EXHIBITS

EXT.R6(a): TRUE COPY OF THE ORDER OF INJUNCTION IN I.A.NO.597/2011 IN OS.NO.128/2011.

EXT.R6(b): TRUE COPY OF THE ORDER OF INJUNCTION IN I.A.NO.1252/2011 IN OS.NO.236/2011.

EXT.R6(c): TRUE COPY OF THE INJUNCTION SCHEDULE IN OS.NO.236/2011.

EXT.R6(d): TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 4TH RESPONDENT.

EXT.R6(e): TRUE COPY OF THE COMMUNICATION DT.9.5.2012 RECEIVED BY THE RESPONDENTS.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.26669 of 2012-G

Dated this the 16th day of June, 2015

JUDGMENT

The petitioner has approached this Court praying for a direction to the respondents to issue patta in respect of the land in Survey No.1279 of 2012 of Mannamkandom Village in Devikulam Taluk at the earliest and for a direction to the respondents to communicate the order if any passed by the respondents on Ext.P4 appeal.

2. According to the petitioner, an extent of 1 acre and 10 cents of land in Survey No.1279/12 of Mannamkandom Village in Devekulam Taluk was assigned to her husband late Mathai Mosa, as per the Kerala Land Assignment Rules. The petitioner has produced Ext.P1 receipt, claiming that her husband had remitted the land acquisition dues on 6.12.1974 itself, in tune with the assignment of the property in his favour on 3.5.1961. The petitioner further submits that her husband had submitted a complaint before the District Collector, Idukki, since patta was not issued. Ext.P2 has been produced in order to show that the Assistant Collector, Devikulam as per letter No.L.Dis.3280/76/B2

dated 14.10.1976 had informed the petitioner's husband, with reference to the complaint filed by him on 26.04.1976 regarding non issuance of patta, saying that the consent of the Revenue Board was necessary for issuing patta since there was inordinate delay in remitting the land acquisition dues. It was informed that the patta will be issued as soon as sanction from the Revenue Board was obtained. It is further pointed out that the petitioner's daughter Smt.Kripamma had taken up the matter thereafter consequent to the death of Mathai Mosa and in consideration of her petition, submitted before the District Collector on 2.11.1978 and the District Collector had by Ext.P3 order approved the assignment of 30.550 cents of land, out of 1 acre and 10 cents of land in Sy.No.1279 of 2012, in favour of Sri Kesavan Gopalan in L.A Case No.34/76.

3. In Ext.P3 the District Collector has stated that the petitioner's husband late Mathai Mosa had remitted the land acquisition dues on 08.12.74, consequent to the assignment of the land having an extent of 1 acre and 10 cents in Sy.No.1279 of 2012 of Mannamkandom Village in his favour on 3.5.1961. It is stated therein that Sri Mathai Mosa alienated an extent of 30.550 cents of land to Sri Kesavan Gopalan by way of sale

deed in plain paper on 19.04.1965 and thereupon a fresh land case was filed in the name of Sri Kesavan Gopalan for that extent of land, which continues to be in his possession and enjoyment since 1965. It is stated that patta was issued to Sri Kesavan Gopalan by the Special Tahsildar, L.A, Devikulam on 10.03.1976 after conducting a local enquiry. The District Collector, on receipt of the petition from the petitioner's daughter Kripamma, considered the issue with reference to the records and found that the entire extent of 1.10 ares of land was not in possession of Sri Mathai Mosa at the time of remitting the land acquisition dues. It was found therein that the original assignment order issued by the Special Tahsildar on 3.5.1961 was therefore not proper and the District Collector cancelled the same saying that the assignee was not in possession of the entire extent of 1.10 acres of land at the time of remitting the land acquisition dues. It is further stated that the said assignment was made as a result of mistake of facts. At the same time, the assignment in favour of Sri Kesavan Gopalan, the additional 4th respondent herein was held good and left undisturbed. It was further stated that a fresh land acquisition case in the name of Sri Mathai Mosa for the actual

extent of land in his possession and land acquisition dues remitted by him will be adjusted towards the dues in respect of such extent of land.

4. The petitioner says that her daughter Kripamma had approached the Board of Revenue as per Ext.P4 appeal as against the order passed by the District Collector in Ext.P3 and requesting to issue patta in her favour. The subsequent correspondence for the purpose of issuance of patta is seen made, by way of Ext.P6 petition dated 6.4.2011, submitted by the petitioner to the Tahsildar, L.A, Devikulam, requesting to allow her to remit the tax and to issue patta in respect of the land having an extent of 1 acre and 10 cents of land in Sy.No.1279/12. This is followed by another petition Ext.P7 dated 26.6.12 before the Land Revenue Commissioner in which also the petitioner requested for issuing patta in respect of the said land. It is thereafter that the petitioner has approached this Court praying for the following relief:

“I. Issue a writ of mandamus or other appropriate writ order or direction directing the respondents to issue patta in respect of the land in survey no.1279/12 of Mannamkandom Village in Devikulam Taluk to the petitioner at the earliest at any rate within the period to be prescribed by this Court.

II. Issue a writ of mandamus or other appropriate writ order or direction directing the respondents to communicate the order if any passed by the respondent on Exhibit-P4 appeal, otherwise orders may be directed to be passed by the 3rd respondent at the earliest.

III. Issue such other writ or order or direction as this Honourable Court may think fit and proper in the circumstances of the case.”

5. The additional 4th respondent Kesavan Gopalan has filed a counter affidavit stating that he has been in possession of the land having an extent of 30.5 cents of land right from 10.03.1976 onwards on the strength of patta issued in his favour, which is produced as Ext.R6(a). In his counter affidavit he refers to a notice issued by Special Tahsildar on 2.7.76 and which is produced as Ext.R6(c) in which it was stated that the patta was issued by mistake and on misrepresentation of facts and it was proposed to cancel the same under Rule 8(3) of the Kerala Land Assignment Rules. The 4th respondent has produced another notice issued from the Board of Revenue on 8.9.1980 which is marked as Ext.R6(b) directing him to appear for a hearing on 18.09.1980 in respect of the Revision Petition filed by the petitioner's daughter Kripamma against the order passed by the District Collector-Ext.P3, in respect of the land in

Sy.No.1279/12 of Mannamkandom Village.

6. As at present neither the petitioner nor the 4th respondent is aware of any further proceedings subsequent to the notice issued on 18.09.1980 except for Ext.R6(b) notice issued to the 4th respondent inviting them for a hearing on 18.09.1980.

7. According to the petitioner as well as the 4th respondent the matter is pending even now before the Board of Revenue, especially when it was stated even in the order passed by the District Collector that for the purpose of issuance of patta concurrence of the Board of Revenue was necessary since there was delay in the matter in remitting the land acquisition dues.

8. The Tahsildar has filed a counter affidavit along with the files in respect of the land assignment case relating to the property in Sy.No.1287. In the counter affidavit dated 21.02.2015, the Deputy Tahsildar, Taluk Office, Devikulam has stated that Sri Mathai Mosa submitted a petition on 26.04.1974 before the Sub Collector, Devikulam complaining the non issuance of patta and on enquiry into that through the Special Tahsildar, he was informed that concurrence was to be obtained from the Revenue Board for the purpose of issuing patta, since

there was delay in payment of land acquisition dues. It was further stated that as and when permission was obtained from the Revenue Board, she was informed that patta will be issued to her. Relying on sub rule 7 of Rule 9 of Kerala Land Assignment Rules, 1964, the Tahsildar stated that if the assignee does not remit the land value, the District Collectors and the Board of Revenue will be competent to condone the delay in payment of land value only upto a period of 3 years and 5 years respectively from the date of order sanctioning registry and that in all other cases if the delay exceeds 5 years, sanction of Government is necessary for condoning the delay. Further it is stated that the attempt of the petitioner after 40 years to get the land assigned is belated and the Government alone can condone the delay under sub rule 7 of Rule 9.

8. According to the petitioner, she need not remit any dues towards land assignment since she belongs to the Scheduled Tribe and therefore it is not even necessary for getting concurrence of the Government. At any rate, even according to the petitioner, the matter has been pending before the Board of Revenue in respect of the assignment of land and there is a dispute regarding an extent of 30.550 cents of

property, for which patta has already been issued to the 4th respondent, which is again stated to be cancelled as per the records furnished by the 4th respondent.

9. Additional respondents 7 to 11 have also filed a counter affidavit. Their claim is for right of a pathway which according to them had been in use for the last several years. It is upto these respondents to approach the appropriate authority in case they have to establish any right of way. The 6th respondent submits that he may also be heard. It is upto the 6th respondent to substantiate his claims if any, for which he can also file appropriate petition.

10. Since the matter relates to Ext.P4 petition filed on 9.3.1978 and the available records as produced by the additional 4th respondent show that a hearing was attempted to be made in the year 1980, it is for the petitioner as well as the 4th respondent to approach either the Board of Revenue or the Government seeking appropriate relief. However, since the counter affidavit reveals that it is the Government who has to condone the delay in respect of the land assignment cases for remitting the land assignment dues, the petitioner shall approach the Government with appropriate petition pointing

out her grievances. The Government shall thereupon consider the case of issuance of patta in accordance with rules and after conducting a hearing with notice to all affected parties. Final orders shall be passed within a period of six months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of accordingly.

rtr/

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