

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).NO. 27484 OF 2012 (I)

PETITIONERS:

1. ASOKAN,
S/O.EDATHADAN RAGHAVAN, ALOOR VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
2. MOHANAN,
S/O.EDATHADAN RAGHAVAN, ALOOR VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
3. SALITHA,
W/O.MOHANAN EDATHADAN HOUSE, ALOOR VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.T.N.MANOJ

RESPONDENT(S) :

1. THE DIRECTOR GENERAL ARCHECLOGICAL SURVEY OF INDIA,
JANPATH, NEW DELHI-11011.
2. STATE OF KERALA
THROUGH THE CHIEF SECRETARY-695001.
3. THE DIRECTOR,
ARCHELOLOGICAL DEPARTMENT OF KERALA,
SREE PADHAM PALACE, FORT P.O., THIRUVANANTHAPURAM-23.
4. THE DISTRICT COLLECTOR,
ERNAKULAM-682030.
5. THE VILLAGE OFFICER,
KIZHAKKUMBHAGAM VILLAGE OFFICE, PUTHEYEZHAM,
ALUVA-683101.
6. GOVERNMENT OF INDIA,
REPRESENTED BY THE SECRETARY MINISTRY OF
CULTURE, NEW DELHI-11011

R6 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA

R BY ADV. SRI.DINESH R.SHENOY

R1 BY ADV. SRI.DINESH R.SHENOY,SC, ARCHAEOLOGICAL SURVEY OF
INDIA

R2-R5 BY ADV. GOVERNMENT PLEADER, V.K. RAFAEEK

R6 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

R3 BY SRI.DINESH R.SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE BUILDING TAX RECEIPT FOR THE YEAR 95-96
DT. 30.6.95

EXHIBIT P1(A): TRUE COPY OF THE BUILDING TAX RECEIPT FOR THE YEAR
96-97 DT. 1.2.97

EXHIBIT P2: TRUE COPY OF THE OWNERSHIP CERTIFICATE DT. 31.7.95.

EXHIBIT P3: TRUE COPY OF THE PETITION FILED UNDER THE RIGHT TO
INFORMATION ACT DT. 22.7.10

EXHIBIT P4: TRUE COPY OF THE INFORMATION RECEIVED UNDER THE RIGHT TO
INFORMATION ACT DT. 16.8.10.

EXHIBIT P5: TRUE COPY OF THE INFORMATION RECEIVED UNDER THE RIGHT TO
INFORMATION ACT DT. 4.10.2011

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.27484 of 2012

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Dated this the 18th day of November, 2015

J U D G M E N T

The petitioners are the absolute owners in possession of an extent of 2.57 Acres of land comprised in old survey No.176 (R.S.No.59), by virtue of sale deed Nos.3251 of 1993, 1562 of 1994 and 2145 of 1993 of S.R.O., Sreemoolanagaram. The said property was purchased from the owners of different Tavazhies of Tripunithura kovilakom. When the petitioners approached the office of the 5th respondent during the year 2009 for payment of tax, the 5th respondent refused to accept tax with respect to the said properties purchased by them and they were made to understand that there is a proposal to preserve and protect the property and the building therein, as a Monument, which

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is popularly known as “South Palace” (Thekke Kovilakam) under the provisions of the Ancient Monuments and the Archaeological Sites and Remains Act, 1968 (*hereinafter referred to as 'the Act'*).

2. Later, the petitioners were made to understand that the proceedings are going on to take over or acquire that property, which now stands in the name of the petitioners. To the knowledge of the petitioners, no notification is published so far and no such notification is affixed on the conspicuous part of the house situated within the property purchased by the petitioners, as per the Act. However, the petitioners were not permitted to pay land tax on the ground of the alleged proposal for preservation under the provisions of the Act. What is learnt from the office of the 3rd respondent is that a draft notification is prepared and forwarded to the State Government by the 3rd respondent requiring the State Government to proceed further with the steps for

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preservation of the Monuments and the notification was forwarded to the State Government as early as on 05.09.2011 and even after the lapse of four years, no steps have been taken so far to preserve the said property under the said Act. So also, as on today, no proposal is put forth before the petitioners in order to ascertain the willingness of the petitioners to enter into an agreement, as contemplated under Section 6 of the Act to preserve the Monuments. The petitioners have not received any communication from any of the respondents calling for objection against the proposal for preservation of the Palace of Monuments. So also, no attempt on the part of the State or on the part of the Central Government was made to complete the process of acquisition so as to assess the compensation and for the disbursal of the same to the petitioners. In short, the petitioners are deprived of their rights to enjoy the property in violation of the right guaranteed under the

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law under the guise of preservation of that land under the Act. This is the grievance ventilated through pleadings in this Writ Petition.

3. The 3rd respondent filed a counter affidavit, admitting the proposal averred in the Writ Petition and stated that a draft proposal was sent to the Government of Kerala for approval and for the subsequent publication of primary notification, to protect the South Palace and related Monuments. However, it is for the Government of Kerala, to take a decision and issue primary notification in this regard. At the same time, it is stated that the Act is not applicable to the instant case and as per Rules 13 and 20 of the Act, it is for the Government of Kerala to decide whether a Monument is to be acquired or not as per provisions of the Kerala Land Acquisition Act, 1961, and if decided by the Government, the procedure to be followed is given in Section 28 of the Act. It is also stated that any action for outright purchase of any

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Monuments/sites or enter into an agreement with the owner starts only after a decision is taken by the Government of Kerala in this regard and hence no interaction happened with the petitioners.

4. The sum and substance of the contentions raised by the 3rd respondent is that the matter is left with the Government of Kerala and it is for the Government of Kerala to take a decision as to further proceedings to be followed.

5. Heard the learned counsel for the petitioners and the learned Government Pleader.

6. Having regard to the grievance highlighted in the Writ Petition, it appears that the grievance of the petitioners is genuine and the same deserves to be attended and addressed by the 2nd respondent himself. According to Article 300A of the Constitution of India, no person shall be deprived of his right to property save by authority of law. But, here the petitioners are deprived of

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their rights to enjoy their property, since the last so many years, on a mere proposal to preserve the said property under the provisions of the said Act.

7. Hence, the 2nd respondent is directed to take a final decision in this matter, within a period of three months from the date of production of a copy of this judgment, after affording an opportunity of being heard to the petitioners. However, I hope that the 2nd respondent will take a decision either to proceed with the proposal or to drop the proceedings and inform the parties.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A.To judge