IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 39888 of 2003 (W)

PETITIONER(S):

AMMINI GEORGE, ANJALIKKAL HOUSE,
COLONY ROAD, MUNNAR.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S):

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1. THE DISTRICT COLLECTOR, IDUKKI.

2. THE TAHSILDAR, DEVIKOLAM.

3. THE EXECUTIVE ENGINEER,
GENERATOR DIVISION,
K.S.E BOARD, MUNNAR.

R1 & R2 BY SENIOR GOVERNMENT PLEADER SRI.K.K.SAIDALAVI.
R3 BY ADV. SRI.JOSE J.MATHEIKEL, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 39888 of 2003 (W)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF ORDER NO.LC.18/91 DTD.26.3.1992 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: TRUE COPY OF NOTICE DTD.2.7.1999 PUBLISHED BY THE 2ND RESPONDENT.

EXT.P3: TRUE COPY OF CHALAN EVIDENCING PAYMENT OF THE LAND ASSIGNMENT DUES.

EXT.P4: TRUE COPY OF PATTA ISSUED TO THE PETITIONER VIDE ORDER NO.LA-106/99/KDH DTD.2.12.1999.

EXT.P5: TRUE COPY OF RECEIPT EVIDENCING PAYMENT OF THE LAND TAX FOR THE YEAR 2000-2001 AND 2001-2002.

EXT.P6: TRUE COPY OF RECEIPT EVIDENCING PAYMENT OF THE BUILDING TAX FOR THE YEAR 2000-2002.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 39888 of 2003

Dated this the 4th day of September, 2015

<u>J U D G M E N T</u>

The petitioner has approached this Court alleging that respondents 2 and 3 visited the premises of the petitioner and directed to vacate the premises, which was in possession of the petitioner since 1961 onwards.

2. The petitioner alleges that she was in possession of 5.6 cents of land comprised in Sy.No.843/A of KDH Village since 1961 and she had been remitting the tax since 1970. She further alleges that in 1992, she was proceeded against under the Land Conservancy Act and a case was registered for unauthorized occupation of government land and Ext.P1 order dated 26.03.1992 was issued directing the petitioner to vacate the premises. However, the petitioner submitted an application in the year in the year 1999. On receipt of the application, the 2nd respondent invited objections; and receiving a sum of ₹262/- as land assignment dues on 01.12.1999, 'patta', vide Order No.LA-106/99/KDH dated 02.12.1999, was issued to the petitioner.

The petitioner's grievance is that now respondents 2 & 3 had asked her to vacate the government land. It is with this background, the petitioner has come up before this Court.

3. The respondents have filed detailed counter affidavits, wherein it was contended that the 'patta' issued to the petitioner is incompetent as the Deputy Tahsildar, who issued the same, has no authority to do so. According to them, since the inception of KDH Act and Rules, the assignment of land in KDH Village should be made as per the provisions of KDH (Presumption of Land) Act, 1971; and the Government has delegated the power to the District Collector. According to them, as the assignment was under the Kerala Land Assignment Rules, the assignment as well as the consequential 'patta' in the name of the petitioner was improper.

4. Arguments have been heard.

5. The long continuous possession of the petitioner since 1961 practically stands admitted by the respondents. The only contention raised by the respondents is that the property in possession of the petitioner was formerly

assigned to the KSEB; and the petitioner has encroached upon the land; and it was at the request of the KSEB, proceedings have been initiated. It has to be noted that a 'patta' has been issued to the petitioner on remitting assignment dues. After assigning the same, without affording the petitioner an opportunity of being heard, any proceeding against her to evict from the property is incompetent; and therefore, the same has to be interfered with.

In the result, the writ petition is allowed.

The respondents are restrained from interfering with the enjoyment and possession of the property in Sy.No.843/A of KDH Village by the petitioner except under due process of law. As the petitioner was continuously remitting tax, it shall be open to the petitioner to remit the tax unless and until any proceeding is initiated against the petitioner; and in the event of remitting the tax, the respondents shall accept the same without protest.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-