IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 27358 of 2013 (T)

PETITIONER(S):
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1. SUMATHY VELLAPPILLIL,
   W/O. THANKAPPAN, AGED 53 YEARS,
   COOLIE, MANATHANA P.O., KANNUR DISTRICT-670677.

2. ELUKKARAN NARAYANAN, S/O. RAMAN,
   AGED 65 YEARS, BLACKSMITH, MANATHANA P.O.,
   KANNUR DISTRICT-670677.

3. KUTTIACHAN, S/O. ANTONY, AUTO DRIVER,
   MANAKKAT HOUSE, MANATHANA P.O.,
   KANNUR DISTRICT.

4. OMANA, W/O. KUTTIACHAN, COOLIE, RESINDG -DO-.

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S):
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1. THE VILLAGE OFFICER,
   MANATHANA VILLAGE OFFICE,
   MANATHANA P.O., KANNUR DISTRICT-670677.

2. THE DISTRICT COLLECTOR, KANNUR-670001.

BY GOVERNMENT PLEADER SRI.S.JAMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 27358 of 2013 (T)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1- TRUE COPY OF THE REGISTERED ASSIGNMENT DEED NO. 3578/2010 OF SRO, PERAVOOR.

EXHIBIT P2- TRUE COPY OF THE REGISTERED ASSIGNMENT DEED NO. 3577 OF 2010 OF SRO, PERAVOOR.

EXHIBIT P3- TRUE COPY OF THE REGISTERED ASSIGNMENT DEED NO. 3579 OF 2010 OF SRO, PERAVOOR.

EXHIBIT P4- TRUE COPY OF THE JUDGMENT IN WPC 2676/2010 OF THIS HON'BLE COURT.

EXHIBIT P5- TRUE COPY OF THE 2ND RESPONDENT DATED 3-4-2010.

EXHIBIT P6- TRUE COPY OF THE RECEIPT OF BASIC TAX REMITTED BY THE 1ST PETITIONER IN RESPECT OF EXT P1 PROPERTY.

EXHIBIT P7- TRUE COPY OF THE RECEIPT OF BASIC TAX REMITTED BY THE 2ND PETITIONER IN RESPECT OF EXT P2 PROPERTY.

EXHIBIT P8- TRUE COPY OF THE RECEIPT OF BASIC TAX REMITTED BY THE 3RD AND 4TH PETITIONERS IN RESPECT OF EXT P3 PROPERTY.

EXHIBIT P9- TRUE COPY OF THE QUESTIONNAIRES SUBMITTED BY THE 1ST PETITIONER IN RESPECT OF EXT P1 PROPERTY.

EXHIBIT P10- TRUE COPY OF THE QUESTIONNAIRES SUBMITTED BY THE 2ND PETITIONER IN RESPECT OF EXT P2 PROPERTY.

EXHIBIT P11- TRUE COPY OF THE QUESTIONNAIRES SUBMITTED BY THE PETITIONERS 3 AND 4 IN RESPECT OF EXT P3 PROPERTY.

EXHIBIT P12- TRUE COPY OF THE REPLY ISSUED BY THE 1ST RESPONDENT IN RESPECT OF EXT P1 PROPERTY.

EXHIBIT P13- TRUE COPY OF THE REPLY ISSUED BY THE 1ST RESPONDENT IN RESPECT OF EXT P2 PROPERTY.

EXHIBIT P14- TRUE COPY OF THE REPLY ISSUED BY THE 1ST RESPONDENT IN RESPECT OF EXT P3 PROPERTY.

EXHIBIT P15- TRUE COPY OF THE APPLICATION SUBMITTED BY CHEMBAN DATED 6.8.2008.

RESPONDENTS' EXHIBITS & ANNEXURES:

ANNEXURE R1(A) : TRUE COPY OF THE COMMUNICATION DATED 18.11.2011.

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J

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W.P(C) No. 27358 of 2013

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Dated this the 03rd day of August, 2015

J U D G M E N T

The petitioners are aggrieved with the fact that the petitioners' basic tax have not been received by the Village Officer, despite the petitioners having purchased the properties long back. The petitioners 1 to 4 purchased small extents of properties from one Chemban as per Exts.P1 to P3 registered assignments. The said Chemban is said to have obtained the property from the Government in the year 1977, in his capacity as a member of the Scheduled Tribe. The assignee had been before the authority seeking for alienation of the property for the treatment expenses of his wife and daughter.

2. The authority having not considered it, the assignee was before this Court and the same was disposed of as per Ext.P4. Ext.P4 indicates that the assignee being a landless person, was assigned the said land as per Ext.P1 produced therein. This Court

directed the respondent to take a decision on the application filed within a period of one month from the date of production of a certified copy of the judgment.

3. In pursuance to that, Ext.P5 order was passed granting permission, and on its strength Exts.P1 to P3 deeds were executed. The petitioners herein had been regularly paying the tax after having effected mutation as per Exts.P6 to P8. It is only later when there was a refusal by the 1st respondent, to accept the tax, the petitioners are before this Court.

4. The learned Government Pleader would submits that the District Collector had committed a mistake insofar as, not noticing that the assignee was a scheduled tribe and there could be no transfer of the rights in a property as per the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999. Specifically Section 4 has to be noticed as extracted herewith:

> 4. Restriction on transfer:- Notwithstanding anything to the contrary contained in any other law, or in any contract, custom or usage, or in any judgment, decree, or order of any Court, any transfer effected by a member of the Schedules Tribe, of land possessed, enjoyed or owned by him on or after the commencement of this Act, to a person other than a member of a Scheduled Tribe, without the previous consent in writing to the competent authority, shall be invalid.

5. Section 4 clearly indicates that no transfer other than to a member of s Scheduled Tribe shall be invalid if only the same is without the previous consent in writing from the competent authority. The definition of competent authority shows it to be the District Collector. Herein Ext.P5 is the order of the competent authority pursuant to which the said transfer was

made. In such circumstance, it cannot be said that the transfer made to the petitioners by Exts.P1 to P3 are not valid.

Writ petition would stand allowed. The petitioners shall be permitted to pay tax of the properties covered by Exts.P1 to P3 title deeds. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge