

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 31857 of 2009 (B)

PETITIONERS:

1. ALEYAMMA YACOB, W/O. LATE YACOB,
CHEERAKATHOTTATHIL HOUSE, CHATHAMATTOM,
KOTHAMANGALAM, ERNAKULAM DIST.
2. BENNY YACOB, S/O. LATE YACOB,
CHEERAKATHOTTATHIL HOUSE, CHATHAMATTOM,
KOTHAMANGALAM, ERNAKULAM DIST.
3. JESSY PRAKASH, D/O. LATE YACOB,
IKKARAKUDIYIL HOUSE, P.O. POOTHRIKKA,
KOLENCHERRY, ERNAKULAM DIST.
4. JAIN YACOB, S/O. LATE YACOB,
CHEERAKATHOTTATHIL HOUSE, CHATHAMATTOM,
KOTHAMANGALAM, ERNAKULAM, DIST.

BY ADVS.SRI. P.V.BABY
SRI. R.KIRAN

RESPONDENTS:

1. STATE OF KERALA,
REP. BY ITS SECRETARY TO REVENUE DEPT.
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE CHIEF CONSERVATOR OF FORESTS,
THIRUVANANTHAPURAM.
3. THE DIVISIONAL FOREST OFFICER,
KOTHAMANGALAM, ERNAKULAM DIST.
4. THE RANGE OFFICER, MULLARINGAD RANGE,
ERNAKULAM DIST.
5. THE TAHSILDAR,
KOTHAMANGALAM.

R1 TO R5 BY ADVS. SRI. M.P. MADHAVAN KUTY SPL.GOV.T.PLEADER FOREST
& SMT. M.T. SHEEBA, GOVT PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIONER IN OS No.337/1978 BEFORE THE MUNSIFF'S COURT, MUVATTUPUZHA.
- EXT- P2- TRUE COPY OF THE EVIDENCE OF A. BHASKARAN NAIR GIVEN IN OS No.358/1979 ON THE FILE OF OF THE MUNSIFF'S COURT, MUVATTUPUZHA.
- EXT- P3- TRUE COPY OF THE ORDER IN CMP No.3380/1987 IN SA No.219/1985 OF THIS HON'BLE COURT.
- EXT- P4- TRUE COPY OF THE REPRESENTATION DATED 04-09-1991 SUBMITTED BY LATE YACOB BEFORE THE HON'BLE MINISTER FOR FOREST.
- EXT- P5- TRUE COPY OF THE COMMUNICATION DATED 06-09-1991 ISSUED FROM THE FOREST DEPARTMENT TO THE 2ND RESPONDENT.
- EXT- P6- TRUE COPY OF THE ORDER DATED 03-03-1992 OF THE 1ST RESPONDENT.
- EXT- P7- TRUE COPY OF THE COMMUNICATION DATED 29-05-1992 ISSUED FROM THE 5TH RESPONDENT TO THE DISTRICT COLLECTOR, ERNAKULAM.
- EXT- P8- TRUE COPY OF THE JUDGMENT IN OP No.10667/1991 OF THIS HON'BLE COURT.
- EXT- P9- TRUE COPY OF THE JUDGMENT IN OP No.11803/1993 OF THIS HON'BLE COURT.
- EXT- P10- TRUE COPY OF THE DECISION DATED 30-04-1999 OF THE LOK ADALATH, MUVATTUPUZHA.
- EXT- P11- TRUE COPY OF THE COMMUNICATION DATED 23-01-2003 ISSUED BY THE 3RD RESPONDENT TO LATE YACOB.
- EXT- P12- TRUE COPY OF THE COMMUNICATION DATED 01-02-2003 ISSUED BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT.
- EXT- P13- TRUE COPY OF THE REPRESENTATION DATED 23-1-2005 SUBMITTED BY LATE YACOB BEFORE THE HON'BLE MINISTER FOR REVENUE.
- EXT- P14- TRUE COPY OF THE COMMUNICATION DATED 02-12-1994 ISSUED BY THE PRIVATE SECRETARY OF THE MINISTER FOR LABOUR.
- EXT- P15- TRUE COPY OF THE COMMUNICATION DATED 27-09-2001 ISSUED BY THE SECRETARY, FOREST AND WILD LIFE DEPARTMENT, GOVERNMENT OF KERALA.

RESPONDENTS' EXHIBITS

ANNEXURE- R3 (a) - TRUE COPY OF THE JUDGMENT DATED 31-10-1989 IN
SA No.219/1985.

ANNEXURE- R3 (a) - TRUE COPY OF THE REPORT DATED 28-10-1992 PREPARED BY
THE REVENUE DIVISIONAL OFFICER, MUVATTUPUZHA.

ANNEXURE- R3 (a) - TRUE PHOTOGRAPHS OF THE DISPUTED PROPERTY
SHOWING THE FLORA AND FAUNA.

True copy

P.A To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 31857 OF 2009-B

DATED THIS THE 4th DAY OF FEBRUARY, 2015.

J U D G M E N T

Petitioners are the wife and children of late Sri. Yacob, who died on 26-09-2007. It is claimed that late Sri. Yacob was in possession of 2 Hectors of land in the north-west part of Block No.38 in Mullaringad Beat of Thodupuzha Forest range. Sri. Yacob improved the land by cultivation. When the Forest authorities attempted to destroy the cultivations and to forcefully evict Sri. Yacob from the property, he had filed two suits before the Munsiff Court, Muvattupuzha as O.S.Nos.337/1978 and 358/1979. Exhibits P1 & P2 are the Commission Report and deposition of a witness examined in the above said suits, which are produced in proof of possession of Sri. Yacob. It is stated that from the suit O.S. No.358/1979, a Second Appeal was filed before this court in which an interim order was issued restraining the Forest authorities from putting up of any permanent boundary wall through the outer boundary

of the property in question. It is evident that on 04-09-1991 late Sri. Yacob submitted a representation before the Hon'ble Minister for Forest, complaining about attempts made by the officials to destroy the cultivations and to evict him from the property. In Ext.P5 the Government have called for a report from the 2nd respondent based on Ext.P4, in which it was instructed that the steps for eviction shall be kept in abeyance till the Government takes a decision in the matter. It is evident from Ext.P7 that the 5th respondent had submitted report to the District Collector stating that the hon'ble Minister for Revenue had issued order for joint verification of land under occupation of Sri. Jacob. It also includes that this court in OP No.10667/1991 had issued a direction not to evict Sri. Yacob from the encroached land. In the said report it is mentioned that, despite such directions the Forest authorities are reluctant to conduct any joint verification. Hence the District Collector was requested to proceed further in the matter. A copy of the judgment in OP No.10667/1991 is produced as Ext.P8, in which this court found that Ext.P4 appeal is pending before

the Government and if the petitioner is evicted before disposal of the same the remedy will become illusory. Hence it is ordered that till the Government takes a decision on Ext.P4 the petitioner shall not be evicted. Since no joint verification was conducted despite the directions contained in Ext.P8 judgment and despite the instruction issued by the hon'ble Minister for Revenue, Sri. Yacob had approached this court in another writ petition, OP No.1180/2003. In Ext.P9 judgment this court found that there was a direction issued by the Government to the Tahsildar and to the Divisional Forest Officer concerned to make a joint verification. Therefore this court directed those authorities to take appropriate steps within a reasonable time. The petitioner thereafter approached the Taluk Legal Service Committee, Muvattupuzha in a complaint alleging non-implementation of the directions. On 30-04-1999 the matter was settled in a 'Lok Adalath' by directing implementation of Ext.P9 judgment. It is stated that a joint verification was scheduled on two occasions thereafter, during the year 2003, as evidenced from Exts.P11 & P12. But it is alleged

that such a verification was not conducted because of the non-cooperation of the Forest officials. Under the above mentioned circumstances this writ petition is filed seeking directions for conduct of a joint verification in the property in question, in order to take further steps for assignment of the land in favour of the petitioners based on the report of such joint verification to be conducted.

2. In a statement filed by the 3rd respondent it is mentioned that the disputed property is part of 1972 Teak Plantations in Chathamattom Beat of Mullaringad Forest Range. It is stated that there is no separate boundary demarcation for the disputed land and the areas comes under the Thodupuzha Reserve Forest, which is duly notified under the Kerala Forest Act. According to the 3rd respondent the petitioners as well their predecessor had attempted to trespass into land on several occasions and the Forest Department had taken steps against the predecessor of the petitioners by registering various cases. It is stated that O.S. No.337/1978 filed by Sri. Yohannan Yacob was dismissed by the Munsiff Court and thereafter he

had filed O.S. No.358/1979 which was also dismissed. The judgment in O.S. No.358/1979, was taken up in appeal before the Sub Court, Ernakulam in A.S No.85/1983. But the appeal was also dismissed. It is stated that a Second Appeal filed before this court was also dismissed on 31-10-1989, as per Annexure R3 (a) judgment. The statement further reveals that when the predecessor of the petitioners attempted to cut and remove valuable teak trees, raising false claims based on Ext.P5 order passed by the Government, criminal cases were registered against the predecessor of the petitioners by the Forest Department as OR Nos.22/1991 and 24/1991. According to the 3rd respondent when such illegal acts were noted by the Government the stay granted as per Ext.P5 was vacated. It is stated that the predecessor of the petitioners who had encroached into land on the basis of Ext.P5 order was vacated on 29-09-1991 itself. Thereafter the disputed property is under management and control of the Forest Department and the area at present is having thick natural vegetation. According to the 3rd respondent the prayer of

the petitioners for conducting a joint verification has no bonafides and the claim is made without any legal basis. It is further stated that based on the directions issued by the Government a joint verification was conducted earlier on 30-09-1992 and a report was submitted to the District Collector by the Revenue Divisional Officer. On the basis of the report of such joint verification (copy of which is marked as Ext.R3 (b)) it is evident that the petitioners or their predecessor were not entitled to get any benefits. It is evident that they were not in occupation of the disputed property from 01-01-1977 onwards and no assignment can be effected with respect to the said property. Along with statement the 3rd respondent had also produced Ext.R3 (c) series of photographs for establishing that the property in question is covered by thick vegetations and there is no cultivation at all as alleged.

3. The petitioners are seeking direction for conducting a joint verification, basically on the ground that the Government have issued such a direction while considering Ext.P4 representation, as early as in the year

1991. A joint verification in the property can be sought for only for the purpose of deciding the question of assignment of the land. Admittedly the property is a forest land included in the notification under the Act. The petitioners can seek assignment only under provisions of the Kerala Land Assignment (Regularisation of Occupation of Forest Lands Prior to 01-09-1977) Special Rules, 1993. The Rule insist the land sought for assignment should have been under occupation of the assignee or his predecessors in interest prior to 01-01-1977. In Ext.P4 representation submitted by the predecessor in interest of the petitioners it is admitted that, from the year 1977 onwards various officials have registered about 9 cases against him. In Ext.P4 there was no request made before the Government to take any steps for assignment of the land. On the other hand what was complained is about the eviction and destruction of cultivation by the Forest officials based on the dismissal of O.S. No.358/1979. It is true that in Ext.P5 the Government have directed to keep in abeyance all steps for eviction till a final decision is taken on the matter.

According to the 3rd respondent the Government have subsequently vacated the said order. In Ext.P7 report the Tahsildar had categorically mentioned that Sri. Yacob was forcefully evicted from the land by the forest officials and various criminal cases were chargesheeted against him. It is further mentioned that last eviction from forest land was on 29-09-1991. In Ext.P8 judgment this court directed the Government to take a decision on the matter and till then restrained eviction of the petitioners. In Ext.P9 judgment this court only directed the Tahsildar and the DFO to take appropriate steps on the basis of the order issued by the hon'ble Minister for Forest, on 10-02-1993 to conduct a joint verification in the property. Ext.R3 (b) report submitted by the Revenue Divisional Officer it is categorically mentioned that the land in question is remaining as part of forest land and there is no occupation or possession of the land by anybody. But the said report is submitted not on the basis of Ext.P9 judgment. It is evident that such a report was submitted only during pendency of OP No.10667/1991.

4. There was a clear direction issued by this court in Ext.P9 judgment to consider the complaint regarding non-implementation of the direction issued by the Government to conduct a joint verification by the Tahsildar and the DFO. It is also evident that the Lok Adalath had issued a direction to conduct joint verification by the DFO and the Revenue authorities concerned. There is also evidence to show that notices were issued proposing such a joint verification, on two occasions, in the year 1993. Now the complaint raised is regarding non-cooperation on the part of the Forest officials in conducting such joint verification. The petitioners are limiting the relief only to the extent of seeking for having a joint verification.

5. With respect to the question of granting relief as sought for, this court has to take into consideration the factual matrix prevailing as well as the eligibility of the petitioners in getting such relief. Admittedly, a joint verification is required only for the purpose of deciding the question of assignment under the specific Rules cited above. The petitioners will be entitled for any

assignment only if it is proved that their predecessor in interest was in occupation of the forest land prior to 01-01-1977. But it is admitted that on several occasions the Forest officials have evicted the predecessor from occupation of the land and forest cases were registered against him with respect to unauthorised encroachment. The predecessor of the petitioners had approached the civil court seeking for a declaration and consequential injunction with respect to possession of the land in question, in the suit O.S. No.358/1979. In Ext.R3 (a) judgment of this court in the Second Appeal arising out of the said suit it is categorically observed that the trial court found that there is no evidence on the side of the plaintiff to show that he was in possession of the property from 1967 onwards or that he had made any cultivation in the property. It was held by the lower appellate court that the evidence adduced by the defendants would clearly show that the property is part of 'Teak Plantations' of the Government and Teak Trees were planted in the property along with the neighbouring properties which are in possession of the Government. After

considering the documents produced by the Forest officials, the lower appellate court held that there is no convincing evidence on the side of the plaintiff to show that he was ever in possession of the plaint schedule property. Under the above mentioned circumstances it is evident that the predecessor of the petitioners had failed in establishing possession over the land in question or in establishing that he had conducted cultivation in the property. The above aspect, coupled with the admitted fact that the predecessor of the petitioners was evicted on several occasions and criminal cases were registered against him, would negative the claim of the petitioners that their predecessor was in occupation of the land prior to 01-01-1977 and that he continued cultivation in the property in question. Further it is evident that a verification was conducted by the RDO along with DFO, in which it is categorically found that the land in question is demarcated with 'Jundas' as Forest Land and there are no signs of occupation or cultivation by the petitioners or their predecessor. Further, nothing is produced from the side of the petitioners to show that the

Government have taken any positive decision to the extent of holding that the land in question is liable to be assigned to the petitioners or to the effect that the forest officials should be restrained permanently from evicting the petitioners from possession over the property. Hence this court is inclined to arrive at a conclusion that the petitioners have failed in proving that they are entitled to get the land in question assigned in favour of them. Hence their request for directing a joint verification in the property deserves no consideration.

6. Under the above mentioned circumstances this court is not inclined to grant any relief by way of direction to conduct a joint verification as prayed for by the petitioners. Resultantly, the writ petition fails and the same is hereby dismissed.

Sd/-
C.K. ABDUL REHIM
JUDGE

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True copy

P.A. to Judge