IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 31976 of 2009 (N)

PETITIONER(S):

V.X. ALBIN, VALIATHARA, CHINNAKKANAL,
IDUKKI.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S):

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

2. THE DISTRICT COLLECTOR, IDUKKI.

3. THE TAHSILDAR, UDUMBANCHOLA.

4. SMT. ANTHONIAMMAL, WIFE OF RAMER, SURIANELLY COLONY, CHINNAKKANAL P.O.

5. THE LAND REVENUE COMMISSIONER, THIRUVANANTHAPURAM.

6. THE DIVISIONAL FOREST OFFICER, MUNNAR DIVISION, DEVIKULAM.

7. HINDUSTAN NEWS PRINTS LIMITED, REPRESENTED BY ITS REGIONAL MANAGER, DEVIKULAM.

R1 TO R3 & R6 BY GOVERNMENT PLEADER
R4 BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
R5 BY SPL.GOVERNMENT PLEADER (REVENUE) SMT SUSHEELA BHATT
R7 BY ADVS.SRI.V.KRISHNA MENON, SC, HNL
SRI.E.K.NANDAKUMAR
SRI.E.K.MADHAVAN
SMT.P.VIJAYAMMA
SRI.DEVIDAS.U.K

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-02-2015 ALONG WITH WPC. 22766/2009, WPC. 34222/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 31976 of 2009 (N)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:	**COPY OF REGISTERED DEED DATED 04/08/2006.**
EXXT.P2:	**COPY OF ENQUIRY MAHAZAR DATED 20/02/72 PREPARED BY THE SPECIAL VILLAGE ASSISTANT, CHINNAKANAL.**
EXT.P3:	**COPY OF SKETCH PREPARED BY THE SPECIAL VILLAGE ASSISTANCT, CHINNAKANAL.**
EXT.P4:	**COPY OF NOTICE DATED 14/3/72 ISSUED BY THE TAHSILDAR (LA) NEDUMKANDAM.**
EXT.P5:	**COPY OF NOTICE DATED 14/3/72 PUBLISHED ON THE NOTICE BOARD OF TALUK OFFICE, UDUMBANCHOLA.**
EXT.P6:	**COPY OF SCHEDULE OF LANDS DATED 24/10/72.**
EXT.P7:	**COPY OF LETTER DATED 7/1/74 FROM THE 4TH RESPONDENT TO THE 3RD RESPONDENT.**
EXT.P8:	**COPY OF CHALAN RECEIPT EVINCING PAYMENT MADE BY THE 4TH RESPONDENT.**
EXT.P9:	**COPY OF PATTA DATED 26/11/77 ISSUED TO THE 4TH RESPONDENT.**
EXT.P10:	**COPY OF JUDGMENT DATED 17/7/2007 IN WPC NO.17904/06.**
EXT.P11:	**COPY OF ORDER DATED 27/4/2007 ISSUED BY THE 2ND RESPONDENT.**
EXT.P12:	**COPY OF REPORT DATED 29/12/07, APPEARED IN MATHRUBHOOMI DAILY.**
EXT.P13:	**COPY OF REPORT DATED 30/12/07,APPEARED IN MALAYALA MANORAMA DAILY.**
EXT.P14:	**COPY OF NOTICE DATED 13/12/07 ISSUED BY THE 3RD RESPONDENT.**
EXT.P15:	**COPY OF JUDGMENT DATED 11/1/2008/ IN WPC NO.1465/08.**
EXT.P16:	**COPY OF A NOTICE DATED 04/04/08 ISSUED BY THE 3RD RESPONDENT.**
EXT.P17:	**COPY OF JUDGMENT DATED 11/4/08 IN WPC NO.13020/08.**
EXT.P18:	**COPY OF NOTICE DATED 27/11/2008 ISSUED BY THE 1ST RESPONDENT.**
EXT.P19:	**COPY OF APPEAL DATED 5/11/2007 FILED BY TE 6TH RESPONDENT.**

EXT.P20: COPY OF REQUEST SUBMITTED BY THE PETITIONER.

EXT.P21: COPY OF ARGUMENT NOTE DATED 1/10/2009.

EXT.P22: COPY OF LETTER DATED 21/11/07 OF THE PUBLIC INFORMATION OFFICER, TALUK OFFICE, UDUMBANCHOLA.

EXT.P23: COPY OF ORDER DATED 19/10/09 PASSED BY THE 5TH RESPONDENT.

EXT.P24: COPY OF CHAPTER II,IV,V AND VI OF THE SAID REPORT.

EXT.P25: COPY OF LETTER DATED 29/11/2006 OF THE 3RD RESPONDENT.

EXT.P26: COPY OF LETTER 30/11/2006 OF THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS:

EXT.R2(a): COPY OF REPORT NO.136/CR-ADMN/PTN/08 DATED 02.09.2008,CRIME BRANCH, CID HQRS.

EXT.R2(b): COPY OF THE RELEVANT PAGES OF ACTION TAKEN REPORT OF DISTRICT COLLECTOR, IDUKKI SUBMITTED BEFORE THE DIVISION BENCH.

EXT.R2(c): COPY OF THE ORDER DATED 06.06.2013 IN W.P.C NO. 34095/07.

EXT.R7(a): COPY OF THE ORDER G.O.(MS) NO.42/93/F & WLD DATED 11.6.1993.

TRUE COPY

P.A TO JUDGE

LSN

C.K. ABDUL REHIM , J.

W.P.(C). Nos.22766, 31976 & 34222 of 2009

Dated this the 13th day of February, 2015**.**

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

Since a common issue with respect to cancellation of two 'pattas' granted in favour of the predecessors in interest of the petitioners is involved in these writ petitions, they were heard together and disposed of through this common judgment. Reference with respect to exhibits contained in the remaining portion of this judgment is made in the order as it is produced in W.P.(C) 31976/2009, which is treated as the leading case.

2. The petitioner in W.P.(C)31976/09 claims title and possession over an extent of 2.80 Acres of property comprised in Survey No.20/1 of Chinnakanal Village in Udumbanchola Taluk, which he had purchased from 4th respondent by virtue of Ext.P1 Sale Deed executed on 04.08.2006. The petitioners in the other two cases claim title and possession over 3.25 Acres of land comprised in Survey No.509/1 of the same Village in the same Taluk, which they had purchased by virtue of Ext.P2 Sale Deed (in WPC 22766/2009) dated 02.02.2007. The predecessor in interest of the petitioner in W.P.(C) 31976/09 got the property assigned from the Government through land assignment proceedings initiated as LA No.166/72 and on the basis of Ext.P9 'patta' issued

on 26.11.1997. Various documents pertaining to the assignment and the issuance of 'patta' are produced in the said case as Exts.P2 to P8, which includes documents evidencing payment of market value of the land by the predecessor in interest of the petitioner. With respect to the other cases, the land was assigned by virtue of Ext.P1 'patta', on the basis of LA No. 234/68. The said 'patta' was issued on 21.07.1978. The petitioners claim that properties in question were registered in the name of the persons in favour of whom the assignment was made and that the petitioners as well as their predecessors in interest were enjoying the property by paying land tax in the Village Office concerned.

3. In the year 2006, there arose a dispute when the 7th respondent company made attempts to take over possession of the properties in question under the guise that these lands were allotted by the Government for the purpose of captive plantation of soft wood. At that time the 4th respondent in W.P.(C) No.31976/09 as well as the predecessor in interest of the petitioner in the other cases have approached this Court in a writ petition, W.P.(C) No. 17904/06. In Ext.P10 judgment, this Court directed the District Collector, Idukki to consider the matter and to pass appropriate orders based on the complaints submitted by the petitioners therein, after ascertaining the areas to which the petitioners and the Company are entitled. The District Collector was directed to

conduct appropriate enquiries to ascertain the extent of land covered by the respective documents of title of the properties as well as with respect to the rights claimed by the company and to pass appropriate orders, after affording opportunity to both sides. Till such decision, it was directed, to maintain status quo with respect to the land in question. Pursuant to the directions contained in Ext.P10 judgment the properties were surveyed and demarcated with the assistance of the Taluk Surveyor, and the District Collector had issued Ext.P11 proceedings on 27.04.2007. In Ext.P11 it is specifically stated that the Taluk Surveyor had demarcated the properties covered by the two 'pattas' in LA Nos.166/72 and 234/68. However it was noticed that the Forest Range Officer having jurisdiction in the area had made a remark to the effect that, the property covered by the sketch prepared by the Taluk Surveyor will come within a part of the Eucalyptus plantations, Suryanelli, which is of the year 1999 and which is handed over to the 7th respondent company by the Forest Department. The District Collector found that, as per the relevant Government Order, 5600 Hectors of plantations of Eucalyptus belonging to the Forest Department was made available to the 7th respondent company for captive plantations, in the year 1993. Therefore, the remarks noted by the Forest Range Officer had no relevance with respect to the land covered. Therefore, the District Collector ordered that the petitioners in Ext.P10 judgment are entitled to possess and hold the properties demarcated by the Taluk Surveyor on the basis of LA Nos.166/72 and 234/68.

4. While things stand stood as above, during the year 2007, the petitioners noticed certain News Paper reports to the effect that steps are being taken to cancel the assignment in question, on the basis that the 'patta' obtained by the predecessors in interest of the petitioners are bogus. During December 2007, the Tahsildar, Udumbanchola had issued Ext.P14 notice to the 4th respondent and the petitioner in W.P.(C) No. 31976/09 requiring them to appear in the Village Office, Chinnakanal along with documents in proof of the title over the property. It is mentioned in Ext.P14 that, proceedings were initiated on the basis of directions issued by the District Collector to make an enquiry with respect to a complaint in connection with genuineness of the 'patta' in question. The petitioner in W.P.(C) No. 31976/09 had thereupon approached this Court at that time, seeking direction to the extent that no steps for cancellation of the assignment shall be taken without affording him proper opportunity to object such proposal if any. In Ext.P15 judgment the said writ petition was disposed of by directing that finalisation of the proceedings touching upon validity of title in respect of property covered by the 'patta' in LA No.166/72 shall only be taken with notice to the petitioner and after affording an

opportunity to him of being heard. Thereafter, the Tahsildar issued another notice as per Ext.P16 directing the petitioner in W.P.(C) No. 31976/09 to show cause as to why the entries in the 'Thandaper Account' in the name of the petitioner with respect to the property comprised in Survey No.20/1 shall not be cancelled. The petitioner was requested to appear for a personal hearing along with all the documents of title. Ext.P16 notice was challenged by the petitioner again before this Court in a writ petition. In Ext.P17 judgment passed by this Court in the said case, it is revealed that the petitioner had challenged Ext.P16 notice based on a contention relying on Ext.P11 order passed by the District Collector. It is contended that, when the District Collector had categorically found that the petitioners predecessor have title property, it may not be open to the Tahsildar to issue Ext.P16. But this Court found that in view of the observations contained in Ext.P15 judgment, the petitioner can submit a proper reply to Ext.P16 notice. It was made clear that the petitioner will be entitled to raise all the contentions before the Tahsildar in the proceedings initiated on the basis of Ext.P16 notice.

5. In the meanwhile, during the year 2009, the District Collector, Idukki made enquiries with respect to genuineness of the 'patta' in relation to a property comprised in Survey No.509/1 of Chinakannal Village, which is covered under assignment in LA

No.165/72, wherein a resort was constructed under the names and style 'Whispering Dreams'. In a proceedings issued by the District Collector in this regard on 22.06.2009 (Ext.P6 in WP(C) No. 22677/09) it was found that the assignment in LA No. 234/68 granted in favour of the predecessor in interest of the petitioner in W.P.(C) Nos.22677/09 and 34222/09 are forged. It is mentioned in the said order that the property comprised in LA No. 234/68 should be recovered possession subject to final decision which will be taken by the Land Revenue Commissioner. Challenging the said order passed by the District Collector, W.P.(C) No.22766/09 was filed. In the said case it was undertaken on behalf of the Government that the resumption of the land will be made only after issuing notice to the petitioner. This Court directed to maintain status quo on the land. Meanwhile, the Divisional Forest Officer, Munnar as well as the 7th respondent Company had filed appeals against Ext.P11 order of the District Collector, before the Land Revenue Commissioner, Thiruvananthapuram. The Land Revenue Commissioner had issued notice to the petitioner in W.P.(C) No. 31976/09 and the predecessor in interest of the petitioner in the other cases, with respect to a personal hearing to be conducted on the appeal petitions. Ext.P18 is the copy of the notice of hearing issued by the Land Revenue Commissioner to the petitioner in W.P.(C) No.31976/09. The petitioner in the W.P.(C) No.31976/09 had submitted Ext.P20 application before the Land Revenue Commissioner seeking direction to the appellants for furnishing copies of various documents pertaining to title, possession and demarcation of boundary of the property in question. He had also submitted Ext.P21 argument notice before the Land Revenue Commissioner to the extent of substantiating the assignment of title. The petitioner in W.P.(C) No. 31976/09 had also produced Ext.P22 documents obtained under the Right to Information Act, before the Land Revenue Commissioner, to show that there is no Forest Land in Chinnakanal Village and the claim made by the 7th respondent Company with respect to the assignment of land for captive plantation is not true and correct. The appeals preferred by the D.F.O as well as the 7th respondent company were disposed of through a common proceedings issued by the Land Revenue Commissioner, Ext.P23. In Ext.P23 it is stated that, on the basis of a request made by the Forest Divisional Officer, Munnar, the District Collector had ordered a further enquiry in the matter, to be conducted by the Tahsildar, Udumbanchola and such enquiry had revealed that both the 'pattas' (LA Nos.166/72 and 234/68) are bogus and fabricated, and all the entries in the land registry effected on the basis of said 'pattas' are also fabricated. It is mentioned in the said order that the Taluk Surveyor had reported that, "*the land included in LA 166/72 is actually situated in Sy.*

No.511 of Chinnakkannal Village. But in the patta it is marked as Sy. No.20/1. So also it is mentioned that the land included in LA 234/68 actually situates in 2 survey numbers ie. 577 & 510. But the 'patta' it is shown as Sy.No.509/1." It is further stated that the petitioners have raised claim based on the 'patta' only in the year 2006 and that the land in question were not utilized for the purpose for which it was assigned. Hence it is found that the 'pattas' were proved to be forged in nature. It is also revealed from Ext.P23 that, earlier the Land Revenue Commissioner had issued a proceedings dated 16.08.08, remanding the matter to the District Collector for disposal. But the District Collector had filed a review petition, dissatisfied with the order passed by the Commissioner on 16.08.08. Further Ext.P23 reveals that the Land Revenue Commissioner had also considered a connected file which arose from a letter received from the Government, which matter was also tagged on together with the appeals. It is evident from Ext.P23 that after conducting personal hearing of all the parties concerned, the Land Revenue Commissioner had formulated 7 specific questions as points. Observing that the person who appeared on behalf of the petitioners could not give convincing reply to those questions, it was ordered that the 'pattas' No.LA 166/72 and 234/68 are bogus for the reasons mentioned therein, which are extracted below:

> "(a). Land mentioned in the alleged patta LA.166/75 in SyNo.20/1 whereas the land in physical possession of the assignee and successor-in-interest is in Sy.511 as per report of Tahsildar. Like wise the land as per the alleged patta LAA 234/68 is in Sy.509/1 but land in physical possession is in Sy.577, which is against the provisions contained in Kerala Land Assignment Rules. The Survey numbers 511 & 577 not being included in the list of assignable lands, the occupiers can only be treated as encroachers on public lands which attracts all the provisions in the amended Kerala Land Conservancy Act, 2009.
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> (b). The power-of-attorney holder of Smt.Anthoniammal, Shri. Siby Thomas and Shri.Albin, namely Shri Mohan Kumar could not substantiate the basic questions put to him at the time of hearing either orally or with the help of documents.
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> (c). The so called assignees came forward with claim on the land after a lapse of 14 years since the land was surveyed and demarcated in 1992 for HNL. This itself shows that, the parties had never been in possession of land as the captive plantation of HNL has been in existence while fabricating the patta to claim this land. Moreover, the Tahsildar, Udumbanchola through report No.2-400/2006(1) and report No.K2-400/2006(2) has reported after enquiry that the pattas are bogus and fabricated."

Based on the above findings the Land Revenue Commissioner ordered the District Collector, Idukki to evict the petitioners from the lands covering the alleged 'pattas LA Nos.166/12 and 234/68. Further the Land Revenue Commissioner also ordered that Ext.P11 order passed the District Collector stands quashed. In W.P.(C) No.34222/09, the petitioner is challenging the very same order of the Land Revenue Commissioner to the extent it had cancelled the patta in LA No.234/68.

6. Contentions of the petitioners are mainly on the jurisdictional aspects and propriety of the impugned order passed by the Land Revenue Commissioner. It is evident from the records that there was a dispute with respect to the title over the property covered under LA No.166/72 and 234/68 between the petitioners and the 7th respondent company. It is not in dispute that based on the directions contained in Ext.P10 judgment of this Court, the District Collector made enquiries and in Ext.P11 order was passed, in which it was categorically found that the petitioners are entitled to process and hold properties covered under the pattas as surveyed and demarcated by the Taluk Surveyor. By virtue of the impugned order, the Land Revenue Commissioner had considered the appeals preferred by the DFO and the 7th respondent company, which were filed against Ext.P11 order. The findings contained in Ext.P23 to the effect that the Tahsildar had reported that the land in the physical possession of the assignees and their successors are comprised in Sy.Nos. 511 and 577 respectively, were as the land mentioned in the 'pattas are comprised in Sy.Nos.20/1 and 509/1 respectively. Therefore, it is observed that the occupiers can only be treated as encroachers of the public land. But nothing is mentioned in Ext.P23 to the effect that the land surveyed and demarcated by the Tauk Surveyor, mentioned in Ext.P11 order is

whether the land comprised in Sy.Nos.20/1 and 509/1. There is nothing mentioned in Ext.P11 order of the District Collector to the effect that the petitioners have got title or possession in the properties comprised in Sy.Nos.511 and 577. Moreover, in Ext.P23 it is mentioned that the Land Revenue Commissioner had obtained further reports from the District Collector and the District Collector in turn had obtained reports from the Taluk Surveyor as well as the Tahsildar. There is nothing to indicate that the petitioners were put to notice about any such report or that such reports were prepared by the authorities concerned with due notice to the petitioners. Further question remains as to whether the Land Revenue Commissioner had initiated any proceedings for declaration of genuineness of 'pattas' in question, with due notice to the petitioner.

7. Rule 8(3) of the Kerala Land Assignment Rules, 1964 provides that any entry made in the registry with respect to any land is liable to be cancelled, if it is found that same was made under a mistake of fact or owing to a misrepresentation of facts. It provides that the authority competent to order such cancellation shall be the authority which granted the Registry or one Superior to it. It is further provided that no registry of land shall be cancelled without giving the party affected thereby, a reasonable opportunity of being heard. It is evident from Ext.P16 notice issued by the

Tahsildar that the proceedings was initiated for cancellation of registry, atleast in the case of petitioner in W.P.(C) No.31976/09, based on an allegation that LA No.166/72 was bogusly created. It is evident that the petitioner in the said case had challenged Ext.P16 before this Court, basing his contentions on Ext.P11 order of the District Collector. This Court in Ext.P17 judgment had refused to entertain such challenges observing that the petitioner will be at liberty to raise such contentions before Tahsildar, who issued Ext.P16 notice. But nothing is indicated in Ext.P23 order of the Land Revenue Commissioner that, any proceedings based on Ext.P16 was pursued either by the Tahsildar or by any authority superior to him. On the other hand, the Land Revenue Commissioner had declared the 'pattas' as bogus without affording any specific opportunities to the petitioners to object such findings and to prove their title. The findings arrived by the Land Revenue Commissioner in order to declare the 'pattas' as bogus is mainly on the ground that the land in possession of the petitioner are comprised in different Survey Nos. than which is mentioned in the relevant 'pattas'. But nothing is indicated in the order as to how the Taluk Surveyor has surveyed and demarcated, the properties comprised in the relevant 'pattas' and reported that those properties are in the possession of the petitioners. Moreover, there is nothing to indicate that the Land Revenue Commissioner had made any search or perusal with respect to the records which lead to the issuance of the 'pattas' in question. The petitioner in W.P.(C) No.31976/09 had produced Ext.P1 to P8 documents, which pertains to various proceedings initiated at the office of the authority who had assigned the land, including payment of market value of the land in question. Whether the records maintained in the office of the authority who had issued pattas are genuine or whether any manipulations have taken place in the records, had been omitted to be verified by the Land Revenue Commissioner. In brief, the matter was dealt with by the Land Revenue Commissioner in a totally irregular and improper manner. This Court is constrained to observe that she had definitely transgressed the limits and scope in the matter of disposal of the appeals preferred from Ext.P11. It is pertinent to note that the impugned order contains an observation to the effect that along with the appeals the Commissioner had tagged on another connected file, which arose on the basis of a letter issued by the Government. But nothing is revealed as to what was the directions contained in the letter of the Government or as to whether the Government had authorised the Commissioner to initiate any proceedings for deciding the question regarding genuineness of the 'pattas' in question.

8. In the above mentioned circumstances, this Court is of the considered opinion that Ext.P23, the impugned order passed by

the Land Revenue Commissioner on 19.10.2009, is totally illegal, erroneous and improper. Hence, the same is hereby quashed. W.P.(C) Nos.31976/09 and 34222/09 are accordingly allowed

9. With respect to W.P.(C) No. 22766/09, the impugned order (Ext.P6) to the extent it cancelled the assignment in LA No. 232/68 is hereby quashed. It is manifestly clear that the cancellation was effected without initiating any specific proceedings for the said purpose and without affording any opportunity to the person concerned. Such a proceedings cannot be sustained legally as no requisite statutory formalities had been followed in the matter of cancellation. Therefore, W.P.(C) No. 22766/09 is also allowed to the extent of quashing Ext.P6.

The Land Revenue Commissioner may dispose of the appeals in question afresh after affording adequate opportunity to all the parties concerned. It is also made clear that the above judgment will not stand in the way of any competent authority initiating appropriate steps based on Ext.P16 notice and Ext.P17 judgment.

Sd/- **C.K. ABDUL REHIM,**
Judge

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