IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 28891 of 2014 (J)

PETITIONER(S):
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1. ROBIN JOSE, AGED 30,
   S/O.JOSE MATHEW, EDAKKATUKUDIYIL, THRIKKARIYOOR POST,
   KOTHAMANGALAM - 686 692.

2. M/S. MOUNTAIN CLUB RESORTS PRIVATE LIMITED,
   REPRESENTED BY ITS MANAGING DIRECTOR, JOSE MATHEW,
   S/O.E.V.MATHAI, EDAKKATTUKUDIYIL, THRIKARIYOOR POST,
   KOTHAMANGALAM- 686 692.

   BY ADVS.SRI.P.B.KRISHNAN
   SRI.P.B.SUBRAMANYAN
   SRI.SABU GEORGE
   NEELAKANDAN P.M

RESPONDENT(S):
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1. THE STATE OF KERALA,
   REPRESENTED BY THE SECRETARY,
   REVENUE (A) DEPARTMENT,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM - 695 001.

2. THE COMMISSIONER FOR LAND REVENUE,
   OFFICE OF THE LAND REVENUE COMMISSIONER,
   PUBLIC OFFICE BUILDING,
   THIRUVANANTHAPURAM - 695 001.

3. THE DISTRICT COLLECTOR,
   IDUKKI - 685 603.

   BY SPECIAL GOVERNMENT PLEADER SMT. SUSHEELA BHAT

   THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
   14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE SALE DEED DOC. OF 1955 SRO, DEVIKULAM DATED 17/02/1995.

EXHIBIT-P2-TRUE COPY OF THE SETTLEMENT DEED DATED 29/02/1995 OF SRO, DEVIKULAM.

EXHIBIT-P3-TRUE COPY OF THE SELE DEED DATED 18/08/2011 NO. 2711 OF 2011, SRO, RAJAKUMARI.

EXHIBIT-P4-TRUE COPY OF THE SALE DEED NO. 3008 OF 2011 DATED 15/09/2011 OF SRO, RAJAKUMARI.

EXHIBIT-P5-TRUE COPY OF THE SEQUENCE OF TRANSFER OF TITLE.

EXHIBIT-P6-TRUE COPY OF THE JUDGMENT IN O.S 163/1955 DATED 29/07/1997 OF THE MUNSIFF COURT, DEVIKULAM.

EXHIBIT-P7-TRUE COPY OF THE POSSESSION AND NON ATTACHMENT CERTIFICATE DATED 01/06/2012 ISSUED BY THE VILLAGE OFFICER, CHINNAKANAL TO PETITIONER NO.1.

EXHIBIT-P8-TRUE COPY OF THE POSSESSION AND NON ATTACHMENT CERTIFICATE DATED 01/06/2012 ISSUED BY THE VILLAGE OFFICER, CHINNAKANAL TO PETITIONER NO.2.

EXHIBIT-P9-TRUE COPY OF THE NIJASTHITHI CERTIFICATE DATED 19/06/2012 ISSUED BY THE TAHSILDAR, UDUMBANCHOLA TO PETITIONER NO. 1.

EXHIBIT-P10-TRUE COPY OF THE NIJASTHITHI CERTIFICATE DATED 19/06/2012 ISSUED BY THE TAHSILDAR, UDUMBANCHOLA TO PETITIONER NO. 2.

EXHIBIT-P11-TRUE COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER, CHINNAKANAL TO THE PETITIONER NO. 1 DATED 17/05/2012.

EXHIBIT-P12-TRUE COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER, CHINNAKANAL TO THE PETITIONER NO. 2 DATED 17/05/2012.

EXHIBIT-P13-TRUE COPY OF THE BASIC TAX RECEIPT ISSUED IN FAVOUR OF PETITIONER NO.1 DATED 25/04/2013.

EXHIBIT-P14-TRUE COPY OF THE BASIC TAX RECEIPT ISSUED IN FAVOUR OF PETITIONER NO.2 DATED 25/04/2013.

EXHIBIT-P15-TRUE COPY OF THE ORDER IN W.P(C)NO. 1801/2010 DATED 21/01/2010.

EXHIBIT-P16-TRUE COPY OF THE APPLICATION NO. 22/CLR/2012 DATED 16/07/2012.

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EXHIBIT-P17-TRUE COPY OF THE REPORT SUBMITTED BY THE TAHSILDAR, UDUMBANCHOLA TO RESPONDENT NO.3 DATED 25/10/2012.

EXHIBIT-P18-TRUE COPY OF THE REPORT TO RESPONDENT NO.3 DATED 02/11/2012.

EXHIBIT-P19-TRUE COPY OF THE REPORT OF RESPONDENT NO.3.

EXHIBIT-P20-TRUE COPY OF THE REPORT OF RESPONDENT NO.2 DATED 28/02/2013.

EXHIBIT-P21-TRUE COPY OF THE PROCEEDINGS NO. LRJ 49340/12 OF RESPONDENT NO.2 DATED 20/06/2013.

EXHIBIT-P22-TRUE COPY OF THE APPEAL PREFERRED BY THE PETITIONERS DATED 01/07/2013.

EXHIBIT-P23-TRUE COPY OF THE JUDGMENT IN W.P(C) NO.25876 OF 2013 DATED 23/10/2013.

EXHIBIT-P24-TRUE COPY OF THE WRITTEN SUBMISSION MADE BY THE PETITIONERS DATED 23/09/2014.

EXHIBIT-P25-TRUE COPY OF THE G.O(RT) 4748/2014/RD DATED 26/09/2014.

EXHBIIT-P26- TRUE COPY OF THE JUDGMENT IN WP(C) 28115 OF 2006 (V) OF THIS HONOURABLE COURT DATED 5.10.2013.

EXHBIIT-P27- TRUE COPY OF G.O.(MS)NO.161/2013/RD DATED 25.4.2013.

RESPONDENT(S)' EXHIBITS:
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EXT.R3(a): TRUE COPY OF THE VIGILANCE REPORT NO.VE.1/13/SIU-II/2357/13 DTD.13.2.2013.

EXT.R3(b): A TRUE COPY OF THE JUDGMENT DTD.20.10.2014 IN CRL.M.C.NO.6447/2013.

EXT.R3(c): A TRUE COPY OF THE JUDGMENT DATED 28.2.2013 IN WP(C) NO.14251/2012.

EXT.R3(d): A TRUE COPY OF THE ORDER G.O.(MS)NO.161/2013/RD DATED 25.4.2013.

EXT.R3(e): A TRUE COPY OF THE PROCEEDINGS NO.GLR-HML(LR)/2/2013 DATED 27.9.2013 ISSUED BY THE SPECIAL OFFICER.

EXT.R3(f): TRUE COPY OF THE PROCEEDINGS NO.GLR-HML (LR)/2/2013 DATED 31.3.2014 ISSUED BY THE SPECIAL OFFICER.

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EXT.R3(g): TRUE COPY OF THE NOTICE DTD.18.1.2014 ISSUED UNDER SECTION 12 OF THE KERALA LAND CONSERVANCY ACT, 1957 BY THE SPECIAL OFFICER.

EXT.R3(h): TRUE COPY OF THE NOTICE DTD.6.2.2014 ISSUED UNDER SECTION 12 OF THE KERALA LAND CONSERVANCY ACT, 1957 BY THE SPECIAL OFFICER.

EXT.R3(i): A TRUE COPY OF THE JUDGMENT DATED 15.10.2014 IN WP(C) NO.13037/2014.

EXT.R3(j): A TRUE COPY OF THE FINAL ORDER NO.GLR(LR)-4/2013 DATED 1.12.2014 ISSUED BY THE SPECIAL OFFICER.

EXT.R3(k): NOTICE DATED 1.12.2014 UNDER 'FORM-C' ISSUED BY THE SPECIAL OFFICER.

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 28891 of 2014

Dated this the 14th day of January, 2015

JUDGMENT

The grievance of the petitioners is mainly with regard to the rejection of the application filed by them for granting 'NOC' for effecting construction of a resort in the property which is stated as exclusively belonging to the petitioners.

2. The sequence of events narrated in the writ petition shows that, the petitioners obtained title to the property as per Exts. P3 and P4. The flow of title is discernible from Ext.P5 'sequence of transfer of title' given by the petitioner. It is stated that the property was being enjoyed by the petitioner to the exclusion of all others as revealed from Exts. P7/P8 Possession/non-attachment Certificate, Exts. P9/P10 "Nijasthithi Certificate" (equivalent to 'possession' or 'status as on date', as submitted by the learned Government Pleader); Exts. P11/P12 location sketch, Exts. P13/P14 basic tax receipt etc. It is stated that, there was some dispute with regard to the rights over the property and there was an attempt to intercept the possession

and enjoyment when the petitioners were constrained to move the Munsiff's Court, Devikulam by way of O.S. No. 163 of 1955 which culminated in Ext.P6 judgment. It is stated that, a clear finding was rendered by the Civil Court, holding that the predecessor-in-title is entitled to have exclusive right over the property, possession of which traced way back from 1955. It is also held that, the defendant as such was having no right over the property and accordingly, the suit was decreed. It is stated that the matter has become final.

3. On the strength of the above, the petitioner has moved the Revenue authorities for granting 'NOC' for effecting construction of the resort. This was intercepted because of Ext.P15 order passed by the Division Bench of this Court, wherein an undertaking given from the part of the State through the learned Advocate General was recorded, to the effect that no construction would be permitted in the land situated in Munnar, except with the permission of the Revenue authorities.

4. Pursuant to Ext.P15, an application as per Ext.P16 was preferred before the Commissioner for Land Revenue and reports

called for from different corners, which are produced as Exts. P17 to P20. The case of the petitioners is that, the said reports stand in favour of the petitioners and the District Collector has recommended for granting NOC as borne by Ext.P20. However, without any regard to the said proceeding, a fresh report was called for from the 'Section Senior Superintendent' of the Collectorate, as referred to at reference No.2 in Ext.P21 and the application for for granting NOC was rejected as per order dated 20.06.2013. This made the petitioners to file appeal vide Ext.P22. After considering the same, the 1st respondent passed Ext.P25 order, whereby Ext.P21 was set aside and the matter was remanded for fresh consideration in the manner as specified therein. It is stated that the said order is not correct or sustainable, more so, in view of the manner in which the matter is directed to be considered by the Commissioner for Land Revenue, i.e., after 'consultation' with the learned Special Government Pleader and the Special Officer appointed by the Government for resumption of Government land under unauthorised possession of M/s. Harrisons Malayalam Limited.

This made the petitioner to approach this Court by filing this writ petition.

5. A detailed counter affidavit has been filed from the part of the third respondent and the petitioner has filed reply affidavit as well. Both the sides have produced documents in support of their case, which include I.A. No. 17600 of 2014 filed by the concerned respondent and the additional reply affidavit filed by the petitioners.

6. After hearing both the sides and on going through the materials on record, this Court finds that, in so far as Ext.P15 order passed by the Division Bench stands, construction can be effected in the property only on getting clearance from the Revenue Department. It is true that the petitioner had approached the Revenue authorities by submitting Ext.P16 which came to be rejected as per Ext.P21. But since the said order has been intercepted by the Government in appeal, vide Ext.P25, the matter requires to be reconsidered by the Commissioner for Land Revenue who issued Ext.P21. The only objectionable part, if any, in Ext.P25 order could be with regard to the manner in which the

order is required to be passed by the Commissioner, i.e., after 'consultation' with the learned Special Government Pleader and the Special Officer appointed by the Government for resumption of Government land under unauthorised possession of M/s. Harrisons Malayalam Limited. This Court is not much carried away with the expression used. It presumably might be with reference to the opportunity of hearing to be given to the other side, through the authorised representative.

7. Learned Special Government Pleader also concedes the position that, decision has to be taken by the Commissioner for Land Revenue independently and with proper application of mind. It is made clear that, the decision has to be taken by the Commissioner for Land Revenue, also with reference to all the relevant records including the documents which are sought to be relied on by the petitioners with regard to the flow of title, possession, enjoyment and such other fctual particulars. This shall be done after hearing both the sides, taking an independent decision, untrammelled by the terminology used by the 1st respondent while passing Ext.P25 i.e., *after 'consultation' with*

the learned Special Government Pleader and the Special Officer appointed by the Government for resumption of Government land under unauthorised possession of M/s. Harrisons Malayalam Limited. All issues with regard to the merit, title, possession and such other things are left open to be considered by the Commissioner for Land Revenue as aforesaid. Since the matter is pending for quite long, the Commissioner for Land Revenue shall finalize the matter in accordance with law, at the earliest, at any rate, within 'three months' from the date of receipt of a copy of this judgment.

The writ petition is disposed of.

P.R. RAMACHANDRA MENON,
JUDGE.

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