IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 29066 of 2014 (G)

PETITIONER(S) :

V.BALAJI, AGED 51 YEARS,
S/O.L.VENKATAPATHI, NO.67/6, DR.ALAGESAN ROAD,
NO.2, SAIBABA COLONY, COIMBATORE - 641 011,
TAMIL NADU STATE.

BY ADV. SRI.U.BALAGANGADHARAN

RESPONDENT(S):

----

1. THE REVENUE DIVISIONAL OFFICER,
   OTTAPALAM - 679 101.

2. THE VILLAGE OFFICER,
   KOTTATHARA VILLAGE, AGALI, ATTAPADI,
   PALAKKAD - 678 581.

3. THE SUB INSPECTOR OF POLICE,
   AGALI - 678 581.

BY GOVERNMENT PLEADER SRI.S.JAMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 29066 of 2014 (G)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1: TRUE COPY OF THE DOCUMENT NO.1626/2006 DATED 23/11/2006 OF SRO AGALI.

P2: TRUE COPY OF THE SALE DEED NO.3600/1964 OF SRO MANNARGHAT.

P3: TRUE COPY OF BASIC TAX RECEIPT DATED 09/10/2013 ISSUED BY THE SECOND RESPONDENT.

P4: TRUE COPY OF THE REPRESENTATION DATED 30/7/2014 SUBMITTED BY THE PETITIONER TO RESPONDENT NO.1.

P5: TRUE COPY OF THE COMMUNICATION DATED 19/05/2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

=====================

W.P.(C) No.29066 of 2014 - G

=====================

Dated this the 23rd day of July, 2015

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

The petitioner is aggrieved with the non-acceptance of tax with respect to 97 cents of land purchased by the petitioner as per Ext.P1 sale deed. The vendors in Ext.P1 sale deed is also said to have obtained the property from one Abdul Kadhar as per sale deed No.R691/1991 of SRO Agali. The property in question thereafter devolved upon jointly, to one Abdul Gafoor and Mohammadali. It was thereafter, transferred to Alavid Kutty and Hamza of Kottakkal as per sale deed No.149/1996. Finally, the prperty was purchased by the petitioner from the aforesaid Alavi Kutty and Hamza Kottakkal as per Ext.P1 sale deed, the history of which is traced to one Rasakounder as is indicated in paragraph 1 of Ext.P1.

2. Rasakounder is said to have obtained a certificate

of purchase from Pudur Land Tribunal in pursuance of its order O.A No.1530 of 1972. Presumably, the order of the Land Tribunal is in favour of one Scheduled Tribe, who had sold the property to Rasakounder as per Ext.P2. Ext.P2 indicates that the sale has been made sometime in 1964 by document No.3600/1964. The extent of property as is discernible from Ext.P2 is 3 Acres and 90 cents (1.57 hectares). The petitioner is aggrieved by the fact that the petitioner's land tax has not been received and possession certificate is also not issued despite the petitioner having been paying tax from the date of Ext.P1 till 2013 as is indicated at Ext.P3.

3. The learned Government Pleader on the basis of the counter affidavit submits that the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (for brevity, 'the Act of 1975) by Section 5 of the Act of 1975 invalidate any transfer from the Scheduled Tribe to a person out side the Tribe, if the transfer has been effected on or

after 01.01.1960. However, the statement also in the same vein states that the said Act has been repealed and in its place the Kerala Restriction on Transfer By and Restoration of Lands to Scheduled Tribes Act, 1999 (for brevity, 'the Act of 1999) has come. Section 5 of the said Act also provides for invalidation as provided in the Act of 1975.

4. However a proviso is enacted insofar as any transfer of property not exceeding 2 hectares having been exempted from the rigour of invalidation as provided in the Section. Section 22 of the Act of 1999 also indicates that any proceeding pending before a Court as per the earlier provisions of the Act shall be deemed to be a proceeding under the corresponding provisions of the new Act and shall be continued accordingly. In such circumstance, the indication is that even the invalidation effected by Section 5 of the Act of 1975 would be controlled by the proviso of the Act of 1999.

5. The learned Government Pleader also submits that

a survey of the Scheduled Tribe lands are being conducted in the area. That however cannot detain the revenue authorities from accepting the tax which by itself does not confer any title. The petitioner shall hence be permitted to pay tax on the property. The issuance of the possession certificate will also be considered by the authority if necessary after physical inspection and identifying the property as per Exts.P1 and P2 deeds.

The writ petition is disposed of with the above observations.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge.