

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 37085 of 2007 (M)

PETITIONER :

P.M.MATHAI, S/O. MATHEW,
RESIDING AT KALLIYOT, POST KANJIRADUKKAM
PERIYA VILLAGE, HOSDURG TALUK, KASARAGOD-671 531.

BY ADVS.SRI.K.JAYAKUMAR (SR.)
SRI.P.B.KRISHNAN

RESPONDENTS :

1. THE STATE OF KERALA, REPRESENTED BY
THE PRINCIPAL SECRETARY TO GOVERNMENT
REVENUE (L) DEPARTMENT, SECRETARIAT, TRIVANDRUM.
2. THE COMMISSIONER OF LAND REVENUE,
TRIVANDRUM.
3. THE DISTRICT COLLECTOR,
KASARAGOD.
4. THE TAHSILDAR,
HOSDURG.
5. THE SPECIAL TAHSILDAR (L.A.),
HOSDURG, KASARAGOD.
6. M.K.BABURAJ,
ADVOCATE, KANJIRAMATTOM POST, HOSDURG TALUK
KASARAGOD-671 531.

R.6 BY ADV. SRI.T.K.VIPINDAS
R1 TO R5 BY SR. GOVERNMENT PLEADER E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE ORDER OF ASSIGNMENT IN FAVOUR OF THE PETITIONER UNDER L.A.140/93/PERIYA ISSUED BY RESPONDENT NO.3 DATED 16.2.1994

EXT.P2 : COPY OF THE ORDER ISSUED BY RESPONDENT NO.3 DATED 12.9.1997

EXT.P3 : COPY OF THE JUDGMENT IN OP.NO.17489/1997 - F DATED 09.09.1999

EXT.P4 : COPY OF THE PROCEEDINGS J3.10532/2003 OF THE 4TH RESPONDENT DATED 23.5.2003

EXT.P5 : COPY OF THE JUDGMENT IN W.A NO.1962/2005 DATED 26.09.2005

EXT.P6 : COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER DATED 30.11.2005

EXT.P7 : COPY OF THE ORDRE PASSED BY RESPONDENT NO.3 DATED 4.3.2006

EXT.P8 : COPY OF THE PROCEEDINGS REF.L.A.140/93/PERIYA /J. PASSED BY RESPONDENT NO.4 DATED 04.04.2006

EXT.P9 : COPY OF THE NOTICE ISSUED TO THE PETITIONER DATED 07.08.2006

EXT.P10 : COPY OF THE REVISION PREFERRED BY THE PETITIONER BEFORE RESPONDENT NO.1 DATED 10.6.2006

EXT.P11 : COPY OF THE JUDGMENT IN WPC.NO.21598/2006 (U)DATED 14.6.2006

EXT.P12 : COPY OF THE NOTICE NO.54822/L2/2006/RD ISSUED BY RESPONDENT NO.1 DATED 2.9.2006

EXT.P13 : COPY OF THE NOTES OF ARGUMENT FILED BY THE PETITIONER DATED 09.10.2006

EXT.P14 : COPY OF THE ORDER NO.54827/L2/06/RD PASSED BY RESPONDENT NO.1 DATED 22.11.2007

EXT.P15 : COPY OF THE RELEVANT PAGE OF RATION CARD OF THE PETITIONER DATED NIL

EXT.P16 : COPY OF THE INCOME CERTIFICATE ISSUED TO THE PETITIONER DATED 24.4.2006

EXT.P17 : COPY OF THE RECEIPT NO.709598 ISSUED TO THE PETITIONER DATED 10.8.2004

EXT.P18 : COPY OF THE RECEIPT NO.9686738 ISSUED TO THE PETITIONER DATED 04.07.2007

EXT.P19 : COPY OF THE POSSESSION CERTIFICATE ISSUED TO THE PETITIONER DATED 10.3.2006

EXT.P20 : COPY OF THE BUILDING PERMIT ISSUED TO THE PETITIONER DATED 8.2.2005

EXT.P21 : COPY OF THE REPORT OF THE 3RD RESPONDENT DATED 1.1.2007

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EXT.P22 : COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 6.8.2007

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.37085 of 2007

Dated this the 17th day of March, 2015

J U D G M E N T

This writ petition is filed challenging Ext.P14 proceedings of the 1st respondent by which, a revision petition filed by the petitioner has been rejected.

2. The short facts of the case are the following. The petitioner was assigned an extent of 6 cents of land by Ext.P1. According to the petitioner, when he tried to improve the property by constructing a compound wall, there was obstruction from the public. A “Janakeeya Committee” was formed and a claim was raised that the public had some rights over the property by long user. After considering the matter, the 3rd respondent who had initially issued an order of stay of the assignment, vacated the same by Ext.P2. Though the “Janakeeya Committee” had approached this Court by filing O.P.No.17489 of 1997, the same was dismissed by Ext.P3 relegating them to their remedy before the Civil Court. It is not in dispute that, no such civil suit was filed.

3. Instead, the “Janakeeya Committee” continued their efforts to cancel the assignment in favour of the petitioner. The 3rd respondent sought for a report from the 4th respondent. As per Ext.P4, the Tahasildar reported that, there were no grounds to cancel the assignment. Apprehending that Ext.P1 would be cancelled without hearing the petitioner, the petitioner approached this Court by filing

W.P.(C).No.23336/2005. The proceedings were finally disposed of by Ext.P5 judgment in Writ Appeal No.1962/2005 directing that, the petitioner shall also be heard and his contentions considered, while passing final orders in the matter.

4. Thereafter, the petitioner submitted Ext.P6 statement. However, without adverting to or considering the contentions raised by the petitioner, by Ext.P8 dated 04.04.2006, the assignment in favour of the petitioner was cancelled. Ext.P8 was followed by Ext.P9 dated 07.08.2006 directing the petitioner to vacate the premises.

5. In the above circumstances, the petitioner preferred Ext.P10 revision to the 1st respondent. Thereafter, apprehending that he would be dispossessed during the pendency of the revision, the petitioner approached this Court by filing W.P.(C).No.21598 of 2006. The said writ petition was disposed of by Ext.P11 judgment directing the 1st respondent to pass appropriate orders on the petition for stay filed by the petitioner within a period of one month from the date of the order. Further proceedings were to be kept in abeyance, pending the issue of such an interim order.

6. Pursuant to Ext.P11 judgment, Ext.P12 notice of hearing was issued. But, the hearing did not take place on that day for the reason that the petitioner had sought for a postponement. However, Ext.P13 notes of arguments was submitted. Thereafter, the petitioner has been served with Ext.P14 by which he has been informed that, his petition had

been examined in detail and rejected for the reason that, it was devoid of merits. The petitioner has filed this writ petition challenging Ext.P14.

7. A counter affidavit has been filed on behalf of the 1st respondent. It is stated that, on 16.12.2005, the case had been posted and that the counsel for the petitioner had been heard on the said date. According to the counter affidavit, the petitioner's case was examined in detail and was found to be not maintainable.

8. Adv.Sri.T.K.Vipindas appears for the 6th respondent.

9. Heard. As per Ext.P11, WP(C).No.21598/2006 was disposed of with the following directions :

"3. In the facts and circumstances of the case, it is only just and proper that the 1st respondent passes orders on Ext.P8(a) stay petition expeditiously. Accordingly, I direct the 1st respondent to dispose of Ext.P8(a) stay petition within one month from today. Till orders are passed on Ext.P8(a), further proceedings pursuant to Ext.P7 shall be kept in abeyance. Before passing orders, the 1st respondent shall hear the petitioner as well as the 5th respondent. The writ petition is disposed of as above."

It has been specifically directed that, the petitioner as well as the contesting respondent shall be heard before final orders passed. This Court also directed that orders be passed on the stay petition within a period of one month. It is not in dispute that, no such orders were passed. Instead, by Ext.P12, the petitioner was informed that the Additional Chief Secretary (Revenue) would hear him in person at 11.30

a.m. on 16.09.2006. Since the notice was received by the petitioner only on 15.09.2006, he requested for an adjournment and the proceedings were adjourned to 09.10.2006. It is stated that on 09.10.2006 also, the matter was not heard, since the Officer who had issued the notice was not available in the office. The petitioner had therefore submitted Ext.P13 notes of arguments. In view of the above, the petitioner expected that he would be issued with a notice for further hearing. However, no such hearing was conducted. Instead, Ext.P14 was issued.

10. It has to be held that, Ext.P14 is unsustainable for more reasons than one. In the first place, Ext.P14 has not considered any of the contentions of the petitioner, despite the direction to consider them contained in Ext.P11 judgment. Secondly, a statutory revision is expected to be disposed of by a considered order and not by a cryptic order like Ext.P14. The petitioner had submitted Ext.P13 notes of arguments raising a number of contentions. However, the said contentions have not even been recorded. Ext.P4 report of the Tahasildar also ought to have been considered. Therefore, it is clear that, Ext.P14 has been issued without considering any of the relevant materials. Ext.P14 is unsupported by any reasons. For the above reasons, the said proceedings are unsustainable and liable to be set aside.

11. This writ petition presents a very unsatisfactory state of affairs where, a statutory revisional authority has conducted itself in a manner

oblivious to its responsibilities under the statute. A statutory authority while functioning as a quasi-judicial authority is expected to discharge its functions with due regard to the principles of law and justice. Orders like the present, one line rejection, are to be treated as an abdication of the statutory duty that is cast on the revisional authority. In the context of the specific direction issued by this Court to pass orders in the matter after hearing the petitioner and considering his contentions, Ext.P14 cannot be justified on any count. The attitude of the Government officials and its statutorily empowered authorities in treating the directions issued by this Court with such scant disregard has to be deprecated.

For the above reasons, this writ petition is allowed. Ext.P14 is set aside. The 1st respondent is directed to issue fresh notice to the petitioner as well as the 6th respondent, to afford an opportunity of being heard to him and to pass appropriate orders on the revision petition filed by him, after considering the contentions raised by him. Orders as indicated above shall be passed, as expeditiously as possible and and at any rate within a period of two months of the date of receipt of a copy of this judgment.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV