

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. 30458 of 2014 (F)

PETITIONER(S):

1. AUGUSTINE MATHAI, AGED 71 YEARS,
S/O LATE AUGUSTINE MATHEW,
RESIDING AT HOUSE NO 31/1,
MANISH NAGAR, FOUR BUNGLOW,
ANDHERI WEST, MUMBAI - 400053.
2. MARYKUTTY MATHAI, AGED 65 YEARS,
W/O AUGUSTINE MATHAI, RESIDING AT
HOUSE NO 31/1, MANISH NAGAR,
FOUR BUNGLOW, ANDHERI WEST,
MUMBAI - 400053.

BY ADV. SRI.B.PRAMOD

RESPONDENT:

**THE VILLAGE OFFICER,
ERNAKULAM VILLAGE,
ERNAKULAM - 682 013.**

BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT

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

mbr/

WP(C).No. 30458 of 2014 (F)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE SALE DEED DATED 27-05-1999 BEARING REG.
NO. 2188/99 OF THE ERNAKULAM SRO.

EXHIBIT P2 : TRUE COPY OF THE ENCUMBRANCE CERTIFICATE.

EXHIBIT P3 : TRUE COPY OF THE PRINT OUT OF THE APPLICATION.

EXHIBIT P4 : TRUE COPY OF THE RECEIPT ISSUED FROM THE AKSHAYA CENTRE.

EXHIBIT P5 : TRUE COPY OF THE JUDGMENT DATED 28-06-2002 IN
OP.NO. 28189/1999.

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.30458 of 2014

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Dated this the 14th day of January, 2015

JUDGMENT

The petitioners have approached this Court seeking for issuance of a direction to the respondent to issue a possession certificate and location sketch in relation to the property covered by Ext.P1 sale deed dated 27.05.1999. The case of the petitioners is that a shop room with undivided interest in the property upon which the building is situated was purchased by the petitioner as per Ext.P1 for valuable sale consideration. The property originally belonged to the Diwan Peshkar of the erstwhile Cochin Government, which was given on lease to one Thresia. Aforesaid Thresia suffered a money decree and the property, which was being possessed and enjoyed by her, came to be sold in court auction, and one Dhiru Bhai purchased the said property. Later, as per the 'Will' executed by the said person the property devolved upon her grandson on her demise. The grand son conveyed the rights and interest over the aforesaid property to the petitioners as per Ext.P1 sale deed.

The petitioners have been enjoying the property accordingly. The attempt made by the petitioners to obtain the land mutated and to satisfy tax did not turn to be fruitful. The limited relief sought for by the petitioner is only to issue a possession certificate and location sketch, so as to enable the petitioners to enjoy the property in a better manner.

2. Reliance was sought for in Ext.P5 judgment rendered by this Court under similar circumstances involving a part of the very same building and the land concerned. It has been asserted that the petitioners herein are entitled to enjoy possessory rights. The observations of the Bench in Ext.P5, particularly paragraphs 27 and 28 are in the following terms:-

“27) The possession of assignees and those claiming under them are legal and valid, since transfer was not prohibited by pattas similar to Ext.P1. There was also no stipulation that constructions in the property required previous governmental sanction. Objections in the above lines fielded in the counter affidavit, are without any basis or substance. It has not been possible for respondents to establish that there was any violation of condition of pattas, in any of these cases.

28) In the result, I find that the present proceedings initiated by the respondents for enhancement of the ground rent, or compelling the petitioners to make application therefore are not backed by authority of law. Government of course can pursue steps as authorised and

warranted by the terms of the ground rent pattas for bringing a revision. I may but note that Ext.P1 shows that the patta is for possession and ground rent yearly payable is Re.1/- or Rs.2/- as the case may be, per cent depending on the location. By clause 2, what is payable is the above referred ground rent, and any other payments which might become payable arising out of settlements from time to time in respect of new levies introduced in the Taluk. Prima facie, it appears that revision of ground rent is not contemplated, but I am not finally pronouncing thereon. It has to be noticed that no resumption is prescribed in case of a default, but only a liability for revenue recovery of the sums due."

3. In so far as the possession of the petitioners over the land is not disputed, there is no rhyme or reason for the respondent to have denied the request to issue possession certificate and hence the writ petition.

4. Heard the learned Government Pleader as well, who submits that the land has been described as 'Puthiya Pattanam Ground Rent site' in the Basic Tax Register maintained by the Revenue authorities.

5. The learned counsel for the petitioner points out that there is no dispute with regard to the rights of the Government, but limited right has been extended to the grantees who have been in possession and enjoyment over the property.

6. After hearing both sides, this Court finds that, in so far as the possession of the petitioner over the property is not disputed, there has to be a direction to the respondent to issue a possession certificate of the petitioner and also location Sketch after conducting spot inspection with notice to the petitioner. It is ordered accordingly. This shall be done at the earliest at any rate within 'six weeks' from the date of receipt of a copy of the judgment. It is made clear that this Court has not expressed anything with regard to the title or such other rights of the parties over the property and the rights of the Government over the property have been adverted to by this Court while passing Ext.P5 judgment. The petitioner shall produce a copy of the judgment, along with a copy of the writ petition, before the respondent for further steps.

The writ petition is disposed of.

**P.R.RAMACHANDRA MENON,
JUDGE**

sj