

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 34768 of 2009 (M)

PETITIONER :

**ELIZABETH JOHN,
KATTIPARAMBIL HOUSE,
MANJUMMAL P.O., CHERANELLORE.**

**BY ADVS.SRI.SANTHEEP ANKARATH
SRI.ARUN MATHEW VADAKKAN**

RESPONDENT(S):

- 1. DISTRICT COLLECTOR,
ERNAKULAM.**
- 2. TAHSILDAR, TALUK OFFICE, ERNAKULAM.**
- 3. VILLAGE OFFICER, VILLAGE OFFICE,
THRIKKAKARA SOUTH.**

BY SR GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-10-2015, THE COURT ON 29-10-2015 DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.34768/2009

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE SALE DEED DATED 18/01/1984 BEARING NO.68/1984 OF THE SRO, THRIKKAKARA**
- P2 COPY OF THE SALE DEED NO.141/85 OF SRO, THRIKUNITHURA DATED 11/2/1985**
- P3 COPY OF THE APPLICATION FOR ASSIGNMENT OF LAND ON REGISTRY SUBMITTED BY THE PETITIONER DATED 18/11/1997**
- P4 COPY OF THE PETITION SUBMITTED BY THE PETITIONER FOR ISSUANCE OF PATTAYAM WITHIN A PERIOD OF 3 MONTHS FROM THE DATE OF RECEIPT OF COPY OF THE JUDGMENT IN O.P.NO.15543/2002-A DATED 11/6/2002 OF THIS HON'BLE COURT**
- P5 COPY OF THE PROCEEDINGS ISSUED BY THE TAHSILDAR DATED 5/11/2004**
- P6 COPY OF THE PETITION DATED 30/7/2009**
- P7 COPY OF THE LETTER DATED 17/9/2009**
- P8 COPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER, KAKKANADU AND DATED 21/2/2003**
- P9 COPY OF THE BASIC TAX RECEIPT DATED 24/11/1982 ISSUED BY VILLAGE OFFICER, KAKKANADU**

RESPONDENT'S EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 34768 of 2009

Dated this the 29th day of October, 2015

J U D G M E N T

Ext.P7 order, by which, the petitioner's application for assignment of a piece of land was turned down by the 1st respondent, is under challenge.

2. The petitioner alleges that she is the owner of the property having an extent of 30 cents as per Exts.P1 & P2. She had applied for pattayam in 1991. According to her, she had been doing seasonal cultivation in the property ever since Exts.P1 & P2 were executed in her favour and prior to that, her predecessors were also doing seasonal cultivation. As Ext.P1 and the petition dated 28.09.1991 were not considered till 2002, the petitioner has approached this Court; and this Court passed Ext.P4. Pursuant to Exts.P4 & P5, recommendation was made by the Taluk Assignment Committee. The petitioner's grievance is that ignoring the same, Ext.P7 is passed by

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the 1st respondent. Therefore, according to the petitioner, Ext.P7 is in violation of Rule 12A of the Kerala Land Assignment Rules and liable to be quashed. Hence, this writ petition.

3. In the counter affidavit filed by the 2nd respondent, it is contended as follows;

The 1st respondent has ample power to examine the eligibility of the applicant for assignment. Moreover, the 1st respondent is competent to interfere any of the proceedings in connection with ineligibility of assignment. According to the 2nd respondent, in the instant case, the petitioner is neither a landless nor a homeless and as far as agriculture is concerned, she was not doing any sort of agriculture in the applied land and she had no possession over the land as claimed by her. Therefore, according to the 2nd respondent, there is no force in the contention that the 1st respondent had not considered the factual inputs available in the file.

It is further contended that the 1st respondent, being a statutory authority, examined the file in detail for assessing the eligibility of the applicant for getting

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assignment of Government land. The 2nd respondent admit that the Land Assignment Committee had recommended the case. When various reports were examined with regard to assignment, it was seen that the applicant was not eligible for assignment and subsequently, the same was informed by assigning the reason for the rejection for her application.

It was further contended that the ground taken by the petitioner that the 1st respondent had no right or authority to go beyond the recommendations of the Land Assignment Committee is also without any basis. According to the 2nd respondent, the Land Assignment Committee is statutory committee competent to recommend assignment applications and such recommendation is not a final word for assignment of government land. In a later stage, if found any material irregularity or factual mistake in connection with assignment of government land, the 1st respondent is legally competent to correct such mistakes. According to the 2nd respondent, the petitioner is not a serious applicant as far as assignment of government land is concerned and she was better aware that she is not eligible for getting

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assignment of government land and that is why, she kept distance from payment of Kutakappattom since 1981 onwards. The present writ petition is filed only on experimental basis. The 1st respondent has not denied any of the rights of the petitioner in connection with assignment of government land and her application was rejected as she was not eligible for assignment. She is residing far away from the applied land in another Taluk with her family. At present, the applied land is in the possession of the Government and the same has been placed in the land bank constituted by the Government.

4. The petitioner has filed a reply affidavit controverting the contentions in the counter affidavit.

5. Arguments have been heard.

6. Opposing the writ petition, the learned Government Pleader would submit that the petitioner is having other lands of her own and she is neither residing in the property nor cultivating the same with any crops.

7. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P8 mahazar prepared by the Village Officer concerned,

which is produced along with the reply affidavit. The same would show that the property in question was in possession of the petitioner's family; and her father was cultivating in the property; and after his death, the petitioner herself was cultivating in the property. The nature of the property is also made mention of in Ext.P8. According to the learned counsel for the petitioner, the 1st respondent has rejected the application on the ground that the petitioner is having other lands of her own. However, it was pointed out by the learned counsel for the petitioner that the petitioner is not having a single piece of land.

8. As per the Land Assignment Act, it is not mandatory that the applicant should be landless. The only restriction is that the applicant shall not hold a total extent of land exceeding 50 cents including the piece of land, which is held by the applicant and sought to be assigned. It is also relevant to note that there is no stipulation in the Land Assignment Act that the applicant

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for land assignment should be a homeless person. The mahazar prepared by the Village Officer, who had occasion to see the property, was totally ignored by the 1st respondent. Therefore, this Court is of the view that the matter requires a re-look by the 1st respondent in the light of what has been stated above.

Therefore, the writ petition is allowed. Ext.P7 is quashed. The matter is remitted back to the 1st respondent for fresh consideration after affording the petitioner an opportunity of being heard, which shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-