IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No.30740 of 2014 (N)

PETITIONER:

MADHAVAN,S/O.LATE MANU,AGED 80 YEARS,
SCHOOLPADI HOUSE,NECHUR P.O.,
THOLANNUR,ALATHUR,PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
PALAKKAD,PIN-678001.

2. THE TAHSILDAR,TALUK OFFICE,
ALATHUR,PIN-678541.

3. THE DEPUTY DIRECTOR OF SURVEY,
PALAKKAD,PIN-678001.

4. THE VILLAGE OFFICER,TARUR NO.2 VILLAGE,
PALAKKAD DISTRICT,PIN-678547.

5. THE DIVISIONAL FOREST OFFICER,
NENMARA,PALAKKAD DISTRICT,PIN-678508.

R1 TO R4 BY SENIOR GOVT. PLEADER SRI.K.C.VINCENT.
R5 BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.30740 of 2014 (N)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1:A TRUE COPY OF THE ORDER DATED 13-12-1978 OF THE FOREST TRIBUNAL,PALAKKAD.

EXHIBIT-P2:A TRUE COPY OF THE ORDER DATED 16-03-1995 OF THE FIFTH RESPONDENT.

EXHIBIT-P3:TRUE COPY OF THE CERTIFICATE DATED 16-08-2003 ISSUED BY THE FIFTH RESPONDENT.

EXHIBIT-P4:A TRUE COPY OF THE JUDGMENT DATED 19 MARCH 2014 IN WRIT PETITION (CIVIL NUMBER 27709 OF 2012 OF THIS HONOURABLE COURT).

EXHIBIT-P5:A TRUE COPY OF THE ORDER DATED 29 OCTOBER 2014 OF THE FOURTH RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.30740 of 2014

Dated this the 3rd day of February, 2015

<u>JUDGMENT</u>

The petitioner has approached this Court with the following prayers:

> *"i) Issue a writ in the nature of mandamus commanding the respondents 2 and 4 to collect basic tax and issue a possession certificate to the petitioner in respect of his property covered by Exts.P1 to P3.*
>
> *ii) Issue such other writ, order or direction is this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and in the interest of justice."*

2. The case of the petitioner is that, by virtue of Ext.P1 order dated 13.12.1978 passed by the Forest Tribunal, Palakkad, it has been declared that the property concerned herein is not a vested or private forest and accordingly, the property was restored to the petitioner as per Ext.P2 in the year 1995. It has been further certified by the Forest Department as per Ext.P3 that, they do not have any claim over the property. Despite this, the request made by the petitioner to accept the basic tax in respect of the property under the Kerala Land Tax Act and also to issue a Possession Certificate is not favourably acted upon and

hence the writ petition.

3. The learned counsel for the petitioner points out that, he had approached this Court earlier by filing WP(C) No.27709 of 2012, which was disposed of as per Ext.P4 judgment dated 19.03.2014, directing the 4th respondent to consider the request of the petitioner for acceptance of basic tax, also directing to consider whether the property was covered by any EFL notification. It was pursuant to Ext.P4 that, Ext.P5 order was passed. The stand of the respondents is discernible from paragraphs 5 and 6 of the Counter Affidavit, which are reproduced below:

> *"5. It is respectfully submitted that the land stated above was not included in the NOC of Forest Department. The land restored by the Forest Department to the petitioners are in Sy. Nos.53/2 C(pt) and 46/1(pt) of Tarur-2 Village and made sub division in the name of Madhavan and others as in Re.Sy. No.2/2-3.0320 hectors and 2/4-0.2500 hector. The land comprised in Re.Sy. No.2/2 has been handed due to Shri. Unnikrishnan, S/o. Vasu, Panniyankara. The land which were restored the possession from the Forest Department to its owners have already been transferred to their names with separate sub divisions and basic tax is collected.*
>
> *6. It is submitted that the petitioner wants to collect the basic tax in old Sy.No.47 of 1.64 Acres, that is included in partition document No.2208/1976, as per 0.0931 Ares (Madhavan) as 2nd number in B part, 0.0670 Ares (Balan) as 8th number in D part, 0.0972 Ares (Narayanan) as 8th number in C part, 0.0567 Ares (Damodaran) as 11th numbers in E part and in the partition Document No.3658/1987. 0.1093 Ares as 4th number in the document and 0.2470 Ares (Madhavan) 5th number in the document. A joint verification of Revenue-*

Forest Department is needed to identify whether the property is included in vested forest. Now the property stands as vested forest in the BTR and the tax can be collected only after changing the BTR and Re-Survey records and no objection certificate from the Forest Department is needed in the disputed land. Change can be done in Re.Sy. records and Village BTR only after exempting the land from vested forest and NOC from the Forest Department."

4. It has been stated in paragraph 8 of the Counter Affidavit filed by the 4th respondent that the disputed land of Block No.9 in Re.Sy. No.2-1 is not included in the exempted land from the vested forest of Forest Department and that the sub division records were already prepared for the land exempted from vested forest as per NOC of Forest Department and that the basic tax is collected for the same land. The 4th respondent adds in paragraph 9 and 10 that, pursuant to Ext.P4 judgment, the Village Officer, Tarur and the Taluk Surveyor have inspected the disputed property on 26.09.2014 and found that the land in question is vested forest as per the Re-survey records and that basic tax cannot be collected for the same. The necessity to change the revenue records can be done only on the basis of NOC to be obtained from the Forest Department and that the above process can be completed only after joint verification by the Revenue Department and the Forest Department, to find out whether the

disputed land is vested forest or not.

5. Today, the learned Government Pleader submits on instructions that, the above process of joint verification can be completed without delay and that it would be done within four month's from today. The said submission is recorded.

6. The writ petition is disposed of, directing the concerned respondents to cause the 'joint verification' as aforesaid and to have the proceedings finalised at the earliest, at any rate, within 'four months' from the date of receipt of a copy of this judgment. Subject to the outcome of the joint verification as above, the claim of the petitioner to remit tax in respect of the concerned property and also to have a Possession Certificate shall be considered and finalised within 'one month' thereafter.

Petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the concerned respondents, for further steps.

P.R. RAMACHANDRA MENON,
JUDGE

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