

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 32062 of 2014 (G)

PETITIONER(S):

J.DEVAKI AMMA AGED 76 YEARS
W/O.LATE V.MADHAVAN NAIR, GURUVAYOOR KIZHAKKATHIL
KOTTARKAVU MURI, MAVELIKKARA, ALAPPUZHA DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL LINES, ALAPPUZHA P.O.
ALAPPUZHA DISTRICT-688001.
3. THE TAHSILDAR,
TALUK OFFICE, MAVELIKKARA P.O.
ALAPPUZHA DISTRICT-690101.
4. THE VILLAGE OFFICER,
MAVELIKKARA VILLAGE, MAVELIKKARA P.O.
ALAPPUZHA DISTRICT-690101.
5. THE MAVELIKKARA MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MAVELIKKARA P.O.
ALAPPUZHA DISTRICT-690101.

R1-R4 BY ADV. GOVERNMENT PLEADER SRI MANOJ P KUNJACHAN
R5 BY SRI.RASHEED.C, SC, MAVELIKKARA MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: COPY OF THE ORDER NO.3433/LA-49/79 DATED 10/12/1979 ISSUED BY THE SPECIAL SECRETARY, LEGISLATURE SECRETARIAT, THIRUVANANTHAPURAM.

EXT.P2: COPY OF THE ORDER NO.28257/2/92/REVENUE DATED 21/04/1992 ISSUED BY THE 1ST RESPONDENT.

EXT.P3: COPY OF THE COMMUNICATION NO.45686/A2/93/RD DATED 07/07/1993 ISSUED BY THE 1ST RESPONDENT.

EXT.P4: COPY OF THE COMMUNICATION NO.495/M/IRRIGATION/05/ALAPPUZHA DATED 27/07/2005 ISSUED BY THE MINISTER FOR IRRIGATION TO THE PETITIONER.

EXT.P5: COPY OF THE COMMUNICATION NO.B1.11235/11 DATED 02/12/2011 FROM THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P6: COPY OF THE JUDGMENT IN O.P.NO.17233/1996 DATED 27/06/1997 OF THIS HON'BLE COURT.

EXT.P7: COPY OF THE APPLICATION DATED 19/07/2014 FILED BY THE PETITIONER BEFORE THE HON'BLE MINISTER FOR REVENUE.

EXT.P8: COPY OF THE RECEIPT DATED 24/03/2012 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P9: COPY OF THE RECEIPT FOR PAYMENT OF THE PROPERTY TAX FOR THE PERIOD 2013-14 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER DATED 17/3/2014.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 32062 of 2014

Dated this the 04th day of June, 2015

J U D G M E N T

The petitioner is aggrieved by the refusal of the Government to assign land having an extent of 7½ cents, the application for which, is said to have been pending before the Government for long and the property remaining in the possession of the father-in-law of the petitioner and then, her husband; both of them now deceased. The petitioner's husband had submitted an application dated 6.04.1979, the pendency of which is evidenced by Ext.P5. Over the years the attempt of the petitioner's husband to get the land assigned evoked only promises that the same will be considered; as is evidenced by Ext.P2 to P4.

2. Eventually, the application was declined by Ext.P5 on the ground that there is a declaration in O.P NO. 17233/96-B that no Puramboke land adjacent to a river, pond or backwater shall be assigned to anyone.

3. The judgment of the Court referred to in Ext.P5 is produced in Ext.P6. The judgment reads as under:

“The petitioner has approached this Court seeking a direction restraining filling of 'puzha puramboke' in sy.No.985 of Cheranelloore Village.

It is stated in the counter affidavit of the 3rd respondent that filling in question had been stayed and the entire areas under encroachment has been taken into custody in 11.11.1996 and that now the total area is under the custody of Government and free from unauthorised encroachment. The Government or the Revenue Officials shall not assign the land on the side of the river,

or water courses including the land in question to anybody.

O.P is disposed of with the above direction. No costs.”

4. For one, this Court does not think that there is any declaration of law in the judgment since the provisions of the Kerala Government Land Assignment Act, 1960 or the Rule framed thereunder, nor the law on the subject was considered. The grievance was only with respect to the filling up of the Puzha puramboke of Sy. No. 985 of Cheranelloore Village and the declaration if at all made is at best referring to that property. In any event, it is also to be noticed that the direction was also not to assign any land on the side of the rivers or water courses which definitely does not include a stagnant pond.

5. With respect to the assignment, what is relevant is the provisions of the Kerala Government Land Assignment Act,

1960 and the Kerala Land Assignment Rules, 1964. Rule 11 mandates a list of assignable land to be prepared as also the land to be reserved for Government or public purposes; the latter being specifically enumerated in sub rule 2 of Rule 11. The authority only has to look into whether such a restriction is in existence for the subject land.

6. The learned Government Pleader would submit that an affidavit filed by the petitioner was not in the proper form as prescribed under the Zero Landless Kerala 2015 scheme. The argument is that, no land was assigned under the Scheme since the petitioner had taken a adamant stand, in the affidavit so filed, that the petitioner would not vacate the 7 cents of land even if some other land is assigned under the scheme. The claim for assignment cannot be confused with the claim under the Scheme. If the affidavit filed under the scheme is not proper no land under the scheme could be assigned. But that does not absolve the

Government from considering the claim for assignment under the Act of 1960. The petitioner's claim in the writ petition is not under the Zero Landless Scheme but to reconsider her husband's application which is as early as on 6.4.1979 and rejected by Ext.P5. Ext.P5 for the reasons stated above is not sustainable and hence set aside. The 3rd respondent shall consider the matter afresh in accordance with the Kerala Government Land Assignment Act, 1960 and the rules framed thereunder. The petitioner shall not be evicted from the premises till such consideration is made. The consideration shall be made after hearing the petitioner within a period of three months from the date of receipt of a copy of this judgment.

Writ petition is allowed.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge