

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 34308 of 2014 (K)

PETITIONER:

ST ANTONY'S HIGH SCHOOL,
VALIYATHURA, THIRUVANANTHAPURAM
REPRESENTED BY ITS MANAGER, REV.FRO.MELKON.

BY ADVS.SRI.D.KISHORE
SMT.MINI GOPINATH

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, REVENUE (U)DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695001

2. THE LAND REVENUE COMMISSIONER,
THIRUVANANTHAPURAM.695001

3. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.695001

4. THE REVENUE DIVISIONAL OFFICER,
THIRUVANANTHAPURAM.695001

5. THE TAHSILDAR,
TALUK OFFICE, THIRUVANANTHAPURAM.695001

6. THE VILLAGE OFFICER,
MUTTATHARA VILLAGE, THIRUVANANTHAPURAM.695001

SRI.RAFEEK.V.K., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C) .No. 34308 of 2014 (K)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 TRUE COPY OF THE G.O(MS)201/05/REVENUE DATED 18.6.2005 OF IST RESPONDENT

EXT.P2 TRUE COPY OF THE JUDGMENT DATED 1.3.2010 IN WP(C)4707 OF 2010 OF THIS HONOURABLE COURT

EXT.P3 TRUE COPY OF THE REPORT NO.118/11 DATED 28/1/2011 OF THE 6TH RESPONDENT

EXT.P4 TRUE COPY OF THE PROCEEDINGS NO.B5-9066 DATED 5.2.2011 OF THE 5TH RESPONDENT

EXT.P5 TRUE COPY OF THE JUDGMENT DATED 20.9.2012 IN W.P(C)21918 OF 2012 OF THIS HONOURABLE COURT

EXT.P6 TRUE COPY OF THE PROCEEDINGS NO.9267/U1/2013/RD DATED 24.3.2014 OF THE IST RESPONDENT

EXT.P7 TRUE COPY OF THE SUBMISSION DATED 17.7.2014 ALONG WITH THE SCHOOL ACCOUNT DETAILS MADE BY THE PETITIONER BEFORE THE IST RESPONDENT

EXT.P8 TRUE COPY OF THE G.O(MS)NO.456/2014 DATED 4.11.2014 OF THE IST RESPONDENT

EXT.P9 TRUE COPY OF THE PROCEEDINGS NO.903/14 DATED 11/12/2014 OF THE 6TH RESPONDENT ALONG WITH THE MAHAZAR DATED 9.12.2014 GOVERNMENT ORDER DATED 4.11.2014 AND THE LOCATION SKETCH

EXT.P10 TRUE COPY OF THE ASSIGNMENT OF LAND WITHIN MUNICIPAL AND CORPORATION AREAS RULES 1995.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

.....
W.P.(C) No.34308 of 2014
.....

Dated this the 29th day of June, 2015

JUDGMENT

St.Antony's High School, Valiyathura, Thiruvananthapuram has filed this writ petition aggrieved by the refusal on the part of the respondents to extend the benefit of Ext.P1 order by which the Government had ordered that the property given on lease to aided schools for the last several years would be assigned to the respective Schools on conditions stipulated therein. The conditions were to the effect that: (1) this order will not be applicable to individual agencies; (2) a sum of Rs.100/- per cent will be realised towards the value (3) the arrears of lease rent, if any will be written off at the time of assignment (4) arrears of lease rent shall be written off after assessing the same at the rate of Re.1/- per cent.

2. St.Antony's High School, Valiyathura is managed by St.Antony's Forane Church, Valiyathura under the Latin Catholic Arch Diocese, Thiruvananthapuram. The Government of Kerala had given 3 acres and 94 cents of land near the school in the

W.P.(C) No.34308 of 2014

:2:

year 1957 and the school had been functioning in the said compound, in Survey Nos.2856/1, 2857/3-1, 2858/2-1-1 of Muttathara Village, paying rent regularly till the year 1995.

3. Petitioner states that on account of some omission, the lease rent was not paid for some time and the school received a demand notice on 24.9.2004 from the 3rd respondent demanding the sum of Rs.23,75,908/- towards the arrears of lease rent for the period from 1.1.1995 to 31.3.2004. It was while so that the Government issued Ext.P1 order. On the strength of Ext.P1, the petitioner approached the Government with representations requesting to withdraw the demand notice and to extend the benefit of Ext.P1. But the Government did not take any action. On the other hand, a notice of eviction was issued on 16.12.2009. The petitioner thereupon approached this Court by filing W.P.(C) No.4707 of 2010. This Court by Ext.P2 judgment directed the Tahsildar to consider the representation submitted by the petitioner (Ext.P5 in W.P.(C) No.4707 of 2010) seeking assignment of the property, extending the benefit of Ext.P1 order within a period of 3 months and it was directed that the respondents shall not take any coercive action for recovery of

arrears of the lease rent.

4. Thereafter the Tahsildar conducted a joint inspection of the land in question with the airport authorities and the petitioner and forwarded a report to the Revenue Divisional Officer. It was stated that the land was situated 216 meters away from the boundary wall of Airport. After explaining his findings on inspection, he passed Ext.P4 order, saying that application for assignment was pending, for which Government have issued Ext.P1 guidelines and disposed of the petition saying that the subject matter of assignment of Government lands to educational institutions vests with Government and that a comprehensive report will be sent to the higher authorities. It was stated therein that the land in question was being found used by the School and that the same is 216 meters away from the Airport. It was mentioned that the Revenue Divisional Officer has sought for a report based on the application for assignment of the land.

5. Thereafter the petitioner approached this Court again by filing W.P.(C) No.21918 of 2012 seeking a direction to the 1st respondent to finalise the proceedings. This Court by Ext.P5 judgment directed the Secretary to Department of Revenue to

take a decision in the matter with notice to the petitioner on his representation dated 10.9.2012 within a period of six months. Thereafter as per Ext.P6, the 1st respondent directed the petitioner to furnish the school account details for the past 3 years. The petitioner accordingly submitted the records and apart from that he submitted a representation also on 17.7.2014. While so, the petitioner received a communication from the 6th respondent stating that the land in question was taken over as per mahazar prepared on 9.12.2014. Immediately, he received the order passed by the Government also, rejecting his representation as per G.O(MS) No.456/2014/RD dated 4.11.2014 (Ext.P8). According to the petitioner, the land in question is still in possession of the school, being used as a play ground.

6. In Ext.P8, the Government mainly considered the arrears of lease rent and the violation of lease conditions. At the same time, it has noticed from the report of the Tahsildar that 3.94 acres of land was assigned to the school authorities on kuthakapattam and later converted into lease on 12.12.1957 and the lease dues were remitted upto 1994. It is further stated that since the land is situated in corporation area, 1995 Land

Assignment Rules are applicable. It was further found that the school and play ground are situated at a considerable distance and not lying contiguously. It was stated that the request for assignment cannot be considered without remitting the lease rent arrears. The Government found it necessary to take the land for public purposes, on account of non remittance of defaulted lease rent arrears. The Government considered the following aspects:

- (a) Whether kuthakapattom was existing even after 1960.*
- (b) Whether after the inception of Kerala Land Assignment Rule 1995 the institution has complied with the regularisation of lease, as contemplated in Rule 12(1) of the said Rules;*
- (c) Whether, as per Rule 6(2) of Land Assignment Rules 1995, the petitioner institution is entitled to hold the said land within 183 meters of the boundary of Aero drams and landing place;*
- (d) Whether is it not expedient to resume the land and vest the same with the Revenue Department, so that it can be used for all the public purpose, including sports purpose of school as and when needed.*

7. One of the aspects considered was whether the petitioner institution was entitled to hold the land within 183 meters of boundary of Aero drams and landing place under rule 6(2) of

Kerala Land Assignment Rules, 1995 and whether it is not expedient to resume the land and vest the same with the Revenue Department, so that it can be used for all public purpose including sports purpose of school as and when needed. It further stated that the Assignment of Land within Municipal and Corporation Areas Rules, 1995 came into force on 14.11.1995 and as per rule 12(1) the lease holder of the land held under lease shall within 3 months from the date of issue of the rules file application before the assigning authorities. The District Revenue Administration was therefore directed to ensure that the school management authorities had complied with it, for the 3.94 acres of land which is now used as play ground. It was found that the school authorities has remitted the defaulted lease rent arrears regarding the play ground till 1994 and the sum of Rs.1,18,66,375/- is the arrears for the period up to 31.3.2004. It is also stated that the school management authorities did not comply with the lease conditions regarding the defaulted lease rent arrears as envisaged in rule 12. It further says that under rule 6(2)(V) of the Assignment of Government Land in Municipal and Corporation Areas Rules, 1995, the land falls within 183

meters from the boundary of Thiruvananthapuram Airport, it seems expedient to resume the land and vest the same with Revenue Department for Government/Public purpose as may be found necessary. Therefore it was stated that the petitioner institution is not entitled to get the land assigned as the same is within 183 meters from the boundary of the Airport. Further it was ordered that the land lying within 183 meters from the boundary of Thiruvananthapuram air port cannot be subjected to any kind of assignment and hence the area of land measuring 3.94 acres not lying contiguous to the school, used as a play ground shall be resumed to the Revenue Department and should be kept under the custody of the District Collector, Thiruvananthapuram for various sports purposes of the Government of Kerala at the costal area. It was further ordered that the said land can also be used for occasional sports activities of the school at their request. The District Collector, Thiruvananthapuram was directed to calculate the defaulted lease rent arrears as per the statutory provisions, till the date of the order and recover the same from the school authorities.

8. The petitioner challenges this order mainly on the ground

that the Government did not consider the applicability of Ext.P1, while passing the same by rejecting the request of the petitioner. It was further pointed out that the Tahsildar had already found that the land in question was situated 216 meters away from the boundary of Thiruvananthapuram Airport and therefore it was not correct to say that it cannot be assigned, since it was within 183 meters from the Airport boundaries. It was further pointed out that the demand for the huge arrears, when the Government have ordered to write off the arrears of lease rent from the educational institutions which were holding the land on lease, as per Ext.P1, was liable to be set aside.

9. The Government have filed counter affidavit justifying Ext.P8 order. At the same time, it is admitted that the Tahsildar had conducted a joint inspection on 29.8.2014, pursuant to the judgment of this Court and had found that the play ground was being used exclusively for the purpose of institution. It is also admitted that the land with an extent of 3.94 acres was assigned to the school authorities on 12.12.1957, originally as per kuthakapattam and later converted into lease. Again it has been stated in the counter affidavit that the land falls within 183

meters from the boundary of Thiruvananthapuram Airport and hence cannot be subjected to any kind of assignment.

10. I heard the learned counsel appearing for the petitioner and the learned Government Pleader as well.

11. It has been the case of the petitioner right from the beginning that he is entitled to the benefit of Ext.P1, wherein the Government ordered that the land held on lease by the aided educational institutions in the State shall be assigned to them on payment of rent at the rate of 1%, realising the consideration at the rate of Rs.100/- per cent and writing off the arrears of rent. The Government had directed the District Collectors to take appropriate actions for implementation of the said order which was passed on 18.6.2005. The petitioner had been seeking the benefit, since then. This Court had also in Ext.P2 and Ext.P5 judgments directed the Tahsildar and the Government respectively to consider the representation submitted by the petitioner before them, in which he had requested for assignment of land, in terms of Ext.P1. But neither in the order Ext.P8/P9 nor in the counter affidavit the respondents did utter the reason for not granting the benefit of such a Government order to the

School. The Tahsildar, after conducting the joint inspection closed the proceedings before him saying that the Government is the authority to assign land to educational institutions. The reason stated by the Government for rejecting the request is that the land is within 183 meters of Thiruvananthapuram Airport and hence it cannot be assigned. At the same time, the Tahsildar has in Ext.P4 order stated that the land is situated 216 meters away from the Airport boundary wall. Such a statement was made after he conducted a joint inspection with the Airport authorities and school authorities pursuant to Ext.P2 judgment. Therefore, the rejection of petition on that ground is incorrect and baseless.

12. By Ext.P8 order the Government has directed resumption of the land which was in the possession of the school authorities. But the fact that the school authorities have been in possession of the play ground right from 1957 is nowhere disputed.

13. As the impugned orders Exts.P8 or P9 do not refer to the applicability of Ext.P1 and the Government has already directed assignment of land in favour of the educational authorities in accordance with the conditions stipulated in Ext.P1,

W.P.(C) No.34308 of 2014

:11:

and the distance from airport stated in Ext.8 is contrary to the finding in Ext P4, the impugned orders Exts.P8 and P9 shall stand set aside. The Government will pass fresh orders, on the application of the petitioner School for assignment, in terms of Ext.P1 within a period of 3 months from the date of receipt of a copy the judgment.

Till orders are passed status quo with respect to the land in question shall be maintained.

The writ petition is accordingly disposed of.

**P.V.ASHA,
JUDGE.**

rkc