

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.K. ABDUL REHIM

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 38100 of 2010 (J)

PETITIONERS:

1. FARIS P.H.
S/O. HAMEED, 29 YEARS, PATTAPARAMBIL HOUSE,
PANAYAPPILLY, THOPPUMPADY, COCHIN-5.
2. ABDUL RAHES,
S/O. ABDULLA, MUBARAK MANZIL HOUSE,
KADIYUR, KANNUR DISTRICT.
3. JOSEPH FERDINAND REBELLOW
S/O. FRANCIS, PALLEKKATTIL HOUSE,
KANNAMALY, COCHIN-5
4. FAREN FEBINSON REBELLOW
S/O. FARNCIS, DO..DO..
5. T.K. SAKEER HUSSAIN
S/O. T.K. KUNJU MOHAMMED,
THURUTHIPPALLY HOUSE
MATTANCHERRY, COCHIN-2
6. ASEEM P.H,
S/O. HAMMED, PATTARAMBIL HOUSE,
PANAYAPPILLY, THOPPUMPADY, COCHIN-5

BY ADVS. SRI.O.V.RADHAKRISHNAN (SR.)
SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

1. THE DISTRICT SURVEY SUPERINTENDENT,
IDUKKI, IDUKKI DISTRICT-685602.
2. THE VILLAGE OFFICER,
MARAYUR, IDUKKI, IDUKKI DISTRICT-685602.
3. THE TAHSILDAR, DEVIKULAM
IDUKKI, IDUKKI DISTRICT-685613.
4. THE TALUK SURVEYOR,
TALUK OFFICE, DEVIKULAM,
IDUKKI DISTRICT-685613.

5. JOSEPH JOSEPH
KALLARACKAL HOUSE, PRAVITHANAM KARA
BHARANGANAM VILLAGE, MEENACHIL TALUK, KOTTAYAMDISTRICT.
- **6. SMT.RANI JOSE,
AGED 55 YEARS, W/O.(LATE) JOSEPH JOSEPH, KALLARACKAL HOUSE
PRAVITHANAMKARA, BHARANANGANAM VILLAGE
MEENACHIL TALUK, KOTTAYAM DISTRICT.
7. JOJU JOSE,
AGED 20 YEARS, S/O.(LATE) JOSEPH JOSEPH, KALLARACKAL HOUSE
PRAVITHANAMKARA, BHARANANGANAM VILLAGE
MEENACHIL TALUK, KOTTAYAM DISTRICT
REPRESENTED BY MOTHER AND GUARDIAN SMT. RANI JOSE.
8. MEERA AMAL,
AGED 31 YEARS, EDAKATTUKUDIYIL HOUSE,
VARAPPETTY P.O., KOTHAMANGALAM.
9. TEENA SUDEER ,
AGED 29 YEARS, AATTUPURATH HOUSE,
ARATTUPUZHA P.O., THRISSUR, PIN-680 562.
10. SHOBA DAVIS,
AGED 26 YEARS, KURISUNGALPARAMBIL HOUSE,
FATHIMAPURAM P.O.CHANGANASSERY.
- ***11. JOY JOSEPH
S/O JOSEPH, KALLARACKAL, KALAPPURAKKAL HOUSE
PRAVITHANAM PO., BHARANANGANAM VILLAGE
MEENACHIL TALUK, PALA, KOTTAYAM - 686651.
12. DANIEL JOY
SON OF JOY, KALLARACKAL, KALAPPURAKKAL HOUSE
PRAVITHANAM PO., BHARANANGANAM VILLAGE
MEENACHIL TALUK, PALA, KOTTAYAM - 686651.
13. AMMINI GEORGE
WIFE OF GEORGE, VELLOKUNNEL HOUSE,
CHEMMALAMATTOM, ERATTUPETTA, KOTTAYAM 686 529.

[*ADDL. R5 IS IMPEADED AS PER ORDER DATED 25/05/2012 IN IA 5020/2012.]

[**ADDL.R6 TO R10 ARE IMPEADED AS PER ORDER DATED 10.10.14 IN IA 12748/2014.]

[***ADDL.R11 TO R13 ARE IMPEADED AS PER ORDER DATED 12.12.2014 IN IA 16933/14.]

R1 TO R4 BY GOVT. PLEADER SRI. JOE KALLIATH
R5 BY ADV. SRI.J.JULIAN XAVIER
R6 TO R10 BY ADV. SRI.RAJU JOSEPH (SR.)
R11 TO R13 BY ADV. SRI. K.S. HARIHARAPUTHRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE TAX RECEIPT ISSUED BY 4TH RESPONDENT IN FAVOUR OF THE 1st PETITIONER DATED 15-09-2010.
- EXT- P1 (a)- TRUE COPY OF THE TAX RECEIPT ISSUED BY 4TH RESPONDENT IN FAVOUR OF THE 3rd PETITIONER DATED 15-09-2010.
- EXT- P1 (b)- TRUE COPY OF THE TAX RECEIPT ISSUED BY 4TH RESPONDENT IN FAVOUR OF THE 4th PETITIONER DATED 15-09-2010.
- EXT- P1 (c)- TRUE COPY OF THE TAX RECEIPT ISSUED BY 4TH RESPONDENT IN FAVOUR OF THE 5th PETITIONER DATED 15-09-2010.
- EXT- P1 (d)- TRUE COPY OF THE TAX RECEIPT ISSUED BY 4TH RESPONDENT IN FAVOUR OF THE 6th PETITIONER DATED 15-09-2010.
- EXT- P2 (a)- TRUE COPY OF APPLICATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT DATED 02-06-2010.
- EXT- P2 (b)- TRUE COPY OF APPLICATION SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT DATED 02-06-2010.
- EXT- P2 (c)- TRUE COPY OF APPLICATION SUBMITTED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT DATED 02-06-2010.
- EXT- P2 (d)- TRUE COPY OF APPLICATION SUBMITTED BY THE 4TH PETITIONER BEFORE THE 1ST RESPONDENT DATED 02-06-2010.
- EXT- P2 (e)- TRUE COPY OF APPLICATION SUBMITTED BY THE 5th PETITIONER BEFORE THE 1ST RESPONDENT DATED 02-06-2010.
- EXT- P2 (f)- TRUE COPY OF APPLICATION SUBMITTED BY THE 6th PETITIONER BEFORE THE 1ST RESPONDENT DATED 02-06-2010.
- EXT- P3- TRUE COPY OF THE REPORT OF THE 2ND RESPONDENT ISSUED TO RESPONDENT No.3 DATED 29-09-2010.
- EXT- P4- TRUE COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DATED 19-11-2010.
- EXT- P5- TRUE COPY OF THE FIELD REGISTER IN RESPECT OF RE-SY No.131 OF MARAYUR VILLAGE.
- EXT- P6- TRUE COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER AND THE COMMUNICATION DATED 17-08-2009 ISSUED BY THE VILLAGE OFFICER, MARAYUR.
- EXT- P7- TRUE COPY OF THE DOCUMENT No.407/1120 ME ALONG WITH ENGLISH TRANSLATION.

- EXT- P8- TRUE COPY OF THE DOCUMENT No.268/1120 ME ALONG WITH ENGLISH TRANSLATION.
- EXT- P9- TRUE COPY OF THE DOCUMENT No.267/1120 ME ALONG WITH ENGLISH TRANSLATION.
- EXT- P10- TRUE COPY OF THE DOCUMENT No.442/1120 ME ALONG WITH ENGLISH TRANSLATION.
- EXT- P11- TRUE COPY OF THE BASIC TAX REGISTER KEPT BY THE TALUK OFFICE, DEVIKULAM.
- EXT- P12- TRUE COPY OF THE ORDER DATED 31-08-2011 OF THE ADDITIONAL TAHSILDAR, DEVIKULAM.

RESPONDENTS' EXHIBITS

- EXT- R5 (a) - TRUE COPY OF THE DOCUMENT No.956 1123 ME (1948) OF SRO, KOTTAYAM.
- EXT- R5 (b) - TRUE COPY OF THE RELEASE DEED No.4325 OF 1124 ME (1949) OF SRO MEEHACHIL
- EXT- R5 (c) - TRUE COPY OF THE OLD THANDAPPER REGISTER WITH THANDAPPER No.34 IN THE NAME OF MARYAMMA.
- EXT- R5 (d) - TRUE COPY OF THE LAND TAX RECEIPT FOR THE PROPERTY IN RE.SY No.131 IN THE THANDAPPER OF MARYAMMA.
- EXT- R5 (e) - TRUE COPY OF THE JUDGMENT DATED 10-06-2005 IN OS No.124/2003.
- EXT- R5 (f) - TRUE COPY OF THE DOCUMENT No.1659/2000 OF SRO, DEVIKULAM WHICH IS SET ASIDE BY THE HON'BLE SUB COURT AS PER EXT.R5 (e) JUDGMENT.
- EXT- R5 (g) - TRUE COPY OF THE PETITION DATED 17-06-2005 FILED BY PETITIONER BEFORE THE RDO.
- EXT- R5 (h) - TRUE COPY OF THE NOTICE DATED 19-11-2010 ISSUED BY THE 4TH RESPONDENT.
- EXT- R5 (i) - TRUE COPY OF THE PETITION/OBJECTION DATED 14-12-2010 FILED BEFORE THE TAHSILDAR, DEVIKULAM.
- EXT- R5 (i) (a)-TRUE COPY OF THE RECEIPT.
- EXT- R5 (j) - TRUE COPY OF THE OBJECTION DATED 14-12-2010 FILED BEFORE THE DISTRICT COLLECTOR, IDDUKKI DISTRICT.
- EXT- R5 (j) (a)-TRUE COPY OF THE RECEIPT DATED 15-12-2010.

EXT- R5 (k) - TRUE COPY OF THE THANDAPER REGISTER WHICH IS FABRICATED BY ENTERING THE NAME OF PHILIP AJOO AND OTHERS.

EXT- R5 (l) - TRUE COPY OF THE SAID REPORT DATED 20-01-2011 OF THE 2ND RESPONDENT.

EXT- R5 (m) - TRUE COPY OF THE PROCEEDINGS DATED 31-08-2011 BY THE 3RD RESPONDENT.

EXT- R5 (n) - TRUE COPY OF THE SAID COMPLAINT DATED 31-01-2011.

EXT- R13 (a) - TRUE COPY OF THE DOC. No.522 OF 1975 OF SRO, DEVIKULAM.

EXT- R13 (b) - TRUE COPY OF THE DOC. No.526 OF 1975 OF SRO, DEVIKULAM.

EXT- R13 (c) - TRUE COPY OF THE DOC. No.3693 OF 2005 OF SRO, DEVIKULAM.

EXT- R13 (d) - TRUE COPY OF THE DOC. No.3692 OF 2005 OF SRO, DEVIKULAM.

EXT- R13 (e) - TRUE COPY OF THE WILL No.59 OF 1981 DATED 02-07-1981.

EXT- R13 (f) - TRUE COPY OF THE DEATH CERTIFICATE DATED 28-04-2008.

EXT- R13 (g) - TRUE COPY OF THE DOC. No.1354 OF 2000 OF SRO, DEVIKULAM.

EXT- R13 (h) - TRUE COPY OF THE DOC. No.16614 OF 2000 OF SRO, DEVIKULAM.

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 38100 OF 2010-J

DATED THIS THE 11th DAY OF FEBRUARY, 2015.

J U D G M E N T

All the 6 petitioners have purchased various extents of land comprised in Sy. No.131/1 of Marayur village, through sale deeds registered before the Sub Registrar Office, Devikulam during the year 2009-2010. The properties in question were mutated into respective names and the petitioners have remitted land tax before the Village Officer, Marayur upto the year 2010-2011, as evidenced from Ext.P1 series Basic Tax Receipts. The petitioners have submitted Ext.P2 series applications before the 1st respondent to conduct survey and demarcation of the boundary of individual properties purchased by them. It is evident from Ext.P3 that the 2nd respondent had submitted a report to the 3rd respondent stating that the boundaries of the properties purchased by each of the petitioners has to be demarcated in accordance with the sale deeds. The 4th respondent had issued Ext.P4 notice to the 1st petitioner intimating that the

survey of the properties will be conducted on 29-11-2010. According to the petitioners, the said notice was issued based on the applications submitted by all the petitioners with respect to survey and demarcation of the boundary of the properties purchased by each of them. It is stated that on 29-11-2010 certain persons in the locality had obstructed the measurement and the 4th respondent returned from the spot informing that he will submit detailed report before the 3rd respondent about the illegal obstruction. But thereafter no steps were taken from the side of the 3rd respondent and the petitioners were deprived of their right to enjoy the property because the survey could not be completed. Under such circumstances this writ petition was filed seeking direction to the respondents to complete the survey and demarcation, initiated pursuant to Ext.P4 notice.

2. Initially this writ petition was disposed of through judgment dated 22-12-2010 directing the 4th respondent to complete the survey based on Ext.P4 notice, within 8 weeks from the date of production of copy of the judgment.

Subsequently the 5th respondent had filed RP No.92/2011 seeking review of the judgment. Another review petition was also filed by the additional respondents 11 to 13 as RP No.107/2011. This court through a common order dated 24-03-2011 had recalled the judgment, by allowing both the review petitions. In the said order it was observed that, it is evident that several disputed questions of fact are raised challenging title over the property between the writ petitioners and the review petitioners. The review petitioners contended that, the 'Thandaper' was fabricated and title of the predecessor in interest of the petitioners itself was invalid and illegal. However this court observed that, when the ownership and possession of the property itself is in dispute this court will not be justified in directing the authorities to act upon the applications submitted by the writ petitioners for survey and demarcation, until those issues are adjudicated. On that basis the writ petition was dismissed through judgment dated 24-03-2011. The petitioners took up the matter in appeal before the Division

Bench. In the judgment in WA No.318/2014, dated 16-03-2013, the Division Bench had set aside the judgment observing that, having allowed the review petition the writ petition ought to have been heard on merits. Therefore the writ petition was revived and posted for hearing.

3. From counter affidavits filed by the 3rd respondent and the contesting respondents it is evident that the mutation effected in favour of the petitioners were subsequently cancelled through an order passed by the 3rd respondent as per Ext.R5 (m). Learned counsel appearing for the contesting respondents had pointed out various documents produced by them, to content that no valid title is conveyed to the petitioners through the documents by which they have purchased the properties. On the other hand, learned counsel appearing for the writ petitioners pointed out that, even in a suit filed by the additional 5th respondent there is no relief sought for to the extent of setting aside the documents in question. This court is of the considered opinion that it is not necessary to advert to

merits of any such disputes, because those matters are not germane for consideration in this writ petition for deciding the issue involved.

4. Question to be decided is only as to whether the petitioners are entitled to seek survey and demarcation of the boundary of the properties which they alleged to have purchased by virtue of the sale deeds referred. Rule 27 of the Kerala Survey and Boundaries Rules, 1964 deals with requests for demarcation of registered lands. The term 'registered land' is defined under Section 2 (v) means any land the proprietary rights of which does not vests in the Government. There is no case that the right over the land is vested with the Government. In other words, there is no dispute that the land in question is 'registered land'. As per Rule 27 the 'registered holder' of a settlement or a post settlement or a current "pokkuvaravu" sub-division which is not yet been demarcated and surveyed, alone can apply for survey and demarcation of his land, which is to be done at his cost. The application for the said purpose should be

submitted in the form prescribed, to the Tahsildar within whose jurisdiction the land is situated. The writ petitioners cannot point out any other provision through which the holder of a land can seek for survey and demarcation of boundary. As envisaged under Rule 27 such a request can be made only by the 'registered holder'. The term 'registered holder' is defined under the Act in Section 2 (iv) means the person in whose name land in question is registered in the Government accounts of the village. From the facts revealed it is evident that the mutation effected in favour of the petitioners now stands cancelled. As such the petitioners cannot be considered as 'registered holders' of the land in question. Therefore the application for survey and demarcation of the boundary of the land individually purchased by each of the petitioners, cannot be entertained by the respondents 3 & 4.

5. Learned senior counsel appearing for the petitioners submitted that, the order cancelling mutation is now pending under challenge before the appellate

authority. It is for the said appellate authority to decide the question as to whether the petitioners are entitled to get the mutation effected in terms of the Transfer of Registry Rules. Learned counsel appearing for the contesting respondents argued that they have also raised objections before the appellate authority. Learned Senior Counsel appearing for the petitioners pointed out Explanation-I to Section 2 (iv) which provides that person other than 'registered holder' who is in lawful management of the land will also be deemed to be a registered holder in respect of such land. But the applications submitted by the petitioners (Ext.P2 series) does not reveal anything that they are in lawful management of the property other than in the capacity as a registered holders. However if the petitioners have got any case that they are in lawful management of the land, despite they are not the registered holders, it will be left open to them to approach the appropriate competent authority in such capacity. It is also left open to the petitioners to approach the respondents 3 & 4, in case the

properties in question are mutated into their name by virtue of order of the appellate authority or otherwise. This court is of the considered opinion that this writ petition can be disposed of by reserving such liberty to the petitioners. It is also left open to the contesting respondents to raise all contentions available on the question of dispute relating to the title or possession. However, the relief by way of direction as sought for cannot be granted at present.

6. Therefore, the writ petition is hereby disposed of reserving liberty as mentioned above to the parties concerned.

Sd/-
C.K. ABDUL REHIM
JUDGE

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P.A. to Judge