IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2020 / 31ST BHADRA, 1942

WP(C).No.18554 OF 2020(T)

PETITIONERS:

1 P.JAYAKANTH, AGED 34 YEARS
S/O. PONRAJ, RESIDING AT KANDATHILKARAYIL HOUSE KAILASANADU (P.O.), THINGALKADU, IDUKKI, 685 553.

2 BENNY THOMAS, AGED 50 YEARS
S/O. JOSEPH, RESIDING AT KUNNEL HOUSE, CHEMMANNAR HOUSE (P.O.), IDUKKI 685 554.

BY ADVS.
SRI.MATHEW A KUZHALANADAN
SRI.K.R.ARUN KRISHNAN
SRI.SUDEEP ARAVIND PANICKER

RESPONDENTS:

1 KERALA STATE ELECTION COMMISSION
REPRESENTED BY SECRETARY,
CORPORATION OFFICE COMPLEX, LMS JUNCTION, PALAYAM, THIRUVANANTHAPURAM 695 033.

2 THE DISTRICT COLLECTOR,
IDUKKI DISTRICT, COLLECTORATE, KUYILIMALA, PAINAVU (P.O.), IDUKKI 685 603.

3 UDUMBANCHOLA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
UDUMBANCHOLA (P.O.), IDUKKI 685 554.

ADDL.R4 ELECTORAL REGISTRATION OFFICER,
UDUMBANCHOLA GRAMA PANCHAYAT,
UDUMBANCHOLA (P.O.), IDUKKI PIN 685554 (ADDL. R4 IS IMPLEADED AS PER ORDER DATED 16.09.2020 IN I.A. NO. 2 OF 2020)
R1 BY SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
R3 BY ADV. SHRI.LIJI J.VADAKKEDAM, SC, UDUMBANCHOLA GRAMA PANCHAYAT

OTHER PRESENT:

GP. SRI. PAUL ABRAHAM VAKKANAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2020, THE COURT ON 22-09-2020 DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

W.P.(C) No.18554 of 2020

Dated this the 22nd day of September, 2020

JUDGMENT

Petitioners reside within the limits of the third respondent Grama Panchayat. The grievance of the petitioners in the writ petition concerns inclusion of large number of persons who are not residing ordinarily in the said Panchayat, in the electoral roll prepared for the ensuing election to the Grama Panchayat. It is alleged by the petitioners that names of such persons have been included in the electoral roll based on false declarations given by them. The petitioners have pleaded in the writ petition a few instances of such inclusion in the electoral roll. It is stated by the petitioners in the writ petition, among others, that several persons are shown in the electoral roll as residing in particular house numbers, the owners of which are not even aware of such persons. Ext.P25 is a detailed complaint preferred by the first petitioner in this regard to the first respondent. The petitioners have also raised objections in Form No. 5 of the Kerala Panchayat Raj (Registration of Electors) Rules, 1994 (the Rules) before the fourth respondent concerning some of such persons who are included in the electoral roll, when draft electoral roll was published. Ext.P26 series are the receipts issued by the fourth respondent to the petitioners in this

regard. The petitioners seek direction to the first respondent to consider Ext.P25 complaint in a time bound manner. The petitioners also seek directions to the fourth respondent to consider the objections raised by them in the prescribed form to the draft electoral roll.

2. A statement has been filed on behalf of the first respondent. The stand taken by the first respondent in the statement is that if the petitioners have any grievance against inclusion of any person in the electoral roll, they have to submit objections in Form No. 5 of the Rules to the Electoral Registration Officer within the time stipulated in Rule 10 of the Rules and that the electoral roll will be finalized only after considering all the objections received within the outer time limit.

3. Heard the learned counsel for the petitioners, the learned Standing Counsel for the first respondent as also the learned Government Pleader.

4. The learned counsel for the petitioners submitted that it is now a common practice in the State to include persons who are not ordinarily residing in the Panchayat in the electoral roll of the Panchayat based on false declarations and even if it is found later in the enquiry conducted based on the objections that the enrolment of such persons are bad, action is not taken against the persons concerned in terms of Section 27 of the Kerala Panchayat Raj Act. According to the learned counsel, it is on account of this reason that large scale enrolments based on false declarations are taking place in the State. It is also submitted by the learned

counsel, placing reliance on the decision of the Apex Court in **Lakshmi Charan Sen and Others** v. **A.K.M. Hassan Uzzaman and Others**, (1985)4 SCC 689, that merely for the reason that an objection is not raised by an aggrieved person against the draft electoral roll in the prescribed form, the Electoral Registration Officer is not precluded from considering whether the enrolments have been made in accordance with law. The learned counsel, in the circumstances, pressed for directions to the first respondent to take appropriate action on Ext.P25 complaint. The learned counsel also pressed for directions to the fourth respondent to consider the objections submitted by the petitioners in the statutory form against the draft electoral roll, before the electoral roll for the ensuing election is finalized.

5. The learned Standing Counsel for the first respondent pointed out that the first respondent is not empowered to consider complaints in the nature of Ext.P25 as it is for the Electoral Registration Officer to consider such complaints in terms of the provisions of the statute. It was also submitted by the learned Standing Counsel that the first respondent would certainly ensure that all objections against the draft electoral roll received in the prescribed form within the time stipulated would be considered before finalizing the electoral roll.

6. Paragraph 45 of the judgment of the Apex Court in **Lakshmi Charan Sen** reads thus:

> "It is true, as submitted on behalf of the Election Commission, that a perfect electoral roll is not possible. But at

> the same time, it must be remembered that the name of any eligible voter should not be omitted or the name of any disqualified person should not be included in the electoral roll, in violation of any constitutional or statutory provisions. The error, when pointed out, has to be removed. It must also be remembered that a large section of the electorate of our country consist of illiterate people and not politically so conscious as to see that their names are in the electoral roll. Needless to say that ours is a democratic country with a parliamentary form of government that is run on party basis. The parliamentary form of government depends on political parties. A duty therefore is cast on the political parties to educate the electorate and take steps that the names of eligible persons are included in the electoral rolls and that names of ineligible persons are deleted. Erroneous inclusion or omission of the names of a few persons may not be of much consequence. But if a considerable number of the names of such persons are either wrongly, included in, or excluded from, the electoral roll, it will be of great consequence to a particular party either in power or in the opposition. The electoral registration officer, therefore, cannot be fastidious as to whether the claims and objections are strictly in prescribed forms. Even when there are omnibus objections by a political party or political parties, as in this case, filing claims and/or objections, such claims and objections have to be inquired into and necessary action taken so that correct opinion of the electorate may be reflected in the result of the election."

True, objections against draft electoral roll are expected to be submitted in the prescribed form, for if objections are vague, the competent authority may not be able to consider the same. But that does not mean that in a given case where the competent authority is satisfied based on complaints or other materials that the name of a person has been included in the electoral roll based on false declaration, he is not without authority to make

appropriate corrections in the electoral roll.

In the said view of the matter, the writ petition is disposed of directing the first respondent to forward Ext.P25 complaint forthwith to the fourth respondent, and directing the fourth respondent to consider the objections raised therein also, if sufficient particulars/materials are available in respect of persons enrolled based on false declarations. The fourth respondent shall also consider all the objections received in the prescribed form against the draft electoral roll, before finalizing the electoral roll. Needless to say that if it is found that any person is included in the electoral roll based on false declaration, action shall be taken against him under Section 27 of the Kerala Panchayat Raj Act. The first respondent is directed to ensure that the directions issued to the fourth respondent are complied with.

Sd/-
P.B.SURESH KUMAR
JUDGE

ds 17.09.2020

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF NEWS ITEM PUBLISHED IN THE MANORAMA MALAYALAM DAILY DATED 06/09/20005.**
EXHIBIT P2	**A TRUE COPY OF THE RTI APPLICATION DATED 22/06/2020 SUBMITTED BY MR. MANI KRISHNAN, PLATHOTTATHIL ALONG WITH THE INWARD RECEIPT OF BEARING NO. 2180.**
EXHIBIT P3	**A TRUE COPY OF THE APPLICATION BERING COMPUTER ID 142847 SUBMITTED IN FORM 4 FOR ADDITION OF NAME OF MR.S. MANIKANTAN AS RESIDENT OF HOUSE NUMBER 375.**
EXHIBIT P4	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 142627 SUBMITTED IN FORM 4 FOR ADDITIONAL OF NAME OF MS. MURUKESWARI AS RESIDENT OF HOUSE NUMBER 375.**
EXHIBIT P5	**A TRUE COPY OF THE OBJECTION DATED 18/08/2020 SUBMITTED BY MR. JOSEPH KURUVILLA, KARAIKKATTUPARAMBIL AGAINST THE CLAIMS SUBMITTED IN FORM 4 ALONG WITH INWARD RECEIPT BEARING NUMBER 2821.**
EXHIBIT P6	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2139867 SUBMITTED IN FORM 4 FOR ADDITION OF NAME MR. G. SUNDARARAJAPERUMAL AS RESIDENT OF HOUSE NUMBER 36.**
EXHIBIT P7	**A TRUE COPY OF THE OBJECTION DATED 18/08/2020 SUBMITTED BY MS. JESSY JOSEPH, PULAAYAM THURUTHEL AGAINST THE CLAIMS SUBMITTED IN FORM 4 ALONG WITH INWARD RECEIPT BEARING NUMBER 2820.**
EXHIBIT P8	**TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2035573 SUBMITTED IN FORM 4 FOR ADDITIONAL OF NAME OF MS. THANKATHAYI AS RESIDENT OF HOUSE NUMBER 61,**
EXHIBIT P9	**A TRUE COPY OF THE OBJECTION DATED**

	18/08/2020 SUBMITTED BY MS. RAJATHI AGAINST THE CLAIMS SUBMITTED IN FORM 4 ALONG WITH INWARD RECEIPT BEARING NUMBER 2822.
EXHIBIT P10	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2076345 SUBMITTED IN FORM 4 FOR ADDITIONAL OF NAME OF MR. UDAYASURYAN MOTTAKARUPPAN AS RESIDENT OF HOUSE NUMBER 22**
EXHIBIT P11	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER IS 2098395 SUBMITTED IN FORM 4 FOR ADDITIONAL OF NAME OF MS. SELVI MAHENDRAN AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P12	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2087347 SUBMITTED IN FORM 4 FOR ADDITION OF NAME OF MS. RANI A AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P13	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2082373 SUBMITTED IN FORM 4 FOR ADDITIONAL OF NAME OF MS. MALATHI VIJAYAKUMAR AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P14	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2108480 SUBMITTED IN FORM 4 FOR ADDITION OF NAME OF MS. BOOPATHI P. AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P15	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2112686 SUBMITTED IN FORM 4 FOR ADDITION OF NAME OF MS. BHAGYALAKSHMI MURUKAN AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P16	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2103828 SUBMITTED IN FORM 4 FOR ADDITION OF NAME OF MR. PANDI RASU AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P17	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2095211 SUBMITTED IN FORM 4 FOR ADDITION OF NAMEOF MS. MAHENDRAN VELUCHAMI'S AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P18	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2082301 SUBMITTED IN FORM**

	4 FOR ADDITION OF NAME OF MS. SUMATHI UDAYASURYAN AS RESIDENT OF HOUSE NUMBER 22.
EXHIBIT P19	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 2084623 SUBMITTED IN FORM 4 FOR ADDITION OF NAME OF MS.VIJAYAKUMAR PIRAVIRAJ AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P20	**A TRUE COPY OF THE APPLICATION BEARING COMPUTER ID 22091298 SUBMITTED IN FORM 4 FOR ADDITION OF NAME OF MS. M. AZHAGAR AS RESIDENT OF HOUSE NUMBER 22.**
EXHIBIT P21	**A TRUE COPY OF THE OBJECTION DATED 18.08.2020 SUBMITTED BY MR. GEORGE MANIMALATHAZHE AGAINST THE CLAIMS SUBMITTED IN FORM 4, ALONGWITH INWARD RECEIPT BEARING NUMBER 2819.**
EXHIBIT P22	**A TRUE COPY OF RTI APPLICATION DATED 12.08.2020, SUBMITTED BY THE 1ST PETITIONER, FOR INSPECTING THE LAND REVENUE DOCUMENTS PERTAINING TO PERSON WHOSE NAMES HAVE BEEN ADDED UNDER BOGUS HOUSE NUMBERS, ALONG WITH INWARD RECEIPT BEARING NUMBER 2739.**
EXHIBIT P23	**A TRUE COPY OF RTI REPLY LETTER DATED 12.08.2020 ISSUED BY THE 3RD RESPONDENT.**
EXHIBIT P24	**A TRUE COPY OF RTI APPLICATION SUBMITTED BY THE 1ST PETITIONER DATED 13.08.2020.**
EXHIBIT P25	**A TRUE COPY OF THE COMPLAINT DATED 17.08.2020 SUBMITTED TO THE 1ST RESPONDENT AND EMAIL RECEIPT OF THE SAME.**
EXHIBIT P26 A	**TRUE COPIES OF THE RECEIPT DATED 12.08.2020.**
EXHIBIT P26 B	**TRUE COPY OF THE RECEIPT DATED 13.08.2020.**
EXHIBIT P26 C	**TRUE COPY OF THE RECEIPT DATED NIL.**
EXHIBIT P26 D	**TRUE COPY OF THE RECEIPT DATED NIL.**

EXHIBIT P26 E TRUE COPY OF THE RECEIPT DATED NIL.