IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946

WP(C) NO. 2355 OF 2024

PETITIONER:

T.N.PEETHAMBARAN
AGED 78 YEARS
S/O LATE NARAYANAN, ARUNAPURAM HOUSE, N.E.WARD, VAIKOM, KOTTAYAM DISTRICT., PIN – 686141

BY ADV
ARUN THOMAS

RESPONDENTS:

1 **THE DISTRICT COLLECTOR**
COLLECTORATE, KOTTAYAM DISTRICT, PIN – 686002

2 **THE TAHSILDAR (LR)**
TALUK OFFICE, VAIKOM, KOTTAYAM DISTRICT, PIN – 686141

3 **THE TALUK SURVEYOR**
TALUK OFFICE, VAIKOM, KOTTAYAM DISTRICT., PIN – 686141

4 **THE VILLAGE OFFICER**
UDAYANAPURAM VILLAGE, PADINJAREKARA P.O VAIKOM TALUK, KOTTAYAM DISTRICT., PIN – 686146

5 **SRI. SOORAJ KUMAR**
S/O MANIKANDAN NAIR, LAKSHMI VILASOM, N.E.WARD, VAIKOM, KOTTAYAM DISTRICT., PIN – 686141

6 **THE DISTRICT SURVEY SUPERINTENDENT (SOUGHT TO BE IMPLEADED)**
O/O. THE DISTRICT SURVEY SUPERINTENDENT, KOTTAYAM, KOTTAYAM KUMILY ROAD, NEAR COLLECTORATE MAIN HALL, COLLECTORATE, KOTTAYAM PIN – 686002
(SOUGHT TO BE IMPLEADED)

OTHER PRESENT:

B.S.Syamanthak, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner claims that he is the owner in possession of 26.99 cents of land in Survey No.108/6 in Udayanapuram Village, which shares a boundary with the property of the 5th respondent. He preferred Ext.P4 application, as early as on 21.05.2018, to the 2nd respondent to fix the dividing boundary between his property and that of the 5th respondent. The said application was dismissed as per Ext.P5 order on the ground that, though an intimation was given to the petitioner to appear before the office of the 2nd respondent, he failed to appear. Thereafter, the petitioner submitted another application seeking the same relief. Ext.P6 is the Chalan receipt for the said application. The 3rd respondent gave notice to the petitioner intimating that he would inspect the property to conduct survey on 15.03.2019. The 3rd respondent also directed the petitioner to produce the tax receipts of the neighboring properties to conduct and complete the survey. The petitioner, by way of Ext.P8 letter

addressed to the 2nd respondent, expressed his inability to produce the tax receipts of the properties belonging to strangers. Thereafter, the petitioner approached the Taluk Legal Services Committee to get the survey done. Due to the intervention of the Taluk Legal Services Committee, another notice was issued. According to the petitioner, neither the inspection was conducted nor was the surveying done. However, the 2nd respondent intimated the Secretary, Taluk Legal Services Committee, that on 31.12.2019, the 3rd respondent inspected the property of the petitioner, measured it and fixed the boundary. When the petitioner filed an application under the Right to Information Act to obtain the plan of the property, the petitioner was served with Exts.P12 and P13. But Ext.P12 was found to be the plan for the property belonging to his son and Ext.P13 was found to be in respect of the property belonging to the 5th respondent. Thus, it was found that the boundaries of the petitioner's property were not fixed as prayed for by the petitioner. Again, the

petitioner approached the Taluk Legal Services Committee. At the direction of the Taluk Legal Services Committee, the 2nd respondent informed the petitioner that the Head Surveyor would inspect the property on 23.06.2023, as per Ext.P16. According to the petitioner, thereafter, nothing took place.

2. It is in these circumstances that the petitioner has approached this Court to get his property surveyed and to fix the dividing boundary between his property and the 5th respondent.

3. I have heard the learned counsel for the petitioner as well as the learned Government Pleader.

4. Notice has been affixed on the house of the 5th respondent by the Special Messenger deputed by this Court. Even though, Adv.Harishankar N. Unni proposed vakalath for the 5th respondent, no vakalath has been filed. There is no representation for the 5th respondent also.

5. The learned Government Pleader, on instructions, submits that even though the 2nd respondent issued notice to

the petitioner as well as the 5th respondent to be present at the property on 04.08.2023 at 11 am to survey the property by the Head Surveyor, since, the 5th respondent was absent, survey could not be undertaken. The Government Pleader further submits that the presence of the 5th respondent or his agent is necessary to complete the survey, inasmuch as what is sought to be fixed is the dividing boundary between the petitioner and the 5th respondent. However, for the reason that the 5th respondent does not cooperate with the survey, the 2nd respondent or the surveying authority cannot abstain from their duty to complete the survey of the property of the petitioner as requested by him. Hence, this writ petition is disposed of as follows:

i) The respondents 2, 3 and 6 are directed to conduct and complete the survey of the petitioner's property within five months from the date of receipt of a copy of this judgment.

ii) The respondents 2, 3 and 6 shall give notice to the 5th respondent intimating the date scheduled for the survey. If

the 5th respondent fails to cooperate with the survey, the respondents 2, 3 and 6 are directed to complete the survey in the absence of the 5th respondent, as if he has no objection, and fix the dividing boundary of the petitioner's property and the 5th respondent, in accordance with the law.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

STB

APPENDIX OF WP(C) 2355/2024

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE TAX RECEIPTS ISSUED BY THE UDAYANAPURAM VILLAGE DATED 13-10-2021.**
Exhibit P2	**TRUE COPY OF THE SKETCH PREPARED BY THE SURVEY DEPARTMENT**
Exhibit P3	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER ON 22-06-2017 BEFORE THE 2ND RESPONDENT**
Exhibit P4	**TRUE COPY OF THE REPRESENTATION DATED 21-5-2018 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**
Exhibit P5	**TRUE COPY OF THE COMMUNICATION DATED 8-11-2018 ISSUED BY THE TAHSILDAR (LR), VAIKOM TALUK**
Exhibit P6	**TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF STATUTORY FEE REMITTED BEFORE THE SUB TREASURY, VAIKOM DATED 19-2-2019**
Exhibit P7	**TRUE COPY OF THE COMMUNICATION RECEIVED BY THE PETITIONER DATED 15-03-2019**
Exhibit P8	**TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER DATED 19-6-2019 BEFORE THE 2ND RESPONDENT**
Exhibit P9	**TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT ISSUED BY THE 2ND RESPONDENT**
Exhibit P10	**TRUE COPY OF THE LETTER SUBMITTED BY THE 2ND RESPONDENT BEFORE THE TALUK LEGAL SERVICES COMMITTEE, VAIKOM DATED 09/04/2021**
Exhibit P11	**TRUE COPY OF THE COMMUNICATION DATED 5-9-2022 ISSUED BY THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT'S OFFICE**
Exhibit P12	**TRUE COPY OF THE SKETCH OF THE SURVEY NO-108/3PT OBTAINED BY PETITIONER AFTER REMITTANCE OF THE REQUISITE FEE**
Exhibit P13	**TRUE COPY OF THE SKETCH OF THE PROPERTY OF THE 5TH RESPONDENT**

	PREPARED BY THE 3RD RESPONDENT DATED 19-09-2022.
Exhibit P14	**TRUE COPY OF THE PETITION PREFERRED BY THE PETITIONER BEFORE THE TALUK LEGAL SERVICES COMMITTEE, VAIKOM DATED 25-11-2022 IN AP.1493/2018**
Exhibit P15	**TRUE COPY OF THE PETITION PREFERRED BY THE PETITIONER BEFORE THE TALUK LEGAL SERVICES COMMITTEE, VAIKOM DATED 03-01-2023 IN AP.1493/2018**
Exhibit 16	**COPY OF THE COMMUNICATION DATED 23-06-2023 ISSUED BY THE 2ND RESPONDENT.**
Exhibit P17	**COPY OF THE COMMUNICATION DATED 21-07-2023 ISSUED BY THE 2ND RESPONDENT.**