IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

WA NO. 918 OF 2023

AGAINST THE JUDGMENT WP(C) 6954/2010 DT 30/3/2023 OF HIGH COURT OF KERALA

APPELLANT/S:

1 JIJI ZACHARIA
AGED 56 YEARS
VELLOOKUNNEL, SURYANELLI P.O., IDUKKI., PIN - 685618

2 ANITHA JIJI WIFE OF JIJI SCARIA
AGED 50 YEARS
VELLOOKUNNEL, SURYANELLI P.O., IDUKKI., PIN - 685618
BY ADV P.RAMAKRISHNAN

RESPONDENT/S:

1 THE COMMISSIONER, LAND REVENUE
PUBLIC OFFICE BUILDING, VIKAS BHAVAN PO,
THIRUVANANTHAPURAM., PIN - 695033

2 THE DISTRICT COLLECTOR IDUKKI.
COLLECTORATE, PAINAVU PO, IDUKKI, PIN – 685603

WA NO. 918 OF 2023

3 THE DEPUTY COLLECTOR DEVIKULAM.
OFFICE OF THE DEPUTY COLLECTOR, DEVIKULAM, IDUKKI, PIN – 685613

4 THE TAHSILDAR UDUMBANCHOLA.
UDUMANCHOLA TALUK OFFICE, IDUKKI, PIN - 685554

5 JOY THOMAS SON OF THOMAS
THAZHEMANNIL, KANAKAPPALAM, ERUMELI P.O. KOTTAYAM, PIN – 686509

BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()
SHRI.JAFFER KHAN Y., SENIOR G.P.()

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2023, ALONG WITH WP(C).26746/2020, THE COURT ON 18/1/2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

WP(C) NO. 26746 OF 2020

PETITIONER/S:

1 JIJI ZACHARIA
AGED 53 YEARS
SON OF ZACHARIA JOSEPH, VELLOOKUNNEL, SURYANELLI P.O.IDUKKI, PRESENTLY RESIDING AT NO 1, GREEN MEADOWS, THIRUVANIYOOR, KOCHI-682 308.

2 ANITHA JIJI,
W/O JIJI ZACHARIA, VELLOOKUNNEL, SURYANELLI P.O.IDUKKI, PRESENTLY RESIDING AT NO 1, GREEN MEADOWS, THIRUVANIYOOR, KOCHI-682 308.

BY ADVS.
P.RAMAKRISHNAN
SMT.PREETHI RAMAKRISHNAN (P-212)
SRI.T.C.KRISHNA
SRI.C.ANIL KUMAR
SMT.ASHA K.SHENOY
SRI.PRATAP ABRAHAM VARGHESE

WP(C) NO.26746 OF 2020

RESPONDENT/S:

THE SECRETARY, CHINNAKKANAL GRAMA PANCHAYATH
CHINNAKAANAL P.O.IDUKKI-685 618.
BY

SHRI M.H.HANILKUMAR, SPL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/12/2023, ALONG WITH WA.918/2023, THE COURT ON 18/1/2024 DELIVERED THE FOLLOWING:

A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.

W.A.No.918/2023 and W.P.(C).No.26746/2020 **"C.R."**

Dated this the 18th day of January, 2024

J U D G M E N T

A.Muhamed Mustaque, J.

This writ appeal and the writ petition are at the instance of the same parties. The matter is related to cancellation of patta and transfer of registry in respect of the land comprised in survey No.34/1 having an extent of 2.62 acres of Chinnakanal Village, Udumbanchola Taluk in Idukki District. Consequent upon cancellation, land is ordered to be restored to the revenue invoking the Land Conservancy Act, 1957. A learned Single Judge

of this Court heard the matter relating to cancellation of patta in W.P.(C).No.6954/2010 and affirmed the decision of revenue to cancel the patta. This is how the writ appeal was filed. In the land in question, a resort is being run, namely, Green Jungle Resort. Chinnakanal Grama Panchayat refused to issue licence for running the resort. Accordingly, W.P.(C).No.26746/2020 was filed. Since both matters are interconnected, these matters are disposed of by a common judgment.

2. The Tahsildar of Udumbanchola Village initiated proceedings for cancellation of the patta as against Joy Thomas alleging that patta had been illegally obtained. He cited six reasons in his show cause dated 10/4/2008 which reads as follows:

> 1)Application details are not found in Application Register and Assignment Register.
>
> 2) No Chalan or other receipts towards payment of land value and other charges are found in the file.
>
> 3) Date is not entered in the Office Copy of patta
>
> 4) The published copy of 12(1) notice at Taluk Office is not available in the file.
>
> 5) In the Mahassar the land is described as CHR

6) The date of application for assignment was 19.09.1977, and the date of order of assignment on registry was 22.4.1978. But the patta is seen issued on 20.3.93 only, after a lapse of 15 years without assigning any reason for the delay.

3. Joy Thomas is the patta holder. He transferred the property to his nephew Jiji Zacharia, in the year 1995, and Jiji Zacharia transferred his property to his wife Anita Jiji in the year 2004 by a sale deed. After hearing all the parties, the patta was cancelled as per order dated 12/5/2008; this was on the finding that the patta was illegally obtained by Joy Thomas, suppressing the fact that he had 4 acres of land and that he was not eligible to obtain patta. Apart from the above reason, the Tahsildar also doubted genuineness of the patta for the reason that there are no details of issuance of such patta in the assignment register No.II maintained at the Nedumkandam office. Further, it was noted that there was no payment of the land value, timber value, demarcation charges as per the law under Rule 9(7) of the Land Assignment Rules, 1964. It is also noted that patta is seen to be issued only after 15 years, and as per the Rules, the patta should be issued within 3 months after the order of assignment. Thus, it is observed in the order

that, both on the grounds of ineligibility and for want of proof of genuineness of patta claimed, the land in question will have to be restored to the revenue. It was taken up before the Land Revenue Commissioner in revision. The Land Revenue Commissioner affirmed the order of the Tahsildar by a detailed order. Apart from the above, the Land Revenue Commissioner also noted that land can be assigned only for the purpose of cultivation, and presently, the land being used to run a resort is in violation of the Land Assignment Rules. It is also noted in the order of the Land Revenue Commissioner that the land is situated in the Cardamom Hill Reserve and therefore, any illegal occupation of the land can only be regularised by obtaining patta under the Kerala Land Assignment (Regularisation of Occupations of Forest Lands prior to 1-1-1977) Special Rules, 1993 (hereinafter referred to as the 'Special Rules'). However, it is seen that the patta has been issued under the Land Assignment Rules, 1964, which clearly indicates a doubt regarding the genuineness of the patta. The learned Single Judge who heard the matter relating to cancellation of patta, found that patta is a forged document and the assignee was not eligible to receive such patta. Apart

from the above, it is also found by the learned Single Judge that the land cannot be used other than the purpose for which it was issued and here the use of land was in violation of the conditions of the patta. The learned Single Judge took note of various precedents of this Court justifying cancellation of patta for violation of patta conditions.

4. We heard the learned counsel for the parties Shri P.Ramakrishnan and learned Special Government Pleader Shri Jafar Khan.

5. The learned counsel for the parties submitted that the patta bears the seal of the competent authority and patta cannot be cancelled for the reason that application details are not found in the application register and challan receipts are not found in the file. It is further argued that there was delay in remitting necessary charges for around 15 years and that was due to refusal to accept challan consequent upon an interdictory order passed by this Court in O.P.No.10797/1984. The interim order in that case was vacated only in the year 1992. It is further argued that though the Land Revenue Commissioner in

revision entered a finding that the land is situated in Cardamom Hill Reserve, but such a finding was not entered by the Tahsildar at the first instance; therefore, it is argued that validity of the impugned order before the Revisional Authority cannot be supplemented by fresh reasons.

6. The learned Special Government Pleader submitted that the land in question is situated in Cardamom Hill Reserve and in respect of land in Cardamom Hill Reserve, land cannot be assigned unless it is included in the list of assignable lands prepared pursuant to joint verification.

BACKGROUND OF THE CASE:

7. An Expert Committee was constituted as per G.O.(P) No.3611/2003/RD, dated 17/11/2003, by the Government of Kerala to unearth bogus pattas in Kannan Devan Hills Village. Expert Committee consists of Shri Rajan Madhekar, Additional Director General of Police (Intelligence) and Nivedita P. Haran, Principal Secretary Revenue. This Committee submitted its report on 1/9/2006. The Committee found out large scale of encroachment of revenue and forest land through issue of forged pattayams in

Idukki District with the support of revenue officials. A writ petition is pending before this Court initiated as a Public Interest Litigation from 2010 onwards. The present action initiated in this matter in the background of unearthing large number of bogus pattas in Idukki District.

DISCUSSION AND FINDINGS:

8. We find that cancellation of patta is related to ineligibility of Joy Thomas to obtain such patta and also on the ground that the authority suspects it to be fabricated. To understand this issue, we need to state the law of assignment of land prevailing in the State of Kerala, particularly, in Idukki District. On formation of the State of Kerala in 1956, the State Legislature made law, the Kerala Government Land Assignment Act, 1960. The State Government was given powers to make rules prescribing the manner of assignment of land, qualification of person to whom assignment of land may be made, prescribing authority by which such assignment be made, etc.[See Section 7]. Section 4 of the Land Assignment Act emphasizes transparency in land assignment by mandating that a notification be issued in

regard to assignment of land. Section 3 also mandates consultation with the Local Authority before the assignment of the land. In exercise of the powers conferred on the Government by Section 7 of the Land Assignment Act, the State Government formulated Kerala Land Assignment Rules, 1964 and the Special Rules, 1993. These two Rules are relevant in the context of this case. The Land Assignment Rules, 1964 mandates preparation of the list of assignable land before granting such assignment of land on Registry. Needless to say, this preparation of the list insists that preparation has to be done in such a manner, keeping future requirements of the Government or public purposes. That means, before assignment of any parcel of land, a serious deliberation will have to be made with regard to the requirements of the Government or public purposes in future. Rule 5 of the Land Assignment Rules, 1964 prescribes maximum limit of land to be assigned for cultivation. It distinguishes lands located in the plains and the land located in hilly track for determining the maximum limit of land. Rule 7 prescribes priority to be observed in assignment of the land. This priority in fact, is the qualification or eligibility of the applicant for assignment.

In a sense, it refers to income of the individual and family seeking to obtain land on assignment. Significantly, both Rule 5 and Rule 7 refer to the right of an encroacher to obtain land on assignment, though no such power conferred upon the Government is traceable under the parent Act.

9. The Special Rules 1993 were framed by the Government invoking powers under Section 7 of the Land Assignment Act 1960 for assignment, settlement and regularisation of forest lands under occupation prior to 1/1/1977. The validity of these Special Rules was upheld by the Apex Court in **Nature Lovers Movement v. State of Kerala and Others [(2009) 5 SCC 373].**

10. Land is defined under Rule 2(f) of the Special Rules, 1993 as follows:

> "Land" means the Forest land subjected to joint verification as defined in sub-clause (e) and Cardamom Hill Reserve land which are converted for non-cardamom cultivation prior to 1-1-1977 in Idukki District which have been transferred from Forest Department to Revenue Department and covered in the Resurvey Records and list of lands recommended to Government of India for concurrence under Section 2 of the Forest (Conservation) Act, 1980 (Central Act 69 of 1980) but does not include lands in wild life Sanctuaries.

11. Rule 6 of the Special Rules mandates the preparation of a list of assignable lands. Rule 6 states as follows:

> 6. List of assignable lands and applications.- (1) The joint verification reports or the records of resurvey of the land conducted under the Kerala Survey and Boundaries Act, 1961 (Act 37 of 1961) containing the details of lands found eligible for assignment under these Rules shall be published in the concerned Village Offices and Taluk Offices inviting applications for assignment within the period specified therein.
>
> (2) Application for assignment shall be made in Form No.2 before the Tahsildar within seven days of the publication of the list. (3) Each application shall bear court-fee stamp of the value of Rupees two.
>
> Note.- Applicants belonging to Scheduled Castes/Scheduled Tribes shall be exempt from affixing court fee stamp on their applications.

That means to assign any land under the Special Rules 1993, the land must be included in the list of assignable lands and no land can be assigned under the Special Rules without including such land in the list of assignable lands.

12. The land in this question is admittedly situated in Chinnakanal Village of Udumbanchola Taluk. The extent of the land is 2.62 acres. Joy Thomas appears to have claimed that he made an application for assignment of land having an extent of 4 acres on 19/9/1977. He has no claim that it was a land allotted

to him or given to him on lease or conveyed through other instrument; that means, his claim for patta is by way of a claim as an encroacher. He claims that an order of assignment on registry was issued on 22/4/1978 to assign 2.62 acres of land. And as per the order of assignment he has to pay Rs.63.62 paise towards the land value. He places reliance on a mahazar prepared on 22/3/1978 and a notice issued to him for an inquiry under Rule 12 of the Land Assignment Rules 1964. This notice is dated 12/3/1978 (Sunday). Joy Thomas claims to have remitted necessary charges. Before the Land Revenue Commissioner, Annexure 15 was produced along with a memorandum of revision to evidence payment of value for land and trees. The Land Revenue Commissioner observed that the month and year were written as March 1997 and was corrected as 1993. That means the remittance alleged to have been made by him is much after the issuance of patta, though the rule states that payment will have to be effected within three months of order of assignment of registry. And further receipt of such payment can be made only after condoning delay. Anyway strangely, the payment of challan

alleged to have been effected is not seen produced before this Court.

13. This case has to be examined in the background of the case as above. Joy Thomas claims that his father was in occupation of the land prior to 1966, asserting his status as an encroacher. However, it is not included in the assignable land as mandated under Rule 11. It is not possible for an encroacher to get an assignment of land assuming that Joy Thomas had made such an application without such land being included in assignable list. It is to be noted that even though he obtained land as an encroacher, the applicant has to prove that he does not own land in proprietary right exceeding the maximum limit of land assignable under Rule 5, and his family income does not exceed Rs.10,000/- from all sources. The alleged assignment according to him was made in the year 1978. The rule as on that day prescribes Rs.10,000/- as source of income to become eligible. Joy Thomas deposed before the Tahsildar in inquiry that he holds 4 acres of land and he sold this in 1979 to purchase the land of 1 acre of land in Punalur and in further inquiry it

was disclosed by him that he was in Saudi Arabia and he never stayed or cultivated in the land.

14. The land is situated in Cardamom Hill Reserve. The alleged mahazar produced in this matter by the parties show that it is Cardamom Hill Reserve. The learned Special Government Pleader also pointed out that the land in question is indeed a Cardamom Hill Reserve. Therefore, it is impossible to include it in the assignable list in the year 1977 for assignment of land under the Land Assignment Rules, 1964. In fact in the notice issued by the Tahsildar, it was pointed out that the land is situated in Cardamom Hill Reserve. In the statement filed by Joy Thomas, he also admits that the land is in Cardamom Hill Reserve puramboke, to mean that it is unfit for cardamom cultivation. In respect of converted land in Cardamom Hill Reserve where cardamom is cultivated, Special Rules 1993 would alone be applicable for claiming assignment by an encroacher. To claim assignment under the Special Rules 1993, he has to prove that the encroachment was prior to 1/1/1977, and the land has been included in the list of assignable lands. The encroacher

of land in Cardamom Hill Reserve converted for non-cardamom cultivation prior to 1/1/1977 can claim regularisation of land in accordance with the Special Rules 1993. The parties have no case that the assignment was in accordance with the Special Rules 1993. In any way, we are of the view that the petitioner cannot claim assignment of land under the Special Rules, 1993 for the reason that it was not included in the list prepared under Special Rules 1993. In such scenario he could not have made an application under Land Assignment Rules, 1964 in respect of land which is coming under the Cardamom Hill Reserve; for the obvious reason that if such encroachment is under the Special Rules, 1993, it cannot clandestinely acknowledged under the Land Assignment Rules, 1964. Anyway, the petitioner's claim being under the Land Assignment Rules, 1964 and claim alleged to have been made in the year 1977, there is no point in discussing the impact of the Special Rules, 1993 in as much as the Special Rules came into effect in the year 1993.

15. As we already noted, Joy Thomas was not eligible to apply under the Land Assignment Rules, 1964 as he was having 4

acres of land and his income was not proved to be less than Rs.10,000/-. It is in this background we are sure that patta was obtained by Joy Thomas illegally with the connivance of public officials or might have been fabricated for the following reasons.

(1). Joy Thomas was not eligible for the reasons stated in the aforenoted para.

(2). No challan receipt was produced to evidence the payment of value of tree and land.

(3). The challan receipt produced before the Tahsildar and the Land Revenue Commissioner shows that it was dated as March 1997 and corrected as 1993.

(4). The appellants and the writ petitioners herein for obvious reasons did not produce receipt before this Court for perusal.

(5). As per Appendix I, the form of order of assignment on registry, issued under Rule 9(1) of the Land Assignment Rules, 1964, in clause 14, it is

prescribed that if the assignee does not remit land value within three months of sanctioning registry, registry shall be cancelled. The order of assignment admittedly was on 22/4/1978, and the patta was issued only in 1993. Absolutely, no evidence was produced to show that the remittance was made or any authority had condoned delay in receiving the payment of value. This would clearly show that patta was created either with the help of public officials or by Joy Thomas himself.

6. Details of patta are to be mentioned in Register No.II reflecting payment of remittance of the amount from date of issuance of patta and initials of the Tahsildar. The learned Special Government Pleader made available before this Court a copy of the register along with memo dated 13/11/2023. The petitioner also produced extract of Register No II. In that though the name of Joy Thomas was shown, there is no details of payment effected, date of issuance of patta or initials of the Tahsildar. This would show that some public

officials were also involved in the matter in creating such bogus patta.

7. There is no application details found in the application register or assignment register. The inquiry notice shows that it was issued on 12/3/1978, which is Sunday.

8. Under the Rules, land can be utilised only for the purpose of agriculture activities, but admittedly it is being used for running a resort.

16. The authorities had given fullest opportunity to Joy Thomas, Jiji Zacharia and his wife Anitha Jiji. All factual foundations were settled in the original notice itself. Though reasons assigned in the revision might be more elaborate than one rendered by the primary authority, it is to be noted that all reasons were assigned on the primary facts referred in the show cause notice issued to the parties and no prejudice has been caused to the parties, as reasons assigned by the Land Revenue Commissioner (Revision) being different from the reasons assigned in the original order. We are sure that this patta was

created illegally either with the help of public officials or might have been fabricated by Joy Thomas and other parties and his subsequent assignee. As opined in the order of the Land Revenue Commissioner, the Principal Secretary of Revenue is bound to order criminal investigation against parties who are indulged in illegal activities to grab government land. With the above observation, we dismiss the writ appeal. We also dismiss the writ petition filed by the parties challenging refusal to issue licence to run the resort. We grant one month time to the appellant to surrender the land failing which we order the District Collector to take steps to restore the land immediately, thereafter.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SHOBA ANNAMMA EAPEN, JUDGE

ms

APPENDIX OF WP(C) 26746/2020

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF NO OBJECTION CERTIFICATE DATED 20.6.2005 ISSUED BY THE RESPONDENT
EXHIBIT P2	TRUE COPY OF LETTER DATED 19.8.2009 FROM THE TOWN PLANNER, IDUKKI TO THE RESPONDENT
EXHIBIT P3	TRUE COPY OF INTERIM ORDER DATED 4.3.201O IN WPC NO 6954/2010
EXHIBIT P4	TRUE COPY OF NOTICE DATED 18.3.2013 ISSUED BY THE RESPONDENT
EXHIBIT P5	TRUE COPY OF REPLY DATED 21.3.2013 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT
EXHIBIT P6	TRUE COPY OF JUDGMENT DATED 15.12.2015 IN WPC NO 37871/2015
EXHIBIT P7	TRUE COPY OF RECEIPT DATED 20.7.2016 ISSUED BY THE RESPONDENT IN RESPECT OF BUILDING NO 320/6
EXHIBIT P8	TRUE COPY OF RECEIPT DATED 20.7.2016 ISSUED BY THE RESPONDENT IN RESPECT OF BUILDING NO 321/6
EXHIBIT P9	TRUE COPY OF RECEIPT DATED 31.3.2017 ISSUED BY THE RESPONDENT EVINCING PAYMENT OF RS 1,33,285/- IN RESPECT OF BUILDING NO 320/6
EXHIBIT P10	TRUE COPY OF RECEIPT DATED 31.3.2017 ISSUED BY THE RESPONDENT EVINCING PAYMENT OF RS 44,280/- IN RESPECT OF BUILDING NO 321/6
EXHIBIT P11	TRUE COPY OF SHOW CAUSE NOTICE DATED 25.10.2017 ISSUED BY THE RESPONDENT
EXHIBIT P12	TRUE COPY OF THE RELEVANT EXTRACTS FROM THE AUDIT REPORT REFERRED TO IN EXHIBIT P-11
EXHIBIT P13	TRUE COPY OF REPLY DATED 3.11.2017 FROM THE PETITIONERS TO THE RESPONDENT
EXHIBIT P14	TRUE COPY OF RECEIPT DATED 23.3.2018 IN RESPECT OF BUILDING NOS 320/6
EXHIBIT P15	TRUE COPY OF RECEIPT DATED 23.3.2018 IN RESPECT O BUILDING NOS 321/6

EXHIBIT P16	TRUE COPY OF ARREAR DEMAND NOTICE DATED 21.3.2019 IN RESPECT OF BUILDING NO 320/6
EXHIBIT P17	TRUE COPY OF ARREAR DEMAND NOTICE DATED 21.3.2019 IN RESPECT OF BUILDING NO 321/6
EXHIBIT P18	TRUE COPY OF RECEIPT DATED 28.5.2019 EVINCING PAYMENT OF RS 11,11,936/- IN RESPECT OF BUILDING NO 320/6
EXHIBIT P19	TRUE COPY OF RECEIPT DATED 28.5.2019 EVINCING PAYMENT OF RS 2,52,920/- IN RESPECT OF BUILDING NO 320/6
EXHIBIT P20	V RECEIPT DATED 28.5.2019 EVINCING PAYMENT OF RS 1,52,664/- IN RESPECT OF BUILDING NO 321/6
EXHIBIT P21	TRUE COPY OF RECEIPT DATED 27.2.2020 EVINCING PAYMENT OF RS, 3,99,945/- IN RESPECT OF BUILDING NO 320/6
EXHIBIT P22	TRUE COPY OF RECEIPT DATED 27.2.2020 EVINING PAYMENT OF RS 4,15,779/- IN RESPECT OF BUILDING NO 321/6
EXHIBIT P23	TRUE COPY OF REPRESENTATION DATED 3.11.2020 SUBMITTED BY THE PETITIONERS BEFORE THE RESPONDENT
EXHIBIT P24	TRUE COPY OF REPLY DATED 3.11.2020 FROM THE RESPONDENT TO THE PETITIONERS
EXHIBIT P25	TRUE COPY OF REPLY DATED 3.6.2020 REFERRED TO IN EXHIBIT P-24 FROM THE RESPONDENT TO THE PETITIONERS

APPENDIX OF WA 918/2023

PETITIONER ANNEXURES

Annexure A-1	TRUE COPY OF AADHAAR CARD ISSUED BY THE GOVERNMENT OF INDIA TO THE 5TH RESPONDENT
Annexure A-2	TRUE COPY OF PROCEEDINGS OF THE DISTRICT COLLECTOR, IDUKKI , DATED 8/1/2021