IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

FRIDAY, THE 19TH DAY OF APRIL 2024 / 30TH CHAITHRA, 1946

WP(C) NO. 38298 OF 2023

PETITIONERS:

1 MATHEW.K.T
AGED 63 YEARS
S/O THOMAS, KUMARAMTHARAYIL HOUSE, LALAM VILLAGE,
VELLAPAD KARA, MEENACHIL TALUK, PALA, KOTTAYAM, DISTRICT,
PIN - 686651

2 SARASWATHI
AGED 59 YEARS
W/O RAVI C.S, NOORANPARAYIL HOUSE, KUMARAMANGALAM KARA,
KUMARAMANGALAM VILLAGE, THODUPUZHA TALUK, IDUKKI
DISTRICT, PIN - 685608

BY ADVS.
MATHEW DEVASSI
A.C.DEVASIA
ANCY MATHEW

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO REVENUE, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAMRM, PIN - 695001

2 DISTRICT COLLECTOR
COLLECTORATE, KOTTAYAM, KOTTAYAM DISTRICT,
PIN - 686002

3 TAHSILDAR(LR)
TALUK OFFICE, PALA, KOTTAYAM DISTRICT, PIN - 686575

4 VILLAGE OFFICER
VILLAGE OFFICE LALAM, PALA, KOTTAYAM DISTRICT,
PIN - 686575

OTHER PRESENT:

SR.GP - JUSTIN JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VIJU ABRAHAM, J.

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W.P.(C) No.38298 of 2023

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Dated this the 19th day of April, 2024

JUDGMENT

The petitioners have approached this Court challenging Exts.P7, P8 and P9 and for a direction to respondents 2 to 4 to issue possession certificate to the petitioners in respect of Exts. P3 and P5 properties.

2. The 1st petitioner is in possession and ownership of 1.50 acres of land and tax was paid in respect of the said property as evident from Ext.P4. The 2nd petitioner has purchased 10 cents of land from the 1st petitioner as per Ext.P5 sale deed and by Ext.P6, tax was also remitted in respect of the said property. The 2nd petitioner purchased 10 cents of property for constructing a residential building. The residential building in Ext.P3 property owned by the 1st petitioner is also in a dilapidated condition and therefore, for construction of a residential building, the 1st and 2nd petitioners have filed an application before the 4th respondent for the issuance of a possession certificate. In response to the same, the 4th respondent issued Ext.P7 reply to the 1st petitioner that there is a direction from the 3rd respondent not to issue any

possession certificate in respect of the said property. The 4th respondent issued a similar reply to the 2nd petitioner as per Ext.P8. Ext.P9 is reference No.2 mentioned in Exts.P7 and P8 for rejecting the applications. In Ext.P9 it is stated that Ext.P1 property comes under exempted land under Section 81 of the Kerala Land Reforms Act and the said property is described as rubber plantations and therefore, the 3rd respondent has issued a direction to the 4th respondent not to issue any possession certificate or Record of Rights(ROR) in respect of the holders of Ext.P1 property. The petitioner would contend that there is no statutory inhibition that an owner of land can utilize the land only for specified purpose and the determination of ceiling area of land is only with an object of creating consolidation of holding of land by individuals or families. The petitioner submits that in similar matters this Court has interfered and issued directions for the issuance of revenue certificate etc. The petitioner brought to my notice the judgment of this Court in W.P.(C) No.886 of 2023, which was decided in a similar matter, wherein paragraph 4 to 6 reads as follows:

> *"4. The Full Bench of this Court in* ***Mathew K. Jacob and Another v. District Environmental Impact Assessment Authority [2018 (5) KHC 487: 2018 (4) KLT 913: ILR 2018 (4) Ker. 868: 2019 (1) KLJ 49: AIR 2019 Ker.***

67] *held that there is no prohibition in using an exempted land for a different purpose under the Kerala Land Reforms Act. The said judgment has been affirmed by the Hon'ble Supreme Court in* ***(K.H. Nazar v. Mathew K. Jacob; [(2020) 14 SCC 126;2019 (4) KHC 919].*** *In* ***Kinallur Rock Sand v. State of Kerala and others (2021(2) KLT 351)*** *a single Bench of this Court after following the decision of the Full Bench in* ***Mathew K. Jacob*** *(supra) held that there is no prohibition in using an exempted land under the Kerala Land Reforms Act for a different purpose and if the exempted land is utilised for any other purpose, it may fall within one's ceiling area and the authorities may be able to initiate ceiling proceedings. However, that cannot be a reason to decline permission for using the land for another purpose. In* ***District Collector v. Sajith Lal (2023 KLT OnLine 1225)*** *the Division Bench of this Court in paragraph '5' held as follows;*

> *"5. There is no embargo under law in using any exempted land for non- exempted purposes as well. If the land is used for non-exempted purposes, the holder of the land will lose the qualification for exemption, thus giving authority to the Land Board to initiate ceiling proceedings. The judgments cited at the Bar fortify the above legal proposition. The KLR Act provides no answer against conversion of the exempted land. Had it not been for the exemption, the land would have been included in the ceiling proceedings of the declarant for surrender. The only plausible conclusion in this situation is that the Land Board will be in a position to initiate ceiling proceedings."*

5. *In* ***Village Officer v. Karnataka Fransalian Society [2017 (2) KLT OnLine 2198]*** *the Division Bench of this Court held that whether the property is an exempted*

property or its user is restricted which cannot be changed, would be a matter that would separately come up for consideration as the occasion may arise by its user, by the purchaser or by any other person and those proceedings cannot be pre-empted by any adverse entry in the possession certificate. In ***Wayanad Granites v. District Collector [2023 (4) KLT 874]****, this Court held that revenue certificates need not be denied for the reason that the land is part of exempted land under the Kerala Land Reforms Act or on the ground that no permission has been obtained to convert land under the provisions of the Kerala Land Utilisation Order, 1967.*

6. In the light of the aforesaid decisions, I am of the view that, the reason stated in Ext.P7 for rejecting the attested survey sketch cannot be sustained. Accordingly, Ext.P7 is set aside. There will be a direction to the respondents to issue counter signed survey sketch, possession certificate, demarcation certificate and non assignment certificate to the petitioner, without making any adverse endorsement, within one month from the date of receipt of a certified copy of this judgment. It is made clear that, this Court has only considered the question of issuance of survey sketch, possession certificate, demarcation certificate and non assignment certificate and has not expressed any opinion on the question whether mining lease can be issued in respect of the land in question. The issuance of these certificates shall not be treated as a no-objection from the revenue authorities to start quarrying operations over the land in question. It is also made clear that the right of the Government in taking any action, in case of violation of law, is also reserved"

The petitioner submits that in various other similar matters also, this Court has taken a similar view.

3. Heard the learned Government Pleader also.

4. Taking into consideration the fact that in similar matters this Court has interfered and granted relief to the petitioner therein and that the request of the petitioners is for construction of a residential building, Exts. P7 and P8 are set aside with a consequential direction to the respondents to issue possession certificate to the petitioners in respect of Exts.P3 and P5 properties, within a period of one month from the date of receipt of a copy of this judgment. It is made clear that this Court has considered the question of issuance of possession certificate alone and has not expressed any opinion on the question as to whether the petitioners are entitled for the issuance of a building permit in respect of the land in question. It is also made clear that the right of the Government in taking any action, in case of violation of law, is also reserved.

The writ petition is disposed of as above.

Sd/-
VIJU ABRAHAM
JUDGE

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APPENDIX OF WP(C) 38298/2023

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE SALE DEED NO.402/1977 OF S.R.O, MEENACHIL DATED 23/2/1977**
Exhibit P2	**TRUE COPY OF THE RELEASE DEED NO.1192/83 DATED 20/5/1983**
Exhibit P3	**TRUE COPY OF THE PARTITION DEED NO.1186/1/2021 OF S.R.O, MEENACHIL DATED 8/7/2021**
Exhibit P4	**TRUE COPY OF THE TAX RECEIPT DATED 11/4/2023 ISSUED BY THE 4TH RESPONDENT**
Exhibit P5	**TRUE COPY OF THE SALE DEED NO.1589/1/2023 DATED 11/7/2013**
Exhibit P6	**TRUE COPY OFTHE TAX RECEIPT ISSUED BY THE 4TH RESPONDENT DATED 4/10/2023**
Exhibit P7	**TRUE COPY OF THE REPLY DATED 12/9/2023 ISSUED BY THE 4TH RESPONDENT IN FAVOUR OF THE 1ST PETITIONER**
Exhibit P8	**TRUE COPY OF THE REPLY ISSUED BY THE 4TH RESPONDENT DATED 5/10/2023 IN FAVOUR OF 2ND PETITIONER**
Exhibit P9	**TRUE COPY OF THE INTIMATION ISSUED BY THE 3RD RESPONDENT IN FAVOUR OF THE 4TH RESPONDENT DATED 16/6/2023**