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Sunilkumar.S vs State of Kerala

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Court : Kerala

Decided On : Feb-16-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/5326/2023

Appellant : Sunilkumar.S

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. THURSDAY, THE 16TH DAY OF FEBRUARY 2023 / 27TH MAGHA, 1944 WP(C) NO. 5326 OF 2023 PETITIONER: SUNILKUMAR.S AGED 48 YEARS S/O. SANKARAN NAIR, RESIDING AT THEJUS, TC 42/320(1), CHADIYARA, POOJAPPURA, SASTHAMANGALAM VILLAGE, THIRUVANANTHAPURAM., PIN - 695012 BY ADVS. GOPAKUMAR R.THALIYAL V.MADHURIPAN PILLAI R.B.BALACHANDRAN RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, GOVERNMENT

SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001 2 THE DISTRICT COLLECTOR COLLECTORATE, KUDAPPANAKUNNU, THIRUVANANTHAPURAM., PIN - 3 THE SURVEY DIRECTOR DIRECTORATE OF SURVEY AND LAND RECORDS, SURVEY BHAVAN, COTTON HILL ROAD, VAZHUTHACAUD, THIRUVANANTHAPURAM., PIN - 4 THE TAHSILDAR (LRM) (ADDL. TAHSILDAR), TALUK OFFICE, FORT, THIRUVANANTHAPURAM., PIN - 695023 5 THE VILLAGE OFFICER SASTHAMANGALAM VILLAGE, THIRUVANANTHAPURAM., PIN - 695014 6 THE ESTATE OFFICER (WORKS BRANCH) ADDITIONAL DIVISIONAL MANAGER, SOUTHERN RAILWAY, THYCAUD, THIRUVANANTHAPURAM., PIN - 695014 SRI. BIMAL K NATH (SR GP), SRI S MANU (DSGI) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

16.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P (C) No.5326/2023 -2-

JUDGMENT

The petitioner has approached this court being aggrieved by the fact that

notice has been issued to the petitioner under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Rules 1971 by the Additional Divisional Manager, Thiruvananthapuram Division (6 th respondent) on the premise that the petitioner has encroached upon a land measuring 0.69 Sq. Mtrs in Sy. No.9 Block No.143 of Shasthamangalam Village, Thiruvananthapuram Taluk and requiring the petitioner to appear before the officer for finalizing the proceedings against the petitioner.

2. According to the learned counsel for the petitioner the property in

question has been in possession and enjoyment of the petitioner and his predecessors in interest for nearly 70 years. It is submitted that there is absolutely no encroachment into any railway land and the allegation of encroachment is on account of mistake committed during re-survey. It is submitted that the petitioner

has already filed Ext.P7 application before the 2 nd respondent under Section 13A of the Kerala Survey and Boundaries Act, 1961. He prays that a direction may be issued to the 2nd respondent to consider and pass order on Ext.P7 with notice to the petitioner and to any other person concerned.

3. The learned counsel for the Southern Railways seeks time to get

instructions. However, considering the order I propose to pass, I am of the opinion that this matter need not be adjourned to enable the counsel to obtain instructions.

4. The learned Senior Government Pleader submits that if the petitioner has a complaint that the mistake occurred during re-survey proceedings, the 4 th respondent (Tahsildar, Land Records, Taluk office, Thiruvananthapuram) can be W.P (C) No.5326/2023 -3- directed to conduct a survey with notice to the petitioner and to the 6 th respondent.

5. Having heard the learned counsel for the petitioner, the learned Deputy

Solicitor General for Southern Railway and the learned Senior Government Pleader appearing for official respondents, this writ petition will stand disposed of directing the 4th respondent (Tahsildar, Land Records, Taluk office, Thiruvananthapuram) to conduct a fresh survey and demarcation of the properties belonging to the petitioner with notice to the petitioner and to the 6 th respondent. This exercise shall be completed within a period of two months from the date of receipt of a certified copy of this judgment. Till such time as fresh survey and demarcation is completed by the Tahsildar, Land Records, Taluk office, Thiruvananthapuram as directed above any proceedings initiated by the 6 th respondent under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Rules framed thereunder shall be kept in abeyance.

Writ petition is disposed of as above. Sd/- GOPINATH P. JUDGE AMG W.P (C) No.5326/2023 -4- APPENDIX OF WP(C) 5326/2023 PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE PARTITION DEED DATED 11. 09 .19

03.08.2015 ISSUED BY THE 5TH RESPONDENT Exhibit P4 TRUE COPY OF THE ORDER DATED 01.12.20216 ISSUED BY THE 4TH RESPONDENT. Exhibit P5 TRUE COPY OF THE LETTER DATED 14.03.2017 ISSUED BY THE 6TH RESPONDENT. Exhibit P6 TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 01.02.2023 IN I,A NO. 178/2023 IN O.S NO. 497/2017 FILED BEFORE THE PRINCIPAL MUNSIFF'S COURT, THIRUVANANTHAPURAM. Exhibit P7 TRUE COPY OF THE REVISION PETITION DATED 10.02.2023 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

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