

Dipu Kumar vs State of Kerala

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Court : Kerala

Decided On : Oct-29-2021

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/21360/2021

Appellant : Dipu Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 29TH DAY OF OCTOBER 2021 / 7TH KARTHIKA, 1943 WP(C) NO. 7295 OF 2021 PETITIONER: P.V.JALEEL, S/O. VEERANKUNJI, PANIKKAVEETIL HOUSE, P.O. AYYANTHOLE, THRISSUR, PIN - 680 003. BY ADV. V.C.MADHAVANKUTTY RESPONDENTS: 1 DISTRICT COLLECTOR, IDUKKI DISTRICT, COLLECTORATE BUILDING, IDUKKI, PIN-685 602. 2 TAHASILDAR (LR), PEERUMEDU, IDUKKI DISTRICT, PIN - 685 531. 3 VILLAGE OFFICER, VAGAMON VILLAGE OFFICE, VAGAMON 685 503.

4 LAND REVENUE COMMISSIONER, OFFICE OF THE COMMISSIONER OF LAND REVENUE, PUBLIC OFFICE BUILDING, MUSEUM ROAD, OPPOSITE ZOO, VIKAS BHAVAN P.O. THIRUVANANTHAPURAM, KERALA, PIN - 695 033. 5 STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001. BY ADVS.SRI.JAFAR KHAN, SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.10.2021, ALONG WITH WP(C).21360/2021 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 29TH DAY OF OCTOBER 2021 / 7TH KARTHIKA, 1943 WP(C) NO. 8623 OF 2021 PETITIONER: SAJI GEORGE, AGED 46, S/O.V.K.GEORGE, THOTTAMATTATHIL HOUSE, PAZHUR KARA, PIRAVOM VILLAGE, MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT, PIN-686 664, REPRESENTED BY POWER-OF-ATTORNEY HOLDER V.K.GEORGE, AGED 67, THOTTAMATTATHIL HOUSE, PAZHUR KARA, PIRAVOM P.O., PIN-686 664.

BY ADVS.JOSEPH GEORGE SRI.JIBU P THOMAS RESPONDENTS: 1 THE DISTRICT COLLECTOR, IDUKKI, COLLECTORATE, PAINAVU P.O., IDUKKI, PIN-685 603. 2 TAHASILDAR (LR) PEERMADE, TALUK OFFICE, PEERMADE P.O., IDUKKI, PIN-685 531. 3 TAHASILDAR PEERMADE, TALUK OFFICE, PEERMADE P.O., IDUKKI, PIN-685 531. 4 THE VILLAGE OFFICER, VAGAMON, VILLAGE OFFICE, VAGAMON P.O., IDUKKI DISTRICT, PIN-685 503. 5 THE REVENUE DIVISIONAL OFFICER, IDUKKI, PAINAVU P.O., IDUKKI, PIN-685 603. 6 STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY, REVENUE DEPARTMENT, GOVERNMENT -3- SECRETARIAT,

THIRUVANANTHAPURAM-695 001.

7 SHERLY @ PHILOMINA, AGED 55 YEARS, D/O.ALBERT, FLAT NO.6B-2, NATIONAL RESIDENCY, EDAPALLY P.O., KOCHI, ERNAKULAM DISTRICT, PIN-682 024. BY ADVS.SRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL SRI.JAFAR KHAN, SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.10.2021, ALONG WITH WP(C).21360/2021 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -4-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 29TH DAY OF OCTOBER 2021 / 7TH KARTHIKA, 1943 WP(C) NO. 10862 OF 2021 PETITIONER: JOE GEORGE CHEMPARATHY, AGED 37 YEARS, S/O. GEORGE MATHEW, CHEMPARATHY HOUSE, THODUPUZHA EAST POST-685 585, THODUPUZHA VILLAGE, THODUPUZHA TALUK, IDUKKI DISTRICT. BY ADVS.S.SREEKUMAR (SR.) SRI.GEEN T.MATHEW RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE, MAIN BLOCK, SECRETARIAT, THIRUVANANTHAPURAM G.P.O-695 001, THIRUVANANTHAPURAM DISTRICT.

2 THE LAND REVENUE COMMISSIONER, DEPARTMENT OF LAND REVENUE, LAND REVENUE COMMISSIONERATE, REVENUE COMPLEX, PUBLIC OFFICE BUILDING, PUBLIC OFFICE THIRUVANANTHAPURAM POST- 695 033, THIRUVANANTHAPURAM DISTRICT.

3 THE DISTRICT COLLECTOR, COLLECTORATE, KUYILMALA, IDUKKI PAINAV POST-685 603, IDUKKI DISTRICT. 4 THE TAHASILDAR (LAND RECORDS), PEERMADE TALUK OFFICE, MINI

CIVIL STATION, PEERMADE POST-685 531, IDUKKI DISTRICT. -5- 5 THE SPECIAL TAHASILDAR (LAND ASSIGNMENT), PEERMADE TALUK OFFICE, MINI CIVIL STATION, PEERMADE POST-685 531, IDUKKI DISTRICT. 6 THE TAHSILDAR, PEERMADE TALUK OFFICE, MINI CIVIL STATION, PEERMADE POST-685 531, IDUKKI DISTRICT. 7 THE VILLAGE OFFICER, VAGAMON VILLAGE OFFICE, PULLIKANAM ELLAPPARA ROAD, VAGAMON POST - 685 503, IDUKKI DISTRICT. BY ADVS. SRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL SRI.JAFAR KHAN, SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.10.2021, ALONG WITH WP(C).21360/2021 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -6-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 29TH DAY OF OCTOBER 2021 / 7TH KARTHIKA, 1943 WP(C) NO. 21360 OF 2021 PETITIONER: DIPUKUMAR, AGED 42 YEARS, S/O.SASIDHARAN NAIR, PARAYAMATTATHIL VEEDU, CHEMPLAVU P.O., KOTTAYAM-686584. BY ADVS.R.KRISHNA RAJ E.S.SONI KUMARI SANGEETHA S.NAIR RESMI A. RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 LAND REVENUE COMMISSIONER, DEPARTMENT OF LAND REVENUE, LAND REVENUE COMMISSIONERATE, REVENUE COMPLEX, PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM, KERALA-695033. 3 DISTRICT COLLECTOR, COLLECTORATE, KUYILMALA, IDUKKI P.O., IDUKKI-685603. 4 THE THAHASILDAR (LAND RECORDS), PEERMADE TALUK OFFICE, MINI CIVIL STATION, PEERMADE P.O., IDUKKI-685531. 5 SPECIAL TAHSILDAR (LAND ASSIGNMENT), PEERMADE TALUK OFFICE, MINI CIVIL

SECTION, PEERMADE P.O., IDUKKI-685531. -7-

6 TAHSILDAR, PEERMADE TALUK OFFICE, MINI CIVIL STATION, PEERMADE P.O., IDUKKI-685531. 7 VILLAGE OFFICER, VAGAMON VILLAGE OFFICE, PULLIKKANAM-ELAPPARA ROAD, VAGAMON P.O., IDUKKI-685503. 8 KUNCHERIA LONAPPAN, S/O.KUNCHERIA, ONTHIRIKKAL HOUSE, CHERTHALA, ALAPPUZHA-688524. BY ADV.SRI.JAFAR KHAN, SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.10.2021, ALONG WITH WP(C).7295/2021, DELIVERED THE FOLLOWING: -8-

JUDGMENT

[WP(C) Nos.21360/2021, 7295/2021, 8623/2021, 10862/2021] I am considering all these writ petitions together, because the constitutive issues raised therein and the factual circumstances urged, are similar, if not identical; and the reliefs sought from this Court in all of them are analogous.

2. In all these cases, the challenge is

against the order of the District Collector dated 16.01.2021; and though there are various allegations, averments and assertions made by the petitioners, the primary among them is that none of them were heard by the said Authority, nor were they given an opportunity of producing the relevant documents, which would have been sufficient for them to establish and demonstrate their possession and ownership over the properties involved in these cases. -9-

3. The petitioners point out, from Ext.P15 in

W.P.(C)No.10862 of 2021 - which is the order

impugned in these writ petitions, that the District Collector himself has recorded therein that since there are more than 200 persons involved - who are all residing in other districts, their addresses were unable to be identified and that all of them had not been issued notices.

4. The petitioners further show me that, in

the last line of the said order, the District Collector has even permitted individuals, who have not been served notices, to approach him again with their documents; but that this has now been refused to them, though none of them were issued notices and some of them were, in fact, outside India, without being yet given a copy of the impugned order either.

5. I have heard Sri.S.Sreekumar - learned

-10- Senior Counsel, instructed by Sri.Geen T.Mathew, learned counsel appearing for the petitioner in W.P.(C)No.10862 of 2021; Sri.R.Krishna Raj - learned counsel for the petitioner in W.P. (C)No.21360 of 2021; Sri.V.C.Madhavankutty - learned counsel for the petitioner in W.P. (C)No.7295 of 2021; Sri.Jibu P.Thomas - learned counsel appearing for the petitioner in W.P. (C)No.8623 of 2021 and Sri.Jafar Khan - learned Senior Government Pleader appearing for the official respondents in all these cases.

6. Sri.S.Sreekumar - learned Senior Counsel,

took me extensively through the impugned order to reiteratingly contend that, even as per the District Collector, no notices have been issued to any of the parties involved in these cases. He argued that, therefore, the impugned order must fail from the touchstone of the principles of natural justice; and thus requested that this -11- Court allow the jurisdictional Tahsildar to reconsider the matter, because several documents will have to be examined and an elaborate decision taken, which can be done only by the said Authority at the first instance.

7. Sri.R.Krishna Raj - learned counsel for

the petitioner in W.P.(C)No.21360 of 2021 submitted that his client was not merely denied a notice prior to the issuance of the impugned order; but that same has not been given to him and that he approached this Court, after obtaining it from other sources. He added that his client is presently out of India and therefore, that it would be impossible for the Authorities to say that he was served.

8. Sri.V.C.Madhavankutty and Sri.Jibu P.Thomas - learned counsel for the petitioners in the other two cases, more or less adopted similar

arguments and also prayed that the impugned order

-12- be set aside.

9. In response, the learned Senior Government

Pleader, Sri.Jafar Khan, submitted that the Authorities have enough documents to show that notices had been issued to all the persons, including the petitioners herein. He thus prayed that this writ petition be dismissed, particularly because similar matters have already been taken up by various other persons before the Land Revenue Commissioner, invoking their Statutory Appellate remedy. He concluded by saying that if at all this Court is inclined to grant any relief to the petitioners, they may be only permitted to invoke their alternative remedies and to approach the Land Revenue Commissioner appositely.

10. I have examined the afore submissions and have also gone through the impugned order very carefully.

11. As rightly stated by Sri.S.Sreekumar - -13- learned Senior Counsel and other learned counsel

appearing for the petitioners, the impugned order

itself says that all the persons were not issued notices, because their addresses were not available, some of them residing out side the district concerned and even outside India.

12. The question whether the petitioners were,

therefore, issued notices or otherwise is one of the facts which cannot be resolved by this Court, particularly when the learned Senior Counsel and the counsel for the petitioners assert that what is now being sought to be produced by the Authorities are only evidence that the impugned

order was served on their clients and not the

notices prior to its issue.

13. Be that as it may, since I notice from the

impugned order itself that the District Collector had left liberty to all persons who were not served notice, to approach him again with their -14- documents, I am of the firm view that petitioners must be given that opportunity, since they vehemently maintain that they were not served notices before the impugned order was issued.

14. Resultantly and for the reasons above, I

set aside the impugned orders in these cases, to the extent to which it relates to the petitioners herein; and direct them to mark appearance before the District Collector, with all their documents and materials in substantiation of their claim, at 11 A.M. on 16.11.2021; on which day, said Authority will either hear them and examine their documents or fix another date for such purpose; thus culminating in appropriate orders thereon, after following due procedure, as expeditiously as is possible, but not later than two months thereafter.

15. Needless to say, I have not considered the

rival contentions of the parties at all on their -15- merits, and that they are left open to be pursued appropriately before the District Collector or such other Authority as the petitioners may approach in future. These writ petitions are thus ordered. Sd/-
DEVAN RAMACHANDRAN JUDGE akv -16- APPENDIX OF WP(C) 7295/2021
PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE SALE DEED NO. THE PETITIONER. EXHIBIT P2 TRUE COPY OF THE BASIC TAX RECEIPT IN FAVOUR OF THE PETITIONER ISSUED FROM VAGAMO VILLAGE DATED 2/9/2011. EXHIBIT P3 TRUE COPY OF THE POSSESSION CERTIFICATE ISEUD IN FAVOUR OF THE PETITIONER BY THE VILLAGE OFFICER, VAGAMON DATED 02.09.2011. EXHIBIT P4 TRUE COPY OF THE LETTER NUMBER J2/5978/19 DATED 13.03.2020 ISSUED BY THE 2ND RESPONDENT TAHASILDAR TO THE PETITIONER. EXHIBIT P5 TRUE COPY OF THE COVERING LETTER FORWARDING THE DOCUMENTS TO THE 2ND

RESPONDENT DTD. 18/9/2020. EXHIBIT P6 TRUE COPY OF THE PROCEEDING NO.J2-

TAHASILDAR, PEERUMEDU DATED 19.01.2021 BY WHICH THE THADAPERU NUMBER OF THE PETITIONERS PROPERTY IN SY. NUMBER 724 OF VAGAMON VILLAGE IS CANCELLED BY HE 2ND RESPONDENT.

EXHIBIT P7 TRUE COPY OF THE PROCEEDINGS C IDUKKI DATED 16.01.2021. -17- APPENDIX OF WP(C) 8623/2021 PETITIONER EXHIBITS EXHIBIT P1 TRUE PHOTOCOPY OF SALE DEED NO.3065/I/2012 OF PEERMADE SUB REGISTRAR OFFICE DATED 14.08.2012. EXHIBIT P2 TRUE PHOTOCOPY OF CERTIFICATE NO.C3- BY THE TAHASILDAR, PEERMADE. EXHIBIT P3 TRUE PHOTOCOPY OF PATTA NO.36/92 DATED 03.03.1994 ISSUED BY THE SPECIAL TAHASILDAR, LAND ASSIGNMENT PEERMADE. EXHIBIT P4 TRUE PHOTOCOPY OF TAX RECEIPT NO.1619060 IN BOOK NO.16191 DATED 10.06.2019 ISSUED FROM THE VILLAGE OFFICE, VAGAMON.

EXHIBIT P5 TRUE PHOTOCOPY OF ORDER

NO.C12/3638/2019 DATED 16.01.2021 ISSUED BY THE DISTRICT COLLECTOR, IDUKKI. EXHIBIT P6 TRUE PHOTOCOPY OF PROCEEDINGS NO.J2- TAHASILDAR (LR) PEERMADE. RESPONDENT'S/S EXHIBITS : EXHIBIT R2(a) TRUE COPY OF THE DISTRIBUTION REGISTER DATED 12.3.2020. //TRUE COPY// P.A. TO JUDGE -18- APPENDIX OF WP(C) 10862/2021 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE REGISTERED SALE DEED

NO. 2898 OF 2010 IN BOOK 1, VOLUME 954, PAGES 279 TO 283 OF SUB REGISTRY OFFICE, PEERMADE DATED 23.07.2010. EXHIBIT P2 TRUE COPY OF THE POSSESSION CERTIFICATE NO. 3019/10 DATED 24.09.2010 ISSUED BY THE 7TH RESPONDENT FOR THE EXHIBIT P1 PROPERTY IN THANDAPER NO. 6687.

EXHIBIT P3 TRUE COPY OF THE APPLICATION FOR ASSIGNMENT OF LAND ON REGISTRY, LEASE OR LICENCE. EXHIBIT P3(A) TRUE COPY OF THE MAHAZAR PREPARED BY THE VILLAGE ASSISTANT. EXHIBIT P3(B) TRUE COPY OF THE APPENDIX V NOTICE. EXHIBIT P3(C) TRUE COPY OF THE APPENDIX V NOTICE. EXHIBIT P3(D) TRUE COPY OF THE APPENDIX V NOTICE. EXHIBIT P3(E) TRUE COPY OF THE APPENDIX V NOTICE. EXHIBIT P3(F) TRUE COPY OF THE FORM OF ORDER OF ASSIGNMENT ON REGISTRY. EXHIBIT P3(G) TRUE COPY OF THE CHALLAN. EXHIBIT P3(H) TRUE COPY OF THE PATTA LA538/92/VGN DATED 03.03.1994 ISSUED BY THE 5TH RESPONDENT. -19- EXHIBIT P4 TRUE COPY OF THE LAND TAX RECEIPT NO. 76707 DATED 23.06.2004 ISSUED BY THE 7TH RESPONDENT. EXHIBIT P5 TRUE COPY OF THE REGISTERED POWER OF

ATTORNEY NO.30 OF 2004 FROM PAGES 11 TO 13 VOLUME 55 OF BOOK IV OF SUB REGISTRY OFFICE, POONJAR DATED 11.03.2004. EXHIBIT P6 TRUE COPY OF THE REGISTERED SALE DEED NO. 2059 OF 2004 FROM PAGES 355 TO 357 OF VOLUME 713 OF BOOK I OF SUB REGISTRY OFFICE, PEERMADE DATED 29.06.2004.

EXHIBIT P7 TRUE COPY OF THE LAND TAX RECEIPT NO. 783105 DATED 05.04.2008 ISSUED BY THE 7TH RESPONDENT. EXHIBIT P8 TRUE COPY OF THE POSSESSION CERTIFICATE NO. 1948/2006 DATED 23.11.2006 ISSUED BY THE 7TH RESPONDENT. EXHIBIT P9 TRUE COPY OF THE POSSESSION CERTIFICATE NO. 975/2008 DATED 16.04.2008 ISSUED BY THE 7TH RESPONDENT. EXHIBIT P10 TRUE COPY OF THE TITLE CLEARANCE CERTIFICATE NO. C3-12030/06/KDIS DATED 12.12.2006 ISSUED BY THE 6TH RESPONDENT. EXHIBIT P11 TRUE COPY OF THE TITLE CLEARANCE CERTIFICATE NO. C3-3779/08/LDIS DATED 29.03.2008 ISSUED BY THE 6TH RESPONDENT. EXHIBIT P12 TRUE COPY OF THE REGISTERED SALE DEED

NO. 2233 OF 2008 FROM PAGES 167 OF 170 OF VOLUME 867 OF BOOK I OF SUB REGISTRY OFFICE, PEERMADE DATED 16.06.2008.

EXHIBIT P13 TRUE COPY OF THE REPORT NO. J2/5978/19 -20- DATED 02.11.2019 FILED BY THE 4TH RESPONDENT BEFORE THE 3RD

RESPONDENT. EXHIBIT P14 TRUE COPY OF THE ORDER NO. C12/3638/2019 DATED 13.11.2019 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT. EXHIBIT P15 TRUE COPY OF THE ORDER NO. C12/3638/2019 DATED 16.01.2021. EXHIBIT P16 TRUE COPY OF THE ORDER NO. J2-5978/19 DATED 19.01.2021 ISSUED BY THE 4TH RESPONDENT. EXHIBIT P16 A TRUE COPY OF THE COVER IN WHICH EXHIBIT P15 AND P16 WAS SENT BY THE 4TH RESPONDENT. EXHIBIT P17 TRUE COPY OF THE AADHAR CARD NO. 9321 3330 9199 OF N.J. DENNIS, S/O. MARIYAKUTTY DENNIS (L.A. NO. 36/92) EXHIBIT P18 TRUE COPY OF THE ELECTION IDENTITY CARD NO. BND1057967 OF JOSH Y, S/O. DOMINIC (L.A. NO. 538/92) EXHIBIT P19 TRUE COPY OF THE DEATH CERTIFICATE NO. D0020665-1907191 OF MARY JOSEPH, W/O. JOSEPH (L.A.NO. 84/89) -21- APPENDIX OF WP(C) 21360/2021 PETITIONER EXHIBITS EXHIBIT P1 COPY OF THE SALE DEED NO.3049/1/13 DATED 17.10.2013. EXHIBIT P2 COPY OF THE SALE DEED NO.2981/08 DATED 21.8.2008. EXHIBIT P3 COPY OF THE SALE DEED NO.2067/II/2004 DATED 28.6.2014. EXHIBIT P4 COPY OF THE PATTA NO.LA537/92/VGN DATED 3.3.1994. EXHIBIT P5 COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE 5TH RESPONDENT DATED 17.11.2008. EXHIBIT P6 COPY OF THE TAX RECEIPT DATED 16.11.2018. EXHIBIT P7 COPY OF THE TAX RECEIPT DATED 20.1.2017. EXHIBIT P8 COPY OF THE TAX RECEIPT DATED 21.4.2015. EXHIBIT P9 COPY OF THE TAX RECEIPT DATED 21.2.2014. EXHIBIT P10 COPY OF THE TAX RECEIPT DATED 2.12.2013. EXHIBIT P11 COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 16.1.2021. EXHIBIT P12 COPY OF THE ORDER OF THE 4TH RESPONDENT -22- DATED 14.1.2021. EXHIBIT P13 COPY OF THE COMPLAINT DATED 1.3.2021. EXHIBIT P14 COPY OF THE INTERIM ORDER IN WPC NO.10862/2021 DATED 1.9.2021.. RESPONDENT'S/S EXHIBITS : NIL. //TRUE COPY// P.A. TO JUDGE