

(2021) 06 KL CK 0325

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21490 Of 2019

John Chandy

APPELLANT

Vs

District Collector, Kottayam, Collectorate, Collectorate P.O

RESPONDENT

Date of Decision : 22-06-2021

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2021) 06 KL CK 0325

Hon'ble Judges : P.B.Suresh Kumar, J

Bench : Single Bench

Advocate : Saji Mathew, Denu Joseph, Neethu Reghukumar, Mohammed Anzar K.J., Siby Chenappady, V.Philip Mathew

Final Decision : Dismissed

Judgement

P.B.Suresh Kumar, J

1. The questions involved in these matters are closely interlinked and they are therefore, disposed of by this common judgment. The parties and

documents are referred to in this judgment, as they appear in W.P.(C) No.21490 of 2019.

2. The first petitioner owns 2.8 Ares of land in Re-Survey No.74/4 of Muttambalam Village in Kottayam District. The second petitioner is a person

residing in the locality of the residence of the first petitioner. It is alleged by the petitioners that the seventh respondent who purchased 1.22.13

Hectares of land in Re-Survey No.13 of Muttambalam Village during 2010 has annexed the adjoining Government lands including river puramboke in

Re-Survey Nos.18, 19, 20 and 49 of the same village to the land purchased by him by constructing compound wall and barbed wire fencing around the

land. It is also alleged by the petitioners that the seventh respondent has

thereupon constructed a convention centre, not only in the land purchased by him, but also in a portion of the Government land annexed to the same, and is using the remaining portion of the Government land as the car parking area for the convention centre.

3. On receipt of complaints from the first petitioner and others who are residing in the locality, the fourth respondent issued Ext.P6 notice to the seventh respondent as also to the owners of lands adjoining to the land of the seventh respondent in Re-Survey No.13 informing them that the concerned Taluk Surveyor would fix the boundaries of the land in Re-Survey No.13 on 27.05.2019. It is alleged by the petitioners that with a view to evade the fixation of the boundary proposed by the fourth respondent, the seventh respondent requested the fourth respondent to postpone the measurement pretending that he is unable to be present at the land on the day fixed for measurement. It is stated by the petitioners that on the basis of the said request, further proceedings pursuant to Ext.P6 notice was deferred by the fourth respondent. It is also alleged by the petitioners that the seventh respondent is a very influential person and he made the request aforesaid for deferring the measurement with a view to manipulate the revenue records. The petitioners, therefore, seek directions to respondents 1, 3, 4 and 5 to initiate steps forthwith for identifying the Government lands encroached by the seventh respondent and recover the same in terms of the Kerala Land Conservancy Act, 1957 (the Act).

4. On 06.08.2019, this court passed the following interim order:

â??Admit. Government Pleader takes notice for respondents 1 to 5. Standing Counsel takes notice for the sixth respondent. Urgent notice to the seventh respondent.

The fourth respondent shall find out whether the construction being undertaken by the seventh respondent is encroaching into Government land or river puramboke

and file a report before this court. The fourth respondent shall also conduct an inspection after notice to the petitioner as well as to respondents 6 and 7.

Post on 03.09.2019.â??

5. A counter affidavit has been filed on behalf of the seventh respondent in the writ petition on 03.09.2019, stating, among others, that he has not encroached upon any Government land; that a portion of the land purchased by

him is shown mistakenly in the revenue records as puramboke and that complaints, on the basis of which Ext P6 notice was issued, have been preferred taking advantage of the said mistake. The fact that the first petitioner is a person residing near the land purchased by the seventh respondent and the fact that the second petitioner is a person residing in the locality of the said land have been admitted by the seventh respondent In the counter affidavit. The seventh respondent has also admitted in the counter affidavit that further proceedings pursuant to Ext.P6 notice was deferred on the basis of a request made by him.

6. On receipt of notice in the writ petition, the seventh respondent preferred representations before respondents 1 and 3 stating, among others, that a portion of the land purchased by him is shown mistakenly as puramboke in the revenue records, and requesting the said authorities to rectify the same.

In the meanwhile, the fourth respondent issued a notice on 26.08.2019 re-fixing the date for identification of the boundaries of the land in Re-Survey

No.13. The seventh respondent, in the circumstances, instituted W.P.(C) No.23611 of 2019 challenging the said notice on the ground that the requests made by him for correction of the resurvey records need to be considered before the measurement.

7. On 30.08.2019, this court passed the following interim order in W.P.(C) No.23611 of 2019 :

â??The petitioner will take out notice before admission by special messenger to respondent Nos. 8 to 10.

List this case along with W.P.(C) No.21490 of 2019 on 03.09.2019.

In the meanwhile, even if measures have been taken pursuant to Ext.P9, no action will be taken without orders from this court.â??

On 03.09.2019, this court clarified the order dated 30.08.2019 in W.P.(C) No.23611 of 2019 thus:

â??Read order dated 30.08.2019.

I clarify that the intention of this court in issuing the above order was not to stop the process of measurement. Hence, if the official respondents are so interested, they are at liberty to continue with such, but that no further action subsequent thereto will be then taken without further orders from this court.

Post on 18.09.2019 along with W.P.(C) No.21490 of 2019.â??

8. In the light of the order passed by this court on 03.09.2019 in W.P.(C)

No.23611 of 2019, though the Taluk Surveyor inspected the land of the seventh respondent on 21.01.2020 with notice to him, the boundaries of the land could not be fixed as the seventh respondent was not present in the land and access to the land was denied by locking down the premises. Ext.P10 produced by the petitioners along with I.A.No.1 of 2020 is the report submitted by the Taluk Surveyor in this regard.

9. Later, on 17.02.2020, the seventh respondent has filed another counter affidavit in the matter reiterating the contents of the earlier counter affidavit filed by him on 03.09.2019. Along with the said counter affidavit, the seventh respondent has produced copies of the representations preferred by him before respondents 1 and 3 for rectification of the alleged mistake in the revenue records as Exts.R7(d) and R7(e) respectively. He has also produced along with the said counter affidavit the title deed of the land purchased by him in Re-survey No. 13 as Ext R7(a).

10. On 02.11.2020, when the matter came up, the learned counsel for the seventh respondent submitted that his party is willing to co-operate with the authorities for the measurement proposed. This court, in the circumstances, passed the following interim order:

â??The learned counsel for the seventh respondent submitted that his party was always co-operative and he filed a petition before the Survey Department to choose

a day convenient for him for surveying. It is submitted that he returned to gulf on account of his employment. It is also submitted that he is willing to come to India

for surveying and measurement. Having considered the submission as above, the date of the next inspection is scheduled on 26.11.2020.

Post on 27.11.2020.â??

11. On 16.12.2020, the Special Government Pleader (Revenue) has filed a memo in the matter stating that a survey has been conducted pursuant to the interim order dated 02.11.2020 and it was found that 5.75 Ares of Government land in the Re-Survey No.18 has been encroached upon by the seventh respondent. A report prepared by the fourth respondent in this regard and a sketch of the encroached land also have been produced along with the said memo. The report reads thus:

Â â??As per the order of the Hon'ble High Court of Kerala in W.P.(C)

No.21490/2019 to find out whether the construction being undertaken by the 7th

respondent in W.P.(C) No.21490/2019, is encroaching in to the Government land, a detailed survey was conducted on 26.11.2020 by the Taluk Surveyor. Proper

notices were issued to the 6th and 7th respondent and the petitioner and the survey was conducted in the presence of all concerned parties. The 7th respondents

land is comprised in Survey No.13 of Block no.78 in Muttambalam Village, Kottayam Taluk. After the survey, the Taluk Surveyor reported that the boundary of

Government land comprised in survey no.18 of Block no.78 in Muttambalam Village was refixed and it was reported that an area of 05.75 Ares of Government land

mentioned in the above Survey No.(Survey No.18, Block 78) land has been encroached by Mr.Oommen Ipe, the 7th respondent. Copy of the sketch prepared by the

Taluk Surveyor is submitting herewith??.

An objection has been filed by the seventh respondent to the report of the fourth respondent aforesaid, stating, among others, that notice was issued

prior to the measurement only to fix the boundaries of land in Re-Survey No.13; that his land in Re-Survey No.13 and the lands adjoining to the same

have not been measured; that there was no proceedings for identifying the Government land in Re-Survey No.18 and that the report cannot, therefore,

be acted upon.

12. Heard the learned counsel for the petitioners, the learned counsel for the seventh respondent as also the learned Government Pleader.

13. The learned counsel for the petitioners pointed out that the seventh respondent who admits in his pleadings that the resurvey in the village has been

conducted in the year 1993 has no case that his predecessors have ever raised any complaint concerning the alleged mistake in the resurvey till they

have transferred the land to the seventh respondent. Similarly, it was also pointed out by the learned counsel that even the seventh respondent who

has purchased the land during 2010 in terms of Ext.R7(a) sale deed has not raised any complaint concerning the alleged mistake in the resurvey until

the petitioners have filed the writ petition. It was therefore, contended that there is absolutely no bonafides in the contention taken by the seventh

respondent that a portion of the land purchased by him is mistakenly shown in the revenue records as puramboke. It was also argued by the learned counsel that the seventh respondent who has purchased the land in Re-survey No.13 having been convinced about its extent and boundaries, cannot claim any right over any other land. It was also argued by the learned counsel that the official respondents who are bound to protect Government lands from encroachments are hand in glove with the seventh respondent to enable him to hold the land encroached by him. In order to substantiate the said contention, the learned counsel relied on the conduct of the official respondents in not fixing the boundaries of the land purchased by the seventh respondent despite the direction issued by this court. It was also argued by the learned counsel that at any rate, since the official respondents have informed the court that a portion of the Government land in Re-survey No.18 has been encroached upon by the seventh respondent, directions shall be issued to the official respondents to initiate proceedings against the seventh respondent under the Act for removal of the encroachment made by him.

14. Per contra, the learned counsel for the seventh respondent contended that the petitioners who do not claim any right in the lands allegedly encroached upon by the seventh respondent have no locus standi to institute the writ petition. According to the learned counsel, a writ petition of instant nature could be instituted only as a public interest litigation. It was also contended by the learned counsel that in so far as the seventh respondent is admittedly in possession of the alleged encroached land, he can be evicted therefrom only by instituting a suit, and not through the summary proceedings procedure provided for under the Act. The learned counsel has relied on the decision of the Division Bench of this court in *Harrisons Malayalam Limited v. State of Kerala*, 2018 (2) KLT 369, in support of the said contention. It was also contended by the learned counsel that the measurements conducted by the Taluk Surveyor pursuant to the interim order passed by this court on 2.11.2020 was improper and illegal.

15. I have examined the contentions advanced by the learned counsel for the parties on either side.

16. Since the locus standi of the petitioners to institute the writ petition is challenged by the seventh respondent, it is necessary to consider the

sustainability or otherwise of the said challenge, before proceeding to adjudicate the right of the petitioners to seek the reliefs claimed in the writ petition.

17. As noted, the contention raised by the seventh respondent as regards the locus standi of the petitioners to institute the writ petition is that since they do not claim any personal or individual right over the Government lands allegedly encroached upon by the seventh respondent, they cannot claim any relief in respect of the same in their individual capacity. It is also his case that the reliefs in the nature of those sought for in the writ petition can be granted only in a public interest litigation. According to the petitioners, the Government lands encroached upon by the seventh respondent being the banks of river and open sites in the neighbourhood of their residences, it cannot be said that they do not have any interest over the same to claim relief in a proceedings under Article 226 of the Constitution. The question, therefore, is as to whether the interest aforesaid claimed by the petitioners over the Government lands allegedly encroached upon by the seventh respondent is sufficient to confer on them locus standi to institute the writ petition.

18. No doubt, before the development of the concept of public interest litigation, courts have held that in order to seek relief under Article 226 of the Constitution, one should possess a legal right in the subject matter of the lis. Later, on realising that the utility of public law remedies would be lost, if a liberal view is not taken on the locus standi of persons approaching the Court for relief under Article 226 of the Constitution, courts have held that a private individual would be entitled to seek relief under the said provision, if his interests are affected on account of the illegality complained of, though the same relate primarily to an invasion of public right. In other words, the liberal view was that an individual would be entitled to approach the court for relief invoking the said provision, if he is able to show that he has a special interest or some interest at least to complain of in respect of the legality

[See *Godde Venkateswara Rao v. Government of Andhra Pradesh*, AIR 1966 SC 828 and *Radhey Sham v. Lieutenant Governor and others*, 1970 SCC online Delhi 74]. It was later realised that the poorest of the poor, the illiterate, unorganized labourers, women, children, handicapped etc. by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice in the country. The concept of

'public interest litigation' was developed accordingly to render justice to the aforementioned classes of persons. When the said branch was developed,

the courts have relaxed the common rule of locus standi so as to enable it to look into the grievances complained of on behalf of the poor, illiterate,

disabled etc. who cannot vindicate the legal wrong or legal injury caused to them. In *Balco Employees' Union (Regd.) v. Union of India and Ors.*,

(2002)2 SCC 333, the Apex Court explained the scope of the concept of 'public interest litigation' thus:

Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the Judges

who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other

rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be

espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for

the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing

more than what words themselves said viz. "litigation" in the interest of the public".

While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation

of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. 3. B. Sathe has summarised the extent of the

jurisdiction which has now been exercised in the following words:

PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).

- Where the affected persons belong to the disadvantaged sections of society

(women, children, bonded labour, unorganised labour etc.).

- Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).
- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).
- Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water.

There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private

interest litigation and has a tendency to be counter-productive.

PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was

innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social

disabilities could not approach the court for relief. There, have been, in recent times, increasingly instances of abuse of PIL. therefore, there is a need to re-emphasize

the parameters within which PIL can be resorted to by a petitioner and entertained by the court. This aspect has come up for consideration before this Court and all

we need to do is to recapitulate and re-emphasize the same.

In *Guruvayoor Devaswom Managing Committee v. C.K. Rajan*, (2003) 7 SCC 546, the Apex Court has held that the scope of the public interest

litigation explained in *Balco Employees' Union* are not though final words, the same can be considered as guidelines for entertaining public interest

litigations. It has also been held by the Apex Court in *Guruvayoor Devaswom Managing Committee* that where a segment of public is not interested in

the cause, public interest litigation would not ordinarily be entertained. The proposition that public interest litigation may not be entertained where a

segment of the public is not interested in the cause has been reiterated by the Apex Court in *Chairman & MD, BPL Ltd. v. S.P. Gururaja*, (2003) 8

SCC 567.

19. Reverting to the facts, as noted, it is a case of encroachment of Government land made by an individual. Government lands are to be preserved for the usage and benefit of the people, and encroachment of Government land is, therefore, considered as a loss to every citizen. At the same time, in a case of this nature, a segment of the public may not be interested. Ordinarily, only persons residing in and around the Government land encroached upon may feel aggrieved, for the same in some cases would deprive them its beneficial enjoyment and in some other cases deprive them the comforts of their life for want of such an open land in their vicinity. I do not think that it is a case where the petitioners would be entitled to approach this court with a public interest litigation. The rationale underlying the theory of locus standi being to adjust the conflicts between the public interest, viz, the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper to invoke the jurisdiction of the courts in matters that do not concern him, I am of the view that the question relating to locus standi to seek relief in a case of this nature needs to be considered liberally and it has to be held that individuals would be entitled to approach the court for relief, if they can show that they have some interest or a special interest to complain of in respect of the illegality which the members of the general public may not have. The objection taken by the seventh respondent as to the locus standi of the petitioners to institute the writ petition, in the circumstances, is liable to be rejected and I do so.

20. Now, I shall deal with the question whether the petitioners are entitled to the relief claimed in the writ petition. As noted, it is alleged by the petitioners in the writ petition that the seventh respondent has encroached upon the puramboke lands in Re-survey Nos.18, 19, 20 and 49. The case of the petitioners is that though proceedings have been initiated by the fourth respondent on the basis of the complaints received in this regard for fixing the boundaries of the property purchased by the seventh respondent to ascertain the correctness of the allegation of encroachment, the same have been dropped midway at the instance of the seventh respondent. The seventh respondent admits that he is occupying a portion of the lands classified as puramboke in the revenue records. He justifies the occupation of the said land on the ground that it is part of the land purchased by him in terms of

Ext.R7(a) sale deed and the same happened to be shown in the revenue records as puramboke on account of the mistakes committed by the officials

at the time of resurvey. He also contends that he preferred Ext.R7(d) representation before the first respondent to rectify the mistake and the said representation is pending.

21. In terms of Ext.R7(a) sale deed, the seventh respondent has acquired 1.22.13 Hectares of land in Re-Survey No.13 of Muttambalam Village. It is

recited in Ext.R7(a) sale deed that the land conveyed to the seventh respondent in terms of the same is the land earlier comprised under old Survey

Nos.2/22, 3/4, 4/1A, 4/1B, 2/24/2, 2/24/3, 2/24/5, 4/1A/1, 4/1B, 4/26 and 4/2B/3 of Muttambalam Village and held by one Geevarghese and a firm

namely M/s.Travancore Timbers and Products. It is also recited in Ext.R7(a) sale deed that the lands held by Geevarghese and M/s.Travancore

Timbers and Products have been jointly resurveyed and brought under Re-Survey No.13, recording its extent as 1.22.13 Hectares. It is also recited in

the document that it is the said 1.22.13 Hectares of land that is conveyed to the seventh respondent in terms of the document. The relevant portion of

Ext.R7(a) assignment deed reads thus:

“WHEREAS the properties above referred in the name of late Mr.Geevarghese and the properties above referred of the vendor No.4 firm are jointly resurveyed

allotting the Resurvey No. as 13 in Block No.78 of Muttambalam village, recording and having a total extent of 01 Hectare 22 Ares and 13 square meters and the

vendors are paying land tax for the said property under T.P.No.8448 in Block No.78 of Muttambalam village in the name and in favour of Vendor No.4 firm and

vendors No.1 to 4 are in absolute ownership, possession and enjoyment of the land having a total extent of 01 Hectare 22 Ares and 13 Sq. meters in Re.Sy.No.13 in

Block No.78 corresponding to old Sy.No.2/22,3/4,4/1A,4/1B,2/24/2, 2/24/3, 2/24/5, 4/1A/1, 4/1B, 4/26 and 4/2B/3 of Muttambalam (formerly Vijayapuram) village,

Kottayam Taluk, Kottayam District with the buildings and shed therein, as stated above, which is more particularly described in the schedule hereunder.

AND WHEREAS the vendors assured the purchaser and made to believe that the Vendors are having absolute title and interest over the scheduled property and that

no other person have title, right, claims or interest on the same and the scheduled property is completely free from mortgage, charge, lien or lease, attachment, suit,

arrears of taxes and other claims of workers and other persons, revenue recovery proceedings, proceedings under Kerala Land Reforms Act, Land Acquisition Act,

Revenue Recovery Act and other encumbrance and impediments and that the vendors are in unencumbered and exclusive title, possession and enjoyment of the

scheduled property individually and as partners of the vendor No.4 firm as stated above.

AND WHEREAS the purchaser is desirous of purchasing the said property and vendors have agreed to sell the said property free from encumbrances and other impediments to the purchaser and relying on the aforesaid assurances of the vendors, the purchaser has agreed to purchase the scheduled property together with all

improvements, buildings, shed and other structures therein in the said property completely free of encumbrance and other impediments for a mutually agreed total

sale consideration of Rs.8,00,00,000/- (Rupees Eight Crores only) out of which Rs.7,95,00,000/- (Rupees Seven Crores Ninety Five Lakhs only) is the value of land and

Rs.5,00,000/- (Rupees Five Lakhs only) is the value of the buildings and shed therein with all electrical and other fittings therein with right, title, interest, possession

and ownership of the vendors in the said propertyâ??.

The extracted recitals in the document would show that the vendors of the seventh respondent have conveyed to the seventh respondent only the

lands resurveyed and brought under Re-Survey No.13. As such, even if there was any mistake at the time of resurvey and any portion of the land held

by the vendors of the seventh respondent was shown as puramboke in the revenue records, the seventh respondent cannot claim any right over the

same, for his vendors have not conveyed the same to him. It is all the more so since the seventh respondent has no case that the extent of land

purchased by him, viz, 1.22.13 Hectares is not available under Re-Survey No.13 or that he has not obtained 1.22.13 Hectares of land in terms of

Ext.R7(a) sale deed.

Â

22. Let us now see the request made by the seventh respondent before the first respondent for rectification of the alleged mistake in the resurvey.

Ext.R7(d) is the application preferred by the seventh respondent before the first respondent in this regard. Ext.R7(d) reads thus:

1. Petitioner purchased 1 Hectare 22 Ares and 13 square meters of land situated in Re-Survey No.13 in Block No.78 of Muttambalam Village, Kottayam Taluk,

Kottayam District and buildings/godown bearing Nos.XI 687, XI 688, XI 689, XI 690, XI 691, XI 692 in it by virtue of Sale deed No.3182/2010. The vendor of the above

said property was using the above said buildings as godown for storing plywood sheets. The business was running in a loss. I am paying land tax for the property.

2. It is now understood that a portion of my property has been wrongly classified as poramboke land due to a mistake in resurvey which was done earlier. There was

no proper and scientific method for measurement or demarcation of properties when the said resurvey was conducted. The resurvey was before the petitioner

purchased the property. The then property owners did not take proper steps to rectify the mistake as they suffered great loss in their business and was totally disappointed.

3. The mistake in the resurvey affects my right to property. It is being exploited by the respondent to claim that petitioner is encroaching into Puramboke Land.

Petitioner has not encroached into any puramboke land. He is not in possession of any Puramboke Land.

4. It is humbly prayed that appropriate steps may be taken to rectify the mistake in resurvey in respect of my property in Re-Survey No.13 in Block No.78 of

Muttambalam Village, Kottayam Taluk, Kottayam District having an extent of 1 Hectare 22 Ares and 13 square meters.

As evident from the extracted representation, except the bald statement that a portion of his land is wrongly classified as puramboke in the revenue

records due to mistakes committed at the time of resurvey, the seventh respondent does not disclose the particulars of the mistake occurred. That

apart, the seventh respondent who has purchased the land in Re-Survey No.13 during the year 2010 has submitted Ext.R7(d) representation only on

16.08.2019, that too, after coming to know of the institution of the writ petition.

Again, had the aforesaid stand of the seventh respondent that there occurred a mistake at the time of resurvey been bonafide, the seventh respondent would have certainly invited a measurement of the land in his possession. Instead, as noted, initially when proceedings have been initiated by the fourth respondent for fixing the boundaries of the land in Re-Survey No.13 owned by the seventh respondent by issuing Ext.P6 notice, the seventh respondent requested the fourth respondent to defer the measurement, pointing out personal inconvenience to be present at the time of measurement. Later, when the fourth respondent attempted to measure the property on 21.01.2020 with notice to the seventh respondent, the seventh respondent not only remained absent in his land, but also prevented the officials from measuring the land by locking down the premises. It is thus clear that the stand of the seventh respondent that there occurred some mistakes at the time of resurvey of the lands held by his predecessors is not bonafide at all.

23. Evidently, despite the specific case put forward by the petitioners that the seventh respondent has encroached upon the Puramboke land in Re-survey Nos.18, 19, 20 and 49, and despite the interim orders of this Court, the fourth respondent has ascertained only whether the seventh respondent has encroached upon the puramboke in Re-survey No.18. The fourth respondent has not offered any explanation for not fixing the boundaries of the land in Re-survey No.13 owned by the seventh respondent or for not ascertaining the fact as to whether the seventh respondent is in occupation of any Government land other than the Government land in Re-survey No.18. As noted, it was found in the measurement conducted pursuant to the interim order of this court that an extent of Government land measuring 5.75 Ares in Re-survey No.18 has been encroached upon by the seventh respondent. Of course, the seventh respondent has objected to the measurement conducted by the Taluk Surveyor pursuant to the interim order dated 02.11.2020. I have perused the objections raised by the seventh respondent to the measurement aforesaid. The objections are vague and sketchy, and I do not find any substance in the objections at all.

24. As noted, in the context of the reliefs sought for by the petitioners, it was contended by the seventh respondent, placing reliance on the Division Bench decision of this Court in *Harrisons Malayalam Limited* that since he asserts title to the puramboke land alleged to have been encroached upon

by him, proceedings under the Act cannot be initiated against him. True, it was held by this Court that for initiating proceedings under the Act, it is sine qua non that the land shall be either Government land or puramboke land and that where the occupant raises a bonafide claim of title supported by various documents, action under the Act may not be justified. But, sustainability or otherwise of a proceedings in respect of a property arises only when proceedings are initiated. In the case on hand, proceedings under the Act are yet to be initiated. The competent authority is only at the preliminary stage of ascertaining whether there is encroachment upon the Government land. As noted, the grievance of the petitioners is only that the proceedings initiated in terms of Ext.P6 notice for fixation of the boundaries of the property purchased by the seventh respondent on the basis of the complaints of encroachment made against the seventh respondent have been dropped midway. Likewise, the prayer of the petitioners is only for a direction to the concerned respondents to continue and complete the proceedings initiated in terms of Ext.P6 notice. I do not find any reason, on the facts of the present case, to decline the relief sought for by the petitioners.

25. It is unnecessary to consider the contention raised by the seventh respondent that the survey and measurement conducted pursuant to the interim order passed by this court on 2.11.2020 is improper, as I am ordering de novo survey.

26. As it is found that the stand taken by the seventh respondent that a portion of the land purchased by him is shown mistakenly as puramboke in the revenue records is unsustainable in law, the seventh respondent is not entitled to any relief in W.P.(C) No.23611 of 2019.

In the result, W.P.(C) No.23611 of 2019 is dismissed and W.P.(C) No.21490 of 2019 is allowed, directing the fourth respondent to conclude the proceedings initiated pursuant to Ext.P6 notice with notice to all concerned including the seventh respondent in accordance with law, and ascertain whether the seventh respondent has encroached upon any Government land. This shall be done within six weeks from the date of receipt of a copy of this judgment. If it is found that the seventh respondent has encroached upon any Government land as alleged by the petitioners, needless to say that proceedings shall be initiated against him in accordance with law for eviction of the encroachment.