

(2021) 01 KL CK 0544

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22794 Of 2020

T.C. Cherian And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 22-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 01 KL CK 0544

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : P. Haridas, Cherian Gee Varghese, Biju Hariharan, R.B. Balachandran, Renji George Cherian, P.C. Shijin, Rishikesh Haridas, A.C. Vidhya

Judgement

1. The petitioners, have filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari to quash Ext.P4 notice dated 13.05.2020 issued by the 3rd respondent District Collector; a writ of mandamus commanding the 7th respondent Tahsildar, Thiruvalla to conduct the survey of property in the possession of the petitioners within the boundary walls, in terms of old survey plans and title deeds, and to identify whether there is any government land within the holding of the petitioners; a writ of mandamus commanding the 3rd respondent to receive application for land assignment from the petitioners and to pass orders on the same, after conducting site inspection and after hearing the petitioners, without prejudice to their right of adverse possession.

2. It is stated in Ext.P1 appeal filed before the 2nd respondent Land Revenue Commissioner that the petitioner's mother late Smt. Chachiyamma

Cherian obtained 65 cents of property comprised in old Survey No.31/3A of Thiruvalla Village, vide sale deed bearing No.424 of 1951 of the Sub

Registrar Office, Kottayam. Ext.P4 notice dated 13.05.2020 issued by the 3rd respondent District Collector is in respect of that property.

3. On 27.10.2020, when this writ petition came up for admission, the learned Government Pleader was directed to get instructions and file a statement

within ten days. Coercive proceedings pursuant to Ext.P4 notice was ordered to be kept in abeyance for a period of three weeks.

4. The learned Government Pleader has filed the report of the 7th respondent Tahsildar, Thiruvalla dated 30.11.2020, along with a memo dated

22.12.2020.

5. Along with I.A.No.1 of 2021, the petitioners have placed on record Ext.P6 reply dated 05.01.2021, submitted before 3rd respondent District

Collector to Ext.P4 notice dated 13.05.2020.

6. Heard the learned counsel for the petitioners and also the learned Government Pleader for the respondents.

7. The learned Government Pleader, on instructions, would submit that the 3rd respondent District Collector will consider Ext.P6 reply submitted by

the petitioners to Ext.P4 notice, with notice to the petitioners, and take an appropriate decision, before proceeding further in the matter.

8. The learned counsel for the petitioners would submit that consideration of Ext.P6 reply and Ext.P4 notice may be with a notice to the petitioners.

Having considered the submission made by the learned counsel on both sides, this writ petition is disposed of by directing the 3rd respondent District

Collector to consider Ext.P6 reply made by the petitioners to Ext.P4 notice, with notice to the petitioners and take an appropriate decision, taking note

of the relevant provisions under the Kerala Assignment of Land within Municipal Corporation Act, 1995, and the rules made thereunder, as

expeditiously as possible, at any rate, within a period of two months from the date of receipt of a certified copy of this judgment.

Till such time the interim order of this Court dated 27.10.2020 shall continue.

The legal and factual contentions raised by the petitioners are left open to be raised before the 3rd respondent, at appropriate stage.