

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

WEDNESDAY, THE 10TH DAY OF AUGUST 2022 / 19TH SRAVANA, 1944

WP(C) NO. 3809 OF 2021

PETITIONER:

A.BASHEERKUTTY
AGED 73 YEARS
S/O. ABDUL KHADER KUNJU, THUNDIL VEEDU, KOTTIYAM,
KOTTIAYAM P.O., PIN-691 571, KOLLAM DISTRICT

BY ADVS.
SRI G.SUDHEER (KARAKONAM)
SRI.R.HARIKRISHNAN (H-308)

RESPONDENTS:

- 1 REGISTRATION INSPECTOR GENERAL
OFFICE OF THE INSPECTOR GENERAL, VANCHIYOOR,
THIRUVANANTHAPURAM-695 035
- 2 DISTRICT REGISTRAR (GENERAL),
OFFICE OF THE DISTRICT REGISTRAR (GENERAL),
NEAR COLLECTORATE, KOLLAM, PIN-691 013
- 3 THE SUB REGISTRAR,
ADDITIONAL SUB REGISTRARS OFFICE,
KOTTIAYAM.P.O., KOTTIYAM, KOLLAM DISTRICT-691 571
- 4 A.RAHUMATH
AGED 68 YEARS
THAYYILVEEDU, BEHIND USHAS AUDITORIUM,
VADAKKEVILA P.O., PALLIMUKKU, KOLLAM-691 010
- 5 A.SUHURBAN BEEVI,
AGED 66 YEARS
N.V.NAGAR, HOUSE NO.20, PEROORKADA P.O.,
THIRUVANANTHAPURAM-695 005
- 6 A.SUBAITHA BEEVI,
AGED 62 YEARS
SUBAH, MEKKONE, TKMC P.O.,
KOLLAM-691 005
- 7 A.HUMAYOON KABEER,
THUNDATHIL VEEDU, KOTTIAYAM.P.O.,
KOLLAM-691 571

8 THAHIRA BEEVI
AGED 53 YEARS
THUNDEL VEEDU, KOTTAYAM P.O., KOLLAM-691 571

BY ADVS.
SR.GOVERNMENT PLEADER SMT.C.S.SHEEJA
SRI.K.MOHANAKANNAN
SRI.H.PRAVEEN (KOTTARAKARA)
SMT.D.S.THUSHARA
SMT.A.R.PRAVITHA
SMT.T.V.NEEMA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.06.2022, THE COURT ON 10.08.2022
DELIVERED THE FOLLOWING:

T.R. RAVI, J.

W.P.(C)No.3809 of 2021

Dated this the 10th day of August, 2022

JUDGMENT

The petitioner's father had executed Ext.P1 settlement deed in favour of the petitioner on 21.4.2007. Mutation was effected in favour of the petitioner and the petitioner was paying land tax as is evident from Ext.P2 dated 24.11.2007. It appears that on 3.3.2012, the petitioner's father executed Ext.P3 cancellation deed cancelling Ext.P1 settlement deed. Subsequently, on 11.12.2012, a power of attorney was executed by the petitioner's father in favour of the 7th respondent with regard to the properties covered by Ext.P1. On 25.10.2013, the petitioner's father expired. The petitioner contends that he was not aware of the cancellation deed. 0.0229 Ares of the property covered by Ext.P1 was acquired for the development of National Highway 66 under the National Highways Act. Ext.P5 is the notice issued in July, 2020 to the petitioner directing him to produce the relevant records regarding the property along with an encumbrance certificate for the purpose of claiming the compensation. The petitioner obtained an encumbrance certificate on 5.8.2020, copy of which is marked as Ext.P6, which showed the existence of Ext.P3 cancellation deed. It

is in the above circumstances that the petitioner has approached this Court praying to quash Ext.P11 issued by the 2nd respondent to the petitioner stating that there is no power available to cancel the cancellation deed and that the petitioner has to approach the civil court under Section 31 of the Specific Relief Act. The petitioner has also sought direction to respondents 1 to 3 to revoke Ext.P3 cancellation deed and make necessary entries regarding the same in their records and issue a fresh encumbrance certificate without showing the details of the cancellation deed. The petitioner relies on the judgment of the Hon'ble Supreme Court in **Thotta Ganga Laxmi v. Government of Andhra Pradesh [2011 (3) KLT 345 (SC)]** and that of a Division Bench of this Court in **Hamsa P.A. v. District Registrar General, Kozhikode & Ors. [2011 (3) KHC 342]** to submit that Ext.P3 cancellation deed, which has been executed unilaterally by the vendor of the property is not valid.

2. Heard Sri G.Sudheer, on behalf of the petitioner, Sri K.Mohanakannan on behalf of the 7th respondent and Smt.C.S.Sheela, on behalf of the official respondents.

3. The law regarding cancellation deeds executed unilaterally is no longer *res integra*. A learned Single Judge of this Court considered the issue in the judgment in **Pavakkal Noble**

John v. State of Kerala & Ors. reported in **[2010 3 KLT 941]** and held that such unilateral cancellation is impermissible. The judgment in **Noble John (supra)** was carried in appeal before a Division Bench. While the appeal was pending, the issue again came up before another Division Bench of this Court and in the decision in **Hamsa P.A. v. District Registrar General, Kozhikode & Ors. [2011 (3) KHC 342]**, the Division Bench categorically held that the cancellation deed executed in such a manner is a meaningless transaction and void and non est. The Division Bench had relied on the judgment of the Apex Court in **Thotta Ganga Laxmi v. Government of Andhra Pradesh [2011 (3) KLT 345 (SC)]**. At the time when the Division Bench rendered the judgment in **Hamsa (supra)**, apparently, the decision of the Hon'ble Supreme Court had not been reported. The judgment of the Supreme Court in **Thotta Ganga Laxmi (supra)** was rendered in a case that arose from the State of Andhra Pradesh and was challenging a Full Bench judgment of the High Court of Andhra Pradesh. The Supreme Court categorically held that after having executed a registered document transferring property in favour of another person, the same cannot be cancelled unilaterally and such transaction is a meaningless transaction and void and non est. The appeal filed against the

judgment in **Noble John (supra)** came up for consideration much later, before a Division Bench of this Court, and in the judgment in **Santhosh Antonio S.Netto v. Joshy Thomas & Ors.** reported in **[2020 (3) KLT 408]**, this Court upheld the decision of the learned Single Judge.

4. In view of the above judgments of the Apex Court and the Division Bench of this Court, Ext.P3 cancellation deed must be held to be non est and void and a meaningless transaction, since it is without the junction of the person in whose favour the property was transferred as per Ext.P2. The petitioner is entitled to the relief prayed for. Ext.P11 is set aside. Ext.P3 cancellation deed is declared to be void and *non est* in law and not liable to be acted upon. Respondents 1 to 3 are directed to revoke the registration of Ext.P3 cancellation deed and make necessary entries in the records and issue a fresh encumbrance certificate to the petitioner without showing the details of the registration of Ext.P3 cancellation deed. Necessary orders shall be issued within one month from the date of receipt of a copy of this judgment.

Sd/-
T.R. RAVI
JUDGE

APPENDIX OF WP (C) 3809/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF SETTLEMENT DEED NO.1283/2007
DATED 21.4.2007 OF KOLLAM SUB REGISTRY
- EXHIBIT P2 TRUE COPY OF THE TAX RECEIPT DATED
24.11.2007
- EXHIBIT P2A TRUE COPY OF THE TAX RECEIPT DATED
12.02.2016
- EXHIBIT P2B TRUE COPY OF THE TAX RECEIPT DATED
21.07.2020
- EXHIBIT P3 TRUE COPY OF THE CANCELLATION DEED NO.941/12
OF KOLLAM SUB REGISTRY EXECUTED BY LATE
ABDUL KHADER KUNJU
- EXHIBIT P4 TRUE COPY OF THE DEATH CERTIFICATE OF LATE
ABDUL KHADER KUNJU
- EXHIBIT P5 TRUE COPY OF THE NOTICE ISSUED BY THE
NATIONAL HIGHWAY, SPECIAL DEPUTY COLLECTOR,
KOLLAM DATED NIL
- EXHIBIT P6 TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO
4303/20 ISSUED ON 5.8.2020 BY THE
REGISTRATION DEPARTMENT KOTTAYAM
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT IN WPC
NO.1902/2019 DATED 18.6.2020 OF THIS
HONOURABLE COURT
- EXHIBIT P8 TRUE COPY OF THE JUDGMENT IN WPC NO.22743 OF
2020 DATED 5.11.2020 OF THIS HON'BLE COURT
- EXHIBIT P9 TRUE COPY OF THE PETITION FILED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT
- EXHIBIT P10 TRUE COPY OF THE DIRECTION ISSUED BY 1ST
RESPONDENT TO 2ND RESPONDENT DATED 14.9.2020
- EXHIBIT P11 TRUE COPY OF THE ORDER NOM-3-2585/20 DATED
01.01.2021 ISSUED BY 2ND RESPONDENT

RESPONDENT EXHIBITS

- Exhibit R7 (A) TRUE COPY OF THE POWER OF ATTORNEY EXECUTED
BY LATE ABDUL KHADAR KUNJ IN FAVOUR OF THE
7TH RESPONDENT DATED 11/12/2012