

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

CrI.MC.No. 3241 of 2015 ()

**CRIME NO. 1/2014/NRK OF VIGILANCE AND ANTI CORRUPTION BUREAU,
NORTHERN RANGE, KOZHIKODE**

PETITIONER/PETITIONER :

**SAJAN M.,
SPECIAL VILLAGE OFFICER,
PUTHIYANGADI VILLAGE OFFICE
KOZHIKODE (PRESENTLY WORKING AS SENIOR CLERK
VILLAGE OFFICE, KASARAGODE)
S/O. VASUDEVAN, AGED 44,
MANNARKANDY HOUSE,
EDAKKAD, KOZHIKODE.**

**BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE**

RESPONDENT/COUNTER PETITIONER :

**DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, NORTHERN RANGE
KOZHIKODE, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, COCHIN -31.**

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A1 : COPY OF THE COUNTER AFFIDAVIT FILED BY THE DISTRICT COLLECTOR, KOZHIKODE IN WRIT PETITION (C) 23558/2014 DATED 6.11.2014.

ANNEXURE A2 COPY OF THE JUDGMENT DATED 7.1.2015 IN WRIT PETITION (C) 23558/2014.

ANNEXURE A3 COPY OF THE POSSESSION CERTIFICATE NO. V.O. 1720/2013 DATED 1.11.2013.

ANNEXURE A4 CERTIFIED COPY OF ORDER DATED 20.4.2015 IN S.L.P. NO. 7707/2015.

ANNEXURE A5 CERTIFIED COPY OF THE F.I.R. REGISTERED AGAINST THE PETITIONER AS CRIME NO. 12014/NRK.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No. 3241 of 2015

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Dated this the 23rd day of June , 2015

ORDER

The prayer in this Crl.M.C. is to quash the impugned Anx.A-5 Vigilance Crime No.1/2014/NRK of Vigilance and Anti Corruption Bureau, against the petitioner registered for offence under Sec.13(1) (d) read with Sec.13(2) of the Prevention of Corruption Act.

2. The main ground urged by the petitioner is that even as per the prosecution, the petitioner has only stated in the impugned possession certificate that the land is garden land in appearance and further that this allegation against the petitioner, even if admitted, will not attract the ingredients in the penal provisions contained in the Prevention of Corruption Act and that the registration of the impugned Anx.A-5 crime is without any legal basis and is arbitrary and that the registration of the impugned Anx.A-5 crime is overlooking the findings in Anxs.A-2 judgment dated 7.1.2015 in W.P.(C).No.23558/ 2014 and Anx. A-4 SLP order dated 20.4.2015.

3. The respondent Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Northern Range, Kozhikode has filed a statement dated 22.6.2015 in this matter. Paragraphs 2 to 9 of the above said statement of the respondent read as follows:

“2. It is respectfully submitted that the respondent had registered a crime case No.1/2014 u/s 13(1) & r/w 13(2) of Prevention of Corruption Act. The case was registered on 27.11.2014 and brief of the case is that the accused misused his official power as Special Village Officer by issuing possession certificate to land owner Sri. K E Mooidu, without verifying the A-register, stating that the land is garden land in appearance, which is clearly shown as wetland in 'A' register by accepting brief from the land owner etc.

3. It is respectfully submitted that 14 witness were questioned and 5 documents were seized so far in connection with this case and more accused officers may be included in the list.

4. It is respectfully submitted that the petitioner, Mr. M. Sajan while officiating as Special Village Officer, at Puthiyangadi Village Office, on 1.11.2013, the date on which the Office head and Village Officer Mrs. Sheela was on casual leave, issued a possession certificate to Sri. K.E.Moidu, stating the type of land as Garden land in appearance instead of Nanja ie. Nilam as per the records of Village office ie, B.T. Register and 'A' Register. This was done in favour of the land owner.

5. It is respectfully submitted that the possession certificate was given to the Resurvey No. 53/1, 54/1, 54/2, 54/3A, 54/3B1, 54/3B2, 54/3C1A, 54/3C1B2, 54/12, 58/2B and 54/C1B2. Of which 58/2B is only recorded as THOTTAM in the B.T. Register and all other extents are recorded as Nanja ie, Nilam.

6. It is respectfully submitted that as per Kerala Land Utilization Order 1967, clause (6), Land cultivated with any food crop not to be cultivated with any other food crop and as per Kerala Conservation of Paddy Land and Wet land Act 2008, Section 12(1) Village Officer is an authorized officer to report the offences cited in Section (3) (1) ie. Prohibition on Conservation or Reclamation of Paddy Land and section (11) Prohibition of Wet land. According to Section (12) (2) (e), the authorized officer should take photographs, make inventories or do other things necessary for collecting evidence regarding the commission of the Offence and send a report to the

Hon'ble Court of competent jurisdiction in order to prosecute the accused. Here Special Village Officer Sri.M.Sajan, the petitioner visited the land cited in the possession certificate and written as "seen as garden land" as the classification of land, while except one survey number out of eleven were recorded as Nanja or Nilam in the B.T. Register and 'A' Register kept in the Puthiyangadi Village Office. The petitioner is liable to check the aforesaid registers before conducting field visit to keep the provisions of the Kerala Conservation of Paddy Land and Wet land Act 2008 and Kerala Land Utilization Order 1967. Instead of going for prosecution proceedings the petitioner issued a certificate of possession stating the present situation of the land. Thus he violated the Kerala Conservation of Paddy Land and Wet Land Act 2008 and Kerala Land Utilization Order 1967 for keeping the ecology and food safety of the state. Thus Special Village Officer has no legal authority to issue a possession certificate stating the present condition of the land other than that recorded in the A-Register and B.T. Register kept in the Village office and if found in contrary to the classification in the registers he should report before Hon'ble Court of competent jurisdiction. The sole authority for changing classification is the District Collector as per Section 13, 18 and 28 of Kerala Conservation of Paddy and Wet Land 2008.

Thus Special Village Officer Sri.M.Sajan abused the official power entrusted to him for favour the land owner.

7. It is respectfully submitted that in the investigation, it is revealed that the Agricultural Officer had given a certificate showing that the Resurvey No. 53/1, 54/1, 54/2, 54/3A, 54/3B1, 54/3B2, 54/3C1A, 54/3C1B2, 54/12, 58/2B are not falling in the Data Bank. He reported that it was based on the Draft Data Bank which was not approved. It was clear that some survey numbers where the hospital is built, are omitted while preparing the Draft Data Bank, but no applications of the land owner as per Rule 5 of Kerala Conservation of Paddy Land and Wet Land Rules 2008 and no minutes of meeting of village officer, and agricultural officer and Secretary of Kozhikode Corporation (Local Level Monitoring Committee) was found recorded in this regard. M/s. Perfect Health Care Hospital (Land owners) had not procured any exemption from Government as per Section 10 of Kerala Conservation of Paddy Land and Wet Land Rules 2008. Besides the Data Bank is not approved yet. The role played by the officers in the Local Level Monitoring Committee for omitting some survey numbers from the Draft Data Bank is to be cleared in the investigation. After that, the liable Officers will be added in the accused list.

8. It is respectfully submitted that S.L.P.7707/2015 dated 20.04.2015 is regarding the judgment in the problems of drainage and construction of compound wall, nothing is mentioned in the SLP

about the FIR launched against the officer and the investigation of the case by the Hon'ble Supreme Court. This case was registered on the basis of Surprise check based on a Source report. Later a criminal Miscellaneous Petition CMP-684/14 was filed in the Court of Enquiry Commissioner and Special Judge, Kozhikode and a Quick Verification was ordered by the Hon'ble Court. And in the Quick Verification involvement of officials of Kozhikode Corporation, Agricultural office, Irrigation authorities are also detected and as per Order of Director, VACB, by Order No. E 12(QV 12/2014/kkd) 30563/2014, the allegations cited in the QV are also being investigated along with this case and the investigation is in progress in this angle.

9. It is respectfully submitted that the land in issue still remains as Nanja ie, Nilam in the B.P. Register as well as in the A register of the Puthiyangadi Village Office. The only registers to know about the Land Classification in Village office are B.T. Register and 'A' Register. As, that is the situation, it is clear that an offence had been done by the accused by issuing the possession certificate stating the present situation of land and thus violated the provisions of Section 12(2) (e) of Kerala Conservation of Paddy Land and Wet Land Act 2008. Based on this illegal possession certificate the owner of the land procured the Building Permit, electricity connection etc. from various authorities. Hence the case registered against the officer u/s 13(1)d r/w 13(2) is on genuine ground."

4. The detailed allegations in Anx.A-5 as given on page 39

of the paper book read as follows:

"On the basis of the source report a surprise check was ordered by the Director, Vigilance & Anti-Corruption Bureau, Thiruvananthapuram vide letter No.T2/22386/2014 dated 05.07.2014. The surprise check was conducted by Sri. Raveendran.K., Special Tahsildar(LR), Kozhikode, in the presence of Sri. Girishkumar. P, Assistant Town Planner, Regional Town Planning Office, Kozhikode and Sri.M.C. Devassia, Deputy Superintendent of Police, VACB, Special Cell, Kozhikode on 15.07.2014 at Village Office, Puthiyangadi, Kozhikode; Taluk Office, Kozhikode; Corporation Office, Kozhikode; Krishi Bhavan, Puthiyara, Kozhikode; Office of Pollution Control Board, Kozhikode; and the alleged land site situated at Karaparamba, Kozhikode, on the allegation that the accused accepted a bribe of Rs. 50,000/- from the land owner and provided a false certificate to the land owner by changing the status of the land from wet land to garden land and thereby the land owner Sri. K.E.Moidu, Managing Partner, Perfect Health Care Services, 2/78B, P.K.Buildings, Westhill, Kozhikode, enabled to get building permit from the Corporation Office, Kozhikode to construct a multistoried Super Speciality Hospital and the work is progressing, violating the provisions of Kerala Conservations of Paddy Land and Wet Land Act. The following facts were revealed during the surprise check.

Accused Sri.Sajan.M, Special Village Officer of Puthiyangadi Village Office issued possession certificate of land in Survey Nos. 53/1, 54/1, 54/2, 54/3A, 54/3B2, 54/12, 54/3B1, 54/3C1A, 54/3C1B2, 58/2B on 01.11.2013 to Sri.K E Moidu, the land owner, without verifying the A-register, stating that the land is garden land in appearance, but in the A-register it is clearly shows that the category of the land is wet land. By using this false certificate the land owner could obtain building permit and thus the act of the accused is punishable under section 13(1)(d) r/w 13(2) of PC Act, 1988.

The Director, Vigilance and Anti-Corruption Bureau, after perusing the surprise check report and connected records, accorded sanction to register a Vigilance Case in the matter vide Letter No. E18(SC 7/2014/SCK) 22386/2014 dated 11.11.2014 and Endt.No.C(VC1/14/NRK)10661/14/NRK dated 27.11.2014 of Superintendent of Police, VACB, NR, Kozhikode endorsed the same to me. In pursuance of the above orders, I am registering this case as Crime No.1/2014/NRK under section 13(1)(d) r/w 13(2) of PC Act, 1988 today on 27.11.2014 at 16.00 hours.”
(emphasis supplied)

So it can be seen that one of the specific allegations raised against the petitioner/accused is that he had accepted a bribe of Rs. 50,000/- from the land owner and provided a false certificate to the land owner by changing the status of the land from wet land to garden land and thereby the land owner was enabled to get a building permit from the Kozhikode Municipal Corporation office to construct a multi-storied super specialty hospital, etc.

5. In the light of these specific averments in the above said statement filed by the respondent Vigilance Police Officer as well as the averments in the detailed allegations given on page No.2 of the impugned Anx.A-5 FIR, this Court is of the considered opinion that no interference is called for at this stage in this Criminal

Miscellaneous Case. Accordingly, the Crl.M.C. is closed with liberty to the petitioner to invoke appropriate remedies in accordance with law.

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Sd/-
ALEXANDER THOMAS, JUDGE

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P.S. to Judge