

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

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

W.P.(C).No. 7272 of 2005 (N)

PETITIONER(S):

**DEVASIA KIZHUKKARAKKATTU, S/O. DEVASIA,
NELLIKUTTY P.O., CHEMPERI VIA., KANNUR DISTRICT.**

BY ADV. SRI. SERGI JOSEPH THOMAS

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
AGRICULTURE (NCA) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. REVENUE DIVISIONAL OFFICER,
THALASSERY, KANNUR DISTRICT.**
- 3. VILLAGE OFFICER,
ERUVESSEY, CHEMPERI (P.O), KANNUR DISTRICT.**
- 4. MUTHUKATTIL THOMAS,
ERUVESSEY, CHEMPERI P.O., KANNUR DIST.**
- 5. MARY MUTHUKATTIL, W/O. THOMAS,
ERUVESSEY AMSOM, CHEMPERI P.O., KANNUR DIST.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI. T. RAMPRASAD UNNI
R4 & R5 BY ADVS. SRI. ROJO J.THURUTHIPARA
SRI. BABY THOMAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-06-2015,
ALONG WITH W.P.(C).No.12583/2005, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

W.P.(C).No. 7272 of 2005 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER NO. REF.K.11250/92 DT. 04.11.1992.

EXHIBIT P2: TRUE COPY OF ORDER NO. 3335/NCA3/2000/TD DT. 28.04.2003.

EXHIBIT P3: TRUE COPY OF THE ORDER BO.11250/92 DT. 11.02.2004.

**EXHIBIT P4: TRUE COPY OF THE PETITION SENT BY THE PETITIONER TO THE R.D.O
ON 18.06.2004.**

**EXHIBIT P5: TRUE COPY OF THE PETITION ISSUED BY THE PETITIONER TO
THE R.D.O.**

RESPONDENT(S)' EXHIBITS - **NIL**

//TRUE COPY//

P.A. TO JUDGE

WW

A.M.SHAFFIQUE, J.

W.P.(C)Nos.7272 & 12583 of 2005

Dated this the 23rd day of June, 2015

JUDGMENT

Since these writ petitions concerns common issues, the same as decided together.

2. W.P.(C)No.12583/2005 has been filed by the petitioner challenging Ext.P4 order passed by the Land Revenue Commissioner by which an appeal filed under the Kerala Land utilization Order, 1967 (herein after referred to as the KLU order) has been dismissed on the ground of delay of 230 days in filing the appeal.

3. The appeal came to be filed against the order passed by the Revenue Divisional Officer on 11.02.2004 by which direction has been issued by the Revenue Divisional Officer to reconvert 50 cents of wet land possessed by her in R.Sy. No.45/3 of Eruvessy amsom desom and make it fit for paddy cultivation within a period of sixty days.

4. W.P.(C)No.7272/2005 has been filed by a person in the locality to implement the order passed by the Revenue Divisional

Officer on 11.02.2004.

5. The short question involved in the case is whether any interference is required in respect of the order passed by the Revenue Divisional Officer on 11.02.2004.

6. Perusal of the said order indicates that the Sub Collector as per proceedings dated 04.11.1992 has directed one Sri.Muthukattil Thomas to remove the rubber plants from his land and directed him to cultivate paddy within a period of one month. He preferred O.P.No.689/1993 before this Court, which was disposed on 15.01.1993 on the ground that a statutory appeal has to be filed before the Board of Revenue. Further proceedings was kept in abeyance. The petitioner in W.P.(C)No.7272/2005 and certain others filed O.P.Nos.17528/1997 and 31246/1997 before the High Court for a direction to implement the order of the Sub Collector dated 04.11.1992. In the said case, by judgment dated 26.03.1998, the Revenue Divisional Officer was directed to implement the Sub Collector's order dated 04.11.1992. Though notice was ordered to Sri.Thomas, he did not comply with the directions. Therefore, action was initiated to cut and remove the rubber trees and to sell the same in the public auction. Steps were also taken in terms of Clause 7 of the KLU order. On 18.09.1998, Sri. Thomas filed a petition stating

that he has filed a Writ Appeal No.1373/1998 before the Division Bench. In the Writ Appeal, the Division Bench granted two weeks time to enable him to approach the appellate authority. It was stated that the petitioner herein was the actual owner of the property. Thereafter, an enquiry was conducted to find out who was the actual owner of the property. In the meantime, the Writ Appeal No.1373/1998 was disposed of by judgment dated 27.10.1998. This Court observed that Sri.Thomas did not avail the statutory remedy of appeal before the Land Revenue Commissioner as directed in the interim order. However, Sri.Thomas preferred an appeal later and he filed an application before the High Court to permit the appeal to be considered on merits after condoning the delay. Land Revenue Commissioner heard the party and passed orders remitting the matter back to the Revenue Divisional Officer to dispose of the case afresh after considering the relevant facts. The objectors preferred a revision before the Government and in the meantime, the petitioner herein was impleaded in the case as the owner of the land. Hearing was conducted on 16.06.2003 after serving notice to her. The petitioner appeared before the Revenue Divisional Officer on 04.08.1993 and contended that she was the owner of the property. Hearing was conducted in the matter and ultimately the following

order has been passed;

“Considered the matter against the evidences adduced and records available in file. The petition against this illegal conversion of paddy field was filed on 01.06.1991. Due to various reasons this was dragged at various levels and 12 years passed. Now the contentions of the respondents is that their rubber trees are yielding and is 10 years growth. This is natural. At the same time the petitioners are cultivating paddy in the adjacent field even now. So the respondent's contention that they get their livelihood from the yield of this rubber trees could not be considered as the petitioners also shall be given due justice for getting their livelihood by cultivating paddy. The violation of the KLU Order 1967 is established beyond any reasonable doubts. So the respondent Smt.Mary Thomas W/o.Muthukattil Thomas of Eruvessy amsom is directed to reconvert 50 cents of wet land possessed by her in R.Sy. No.45/3 of Eruvessy amsom desom fit for paddy cultivation within 60 days from the date of receipt of this order.”

7. Having regard to the aforesaid findings of fact by the Revenue Divisional Officer, though the petitioner contends that the said factual findings are incorrect, no material has been produced to show otherwise. It is apparent that the paddy has been cultivated in the said property for a period of time and suddenly without permission from the Revenue Divisional Officer, 50 cents of land was converted into rubber plantation.

8. The Land Revenue Commissioner had dismissed the

appeal on the ground that sufficient cause has not been shown by the petitioner to condone the delay. In fact, it could be seen from the facts as narrated above that several attempts have been made to avoid the entire process. In such circumstances, I am of the view that there is no reason why this Court should exercise the power of judicial review to interfere with the order passed by the Revenue Divisional Officer and the Land Revenue Commissioner. In such circumstances, there is no merit in W.P.(C)No.12583/2005 and the same is liable to be dismissed.

9. As far as W.P.(C)No.7272/2005 is concerned, it is filed by a person in the locality to implement the order passed by the Revenue Divisional Officer. He claims that he is the owner of 52 ½ cents of paddy field in R.S.No.45/3 of Eruvessy Amsom desom on account of the respondents 4 and 5 having converted their property into rubber plantation without permission, it is affecting the paddy field belonging to him.

10. Having regard to the fact that I have already upheld the Revenue Divisional Officer's order dated 11.02.2004, nothing further remains to be considered in this writ petition other than to direct the second respondent to implement its order dated 11.02.2004.

In the result, these writ petitions are disposed of as under;

- i) WP(C)No.12583/2005 is dismissed.
- ii) WP(C)No.7272/2005 is allowed directing the second respondent to implement Ext.P3 order dated 11.02.2004 within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.M.SHAFIQUE
JUDGE

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P.A. TO JUDGE