

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WA.No. 1642 of 2015 ()

AGAINST THE JUDGMENT IN WP(C) 31584/2013 DATED 06-03-2015

APPELLANTS/RESPONDENTS IN WP(C) :

- 1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO REVENUE
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN - 695 001.**
- 2. THE REVENUE DIVISIONAL OFFICER
ERNAKULAM, RDO OFFICE, FORT KOCHI
PIN - 682 001.**
- 3. THE TAHSILDAR
KANAYANNUR TALUK OFFICE, ERNAKULAM,
PIN - 682 012**
- 4. THE VILLAGE OFFICER
CHERANALLUR VILLAGE, CHERANALLUR,
ERNAKULAM DISTRICT, PIN - 682 034.**

BY SR. GOVT. PLEADER SRI. C.R. SYAMKUMAR

RESPONDENT/PETITIONER IN WP(C) :

**SMT. LATHA C. PILLAI
W/O.CHANDRAN NAIR, 'NANDEESWARAM',
KUMBALAM VILLAGE, KOCHI, PIN - 682 506.**

BY ADV. SRI.K.J.MOHAMMED ANZAR

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 1642 of 2015

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Dated this, the 5th day of August, 2015

J U D G M E N T

Shaffique, J.

Heard the learned Government Pleader and the learned counsel appearing for the respondent.

2. This appeal is filed by the State and its authorities challenging judgment dated 6/3/2015 in WP(C) No.31584/2013. Writ petition was filed by the respondent herein, who is hereinafter referred to as the petitioner, challenging Ext.P8, an order passed by the Revenue Divisional Officer refusing to permit the petitioner to convert the land on the ground that the property is included as paddy land in the data bank entries and therefore, he has no jurisdiction in the matter.

3. The short facts involved in the writ petition would disclose that the petitioner initially submitted Ext.P4 application before the Tahsildar seeking permission to fill up the land belonging to him situated in Sy.No.194/3 (Re.Sy.No.60/9) of

Cheranelloor Village, which is a low lying area, with sand. Since no orders were passed in the matter, petitioner approached this Court by filing WP(C) No.500/2010. By judgment dated 16/6/2011, it was observed by the learned Single Judge that she will have to file a fresh application before the Revenue Divisional Officer, which will be considered in accordance with law.

4. Pursuant to the same, petitioner submitted Ext.P7 application before the Revenue Divisional Officer seeking for conversion of her property alleging that it is a coconut garden. This application came to be disposed of by Ext.P8 order dated 6/2/2012.

5. Learned Single Judge while considering the above matter having referred to the various aspects involved in the case observed that since this Court as per judgment dated 16/6/2011 in WP(C) No.500/2010 directed the Revenue Divisional Officer to consider the application and since Ext.P4 application requesting for reclamation was submitted prior to the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as 2008 Act), disposal of the application was on total non application of mind. Accordingly, the writ petition

was allowed and Ext.P8 order was quashed and the 2nd respondent was directed to issue formal orders permitting the petitioner to reclaim the marshy portion of her property subject to the condition mentioned in Column No.19 of Ext.P5 report submitted by the Village Officer. There was also a direction to comply with the judgment within one month. It is impugning the aforesaid judgment that the State and its authorities have come up in appeal.

6. It is contended by the learned Special Government Pleader that it is an admitted position that the data bank entries of the Local Level Monitoring Committee of the area clearly indicate that the property is lying as a "*paddy land*". Under such circumstances, Revenue Divisional Officer has no jurisdiction to consider the application under Clause 6 of the Kerala Land Utilization Order, 1967. For that reason itself, the learned Single Judge was not justified in observing that since Ext.P4 application was given prior to 2008 Act coming into force, Revenue Divisional Officer had the power to issue appropriate orders.

7. Learned Government Pleader also relied upon the judgment of the Division Bench of this Court in ***Praveen v. Land***

Revenue Commissioner (2010 (2) KLT 617), wherein, the Division Bench clearly observed that after the coming into force of the 2008 Act, which is prospective in operation in respect of paddy land, the remedy of the owners/holders of land is to approach the Local Level Monitoring Committee and procedure has to be adopted under the provisions of the 2008 Act.

8. On the other hand, learned counsel for the petitioner would submit that direction was issued based on appropriate reports being prepared by the Village Officer and other authorities and the intention is not to fill up the entire area and convert the same for non agricultural purposes.

9. As far as Ext.P4 is concerned, it is an application submitted by the petitioner before the Tahsildar prior to coming into force of the 2008 Act, but the fact remains that Tahsildar was not the competent authority to adjudicate the request for conversion under Clause 6 of the Kerala Land Utilization Order. Under such circumstances, merely for the reason that petitioner had filed Ext.P4 may not be a reason for the learned Single Judge to have observed that the request was made prior to the 2008 Act, coming into force.

10. It is an admitted position that after the 2008 Act, coming into force, if the properties are included as paddy land in the data bank entries, remedy of the holder of the land is to object to the said entry, if one has a case that the said entry is incorrect or not on the basis of the actual state of affairs. Admittedly, Ext.P8 order has been passed after the Act coming into force and for that reason itself, the judgment of the learned Single Judge in WP(C) No.500/2010 was also after the Act coming into force. Probably at the relevant time, it was not brought to the notice of the learned Single Judge regarding the existence of the data bank entries under the 2008 Act. As matters stand now, it is in evidence that the property which the petitioner intends to convert/fill up is treated as paddy land under the data bank and under such circumstances, the remedy of the petitioner is only to approach the Local Level Monitoring Committee of the said area if any change is to be made in the said entry. Only if the Local Level Monitoring Committee finds that it is not a paddy land, then alone petitioner can seek conversion under the Kerala Land Utilization order, if at all he requires conversion. Under such circumstances, we are of the view that the learned Single Judge

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was not justified in quashing Ext.P8. Ext.P8 was correctly decided by the Revenue Divisional Officer taking into consideration the data bank entries as far as the 2008 Act is concerned.

Under such circumstances, this writ appeal is allowed setting aside the judgment of the learned Single Judge and reserving right of the petitioner to approach the Local Level Monitoring Committee of the area for appropriate reliefs.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

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PS to Judge