

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

W.A.No.1262 of 2014 IN WP(C).3261/2013

AGAINST THE JUDGMENT IN WP(C) 3261/2013 of HIGH COURT OF KERALA DATED 08-07-2014

APPELLANT/PETITIONER:

SHAJU.E.M.
S/O.E.V.MATHEW, EDATTUKARAN HOUSE, VELUPADAMDESAM
VARANTHARAPPILLY VILLAGE
VELUPADAM P.O, MUKUNDAPURAM TALUK
THRISSUR DISTRICT -680 303.

BY ADVS.SRI.T.M.CHANDRAN
SRI.S.SUJITH

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.
3. THE AGRICULTURAL PRODUCTION COMMISSIONER
AGRICULTURAL (NAC) DEPARTMENT, SOUTH SANDWICH BLOCK
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
4. THE DISTRICT COLLECTOR
AYYANTHOLE, THRISSUR DISTRICT - 680 003.
5. VARANTHARAPPILLY GRAMA PANCHAYATH
VARANTHARAPPILLY VILLAGE
VELUPADAM P.O MUKUNDAPURAM TALUK
THRISSUR DISTRICT - 680 303
REPRESENTED BY THE SECRETARY.

R5 BY ADV. SRI.C.A.CHACKO
R BY GOVERNMENT PLEADER SRI.SHYSON P MANGUZHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-10-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

W.A.NO.1262 OF 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I: PHOTOS SHOWING THE BOUNDARIES ON THE FOUR SIDES.

ANNEXURE II: TRUE COPY OF THE LOCATION SKETCH OF THE PROPERTY DATED 4.8.2014.

// TRUE COPY //

PA. TO JUDGE

ANTONY DOMINIC & P.V.ASHA, JJ.

Writ Appeal No.1262 of 2014

Dated this the 29st day of October, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the petitioner in W.P.(C)3261/2013 who is aggrieved by the judgment of the learned Single Judge dismissing the writ petition. The writ petition was filed in the following circumstances:

By Ext.P1 sale deed dated 16.11.2010, appellant purchased 3.96 Ares of paddy land comprised in Survey No.289/1 of Varantharappilly Village. Thereafter he submitted an application to the Secretary of the Varantharappilly Panchayat for a building permit for the construction of a residential building. Since paddy land could not be converted without obtaining orders under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as Act 28 of 2008), the appellant submitted Ext.P4 application dated 25.2.2011 before the Local Level Monitoring Committee constituted thereunder. The Local Level Monitoring Committee recommended to permit conversion of the land as per Ext.P5. However, the District Level Authorised Committee constituted under the Act passed Ext.P6 order rejecting the application suspecting that the

attempt of the appellant and the other two applicants, whose applications were also considered, was to undertake commercial construction in the plots concerned. The appeal filed by the appellant was considered, along with the other appeals filed by other two neighbouring land owners and the appeals were also rejected as per Ext.P7 order of the District Collector, the Appellate Authority under the Act. This order was confirmed in Ext.P11 order passed by the Secretary to the Government, the Revisional Authority. It was in this background, the writ petition was filed challenging Exts.P6, P7 and P12 orders.

2. Although the reason stated in the impugned orders for rejecting the application of the appellant is that the District Level Advisory Committee had suspected that the attempt was to undertake commercial construction and that his father had owned other suitable land and that, therefore, the appellant was ineligible to maintain an application under Act 28 of 2008 for conversion of the paddy land, the learned Single Judge dismissed the writ petition taking the view that the conversion applied for, if permitted, would defeat the very object and

purpose of Act 28 of 2008. It is aggrieved by this judgment, the appeal is filed.

3. We heard the counsel for the appellant and the learned Government Pleader appearing for the respondents.

4. While referring to the facts, we have already taken note of Ext.P1 sale deed by which 3.96 Ares of paddy land was purchased by the appellant. Schedule to the document shows that the said plot of 3.96 Ares of paddy land was sold out of a larger plot of 29.55 Ares, consisting of both paddy land and garden land which was owned by the appellant's vendor. It is also seen that after selling 3.96 Ares, from out of the remaining portions of paddy land, two other similar plots were also sold by the appellant's vendor to two other purchasers. It was accordingly that all three purchasers had applied for building permits and their requests for conversion of paddy lands had reached the Local Level Monitoring Committee, which were ultimately rejected by the District Level Authorised Committee as per Ext.P6 common order. It is also seen that the appeals were filed by all three persons and the

appeals were also rejected by Ext.P7 common order of the District Collector, the Appellate Authority.

5. Reading of Act 28 of 2008 shows that it had come to the notice of the Government of Kerala that indiscriminate and uncontrolled reclamation and massive conversion of paddy land and wetland were taking place in the State. Therefore, in order to restrict the conversion or reclamation of paddy land and wet land and with the object of promoting growth in the agricultural sector and to sustain the ecological system the Act was enacted to conserve the paddy land and wetland in the State of Kerala. Section 2(xii) very widely defines “paddy land” as all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy, cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals. Section 3 of the Act contains an absolute prohibition on conversion or reclamation of paddy land and it states that on and from the date of commencement of the Act, the owner, occupier or the person in custody of any paddy land

shall not undertake any activity for the conversion or reclamation of such paddy land except in accordance with the provisions of the Act.

6. Despite the absolute prohibition contained in Section 3, the Act makes provision for constitution of Local Level Monitoring Committee, State Level Monitoring Committee and District Level Monitoring Committee for regulated reclamation of paddy land. Reading of the provisions of the Act shows that in a Panchayat area, the District Level Authorised Committee is entitled to grant permission for filling up of paddy land for the construction of residential building in plots of land not exceeding ten cents. However, such permission is subject to the recommendation of the Local Level Monitoring Committee and the Local Level Monitoring Committee has to recommend that such reclamation shall not adversely affect the ecological condition and the cultivation in the adjoining paddy land, that the owner of the paddy land or his family do not own a suitable land for this purpose in that district and that the building to be constructed is for his own purpose and that such paddy land is not situated surrounded by other paddy

lands. These requirements, therefore, show that if an owner of a paddy land or his family owns suitable land for the purpose of construction of a residential building in the district, such owner is not entitled to maintain an application for conversion of filling up paddy land under the Act.

7. Having thus noticed the above provisions of the Act, let us examine the status of the vendor of the appellant. Schedule to Ext.P1 sale deed shows that the vendor of the appellant had owned 29.55 Ares of land, a portion of which is garden land and the remaining paddy land. Though the extent of paddy land and garden land are not disclosed in the documents or pleadings, it is out of the portion which is paddy land, the appellant had purchased the 3.96 Ares of land. Two other persons also have purchased similar plots. It is on that basis, the applications were made before the Local Level Monitoring Committee.

8. The vendor of the appellant, who also owned garden land, could not have maintained an application for conversion under Act 28 of 2008 as he owned suitable land in the district viz. the garden land

mentioned above. It is from such an ineligible person that the appellant and others had purchased the properties and then made the applications, on which the impugned orders were passed. In other words, this is a case where a person who was ineligible to make an application under Act 28 of 2008 for conversion of his paddy land, sold portions of his paddy land to different persons, who knowingly purchased the same, and it was such purchasers, who made the applications for conversion of paddy lands which lead to the orders in question. Therefore, what is sought to be achieved by the sale in favour of the appellant is to nullify and to get over the prohibition of conversion contained in Section 3 of Act 28 of 2008. This circuitous method, if accepted, would be the beginning of a disastrous trend and every owner of paddy land in this State would adopt the same and disappearance or destruction of paddy land is the consequence.

9. According to us, if this kind of transactions are recognised and conversion of paddy land is allowed, that will defeat the very purpose of Act 28 of 2008, which was enacted to conserve the paddy land and wet

land in the State and to restrict the conversion or reclamation of that thereof. We, therefore, fully agree with the learned Single Judge that conversion applied for cannot be permitted under the guise of the sale deed obtained by the appellant. We do not find any reason to interfere with the judgment.

Appeal fails and it is dismissed accordingly.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
P.V.ASHA
JUDGE

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