

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

WP(C).No. 1026 of 2014 (C)

PETITIONER(S):

1. VARGHESE JOHN, AGED 66 YEARS S/O. JOHN HAVING PERMANENT RESIDENCE AT ARINGADA HOUSE, KOMBAZHA DESOM, VANIAMPARA P.O, PANNANCHERY VILLAGE, THRISSUR DISTRICT. REPRESENTED THROUGH HIS BROTHER JOHNSON ABRAHAM, S/O. JOHN, AGED 64 YEARS ARINGADA HOUSE PADINJNAREKADU DESOM, MUDAPPALLOORE P.O PALAKKAD DISTRICT 48

2. ELZY VARGHESE JOHN, W/O. VARGHEE JOHN HAVING PERMANENT RESIDENCE AT ARINGADA HOUSE, KOMBAZHA DESOM, VANIAMPARA P.O, PANNANCHERY VILLAGE, THRISSUR DISTRICT REPRESENTED THROUGH HIS BROTHER JOHNSON ABRAHAM, AGED 48 YEARS S/O. JOHN, ARINGADA HOUSE PADINJNAREKADU DESOM, MUDAPPALLOORE P.O PALAKKAD DISTRICT 48

**BY ADVS. SRI. T. SETHUMADHAVAN (SR.)
SRI. PUSHPARAJAN KODOTH
SRI. K. JAYESH MOHANKUMAR
SMT. VANDANA MENON**

RESPONDENT(S):

- 1. THE STATE OF KERALA REPRESENTED BY THE SECRETARY**
- 2. THE DISTRICT COLLECTOR, CIVIL STATION, AYYANTHOLE, THRISSUR 680 003**
- 3. THE REVENUE DIVISIONAL OFFICER, OFFICE OF THE RDO, THRISSUR 680 003**
- 4. THE TAHSILDAR, TALUK OFFICE, THRISSUR, AYYANTHOLE P.O, THRISSUR 680003**
- 5. THE VILLAGE OFFICER, PUNANCHERY VILLAGE, THRISSUR DISTRICT PIN 680652**
- 6. THE AGRICULTURAL OFFICER, KRISHI BHAVAN, PANANCHERY, PATTIKADU P.O, THRISSUR PIN 680 652**

R1 -R 6 BY GOVERNMENT PLEADER SRI. REFEEK V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE SALE DEED NO 3835/1988 OF THE SRO OLLOKKARA DATED 09-08-1988 PURCHASED BY 1ST PETITIONER

EXHIBIT P2 TRUE COPY OF THE SALE DEED NO 4801/1987 OF OLLUKKARA SRO DT 30-10-1987 PURCHASED BY THE 2ND PETITIONER

EXHIBIT P3 TRUE COPY OF THE ROUGH SKETCH SHOWING THE LIE OF THE PROPERTY OF PETITIONERS

EXHIBIT P4 PHOTO COPY OF THE LAND OF THE PETITIONERS WITH CULTIVATION (5 NUMBERS)

EXHIBIT P5 TRUE COPY OF PETITION SUBMITTED BEFORE RDO BY 1ST PETITIONER DATED 8-04-2012

EXHIBIT P6 TRUE COPY OF PETITION SUBMITTED BEFORE RDO BY 2ND PETITIONER DATED 8-4-2012

EXHIBIT P7 TRUE COPY OF REPLY OF RDO TO 1ST PETITIONER DATED 21-05-2012.

EXHIBIT P8: TRUE COPY OF REPLY OF RDO TO 2ND PETITIONER DATED 21.5.2012.

EXHIBIT P9: TRUE COPY OF CERTIFICATE ISSUED BY 6TH RESPONDENT TO 2ND PETITIONER DATED 8.3.2013.

EXHIBIT P10 TRUE COPY OF CERTIFICATE ISSUED BY 6TH RESPONDENT TO 1ST PETITIONER DATED 08-03-2013

EXHIBIT P11 TRUE COPY OF THE JUDGMENT IN WPC NO 7860/2013-F DATED 5-08-2013 OF THIS HON'BLE COURT

EXHIBIT P12 TRUE COPY OF REPORT SUBMITTED BY THE 5TH RESPONDENT TO THE R2 DATED 10-10-2013

EXHIBIT P13 TRUE COPY OF REPORT SUBMITTED BY THE 5TH RESPONDENT TO THE R2 DATED 17-10-2013

EXHIBIT P14 TRUE COPY OF REPORT SUBMITTED BY THE RESPONDENT TO THE R2 DATED 08-10-2013

EXHIBIT P15 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 19-10-2013

RESPONDENT(S)' EXHIBITS

EXT R2(A):COPY OF BTR

EXT. R2(B):COPY OF THE DATA BANK

/TRUE COPY/

P.V.ASHA, J.

=====

W.P.(C). No.1026 OF 2014

=====

Dated this the 17th day of June, 2015

JUDGMENT

The petitioners who are desirous of cultivating their land, initially approached the RDO by submitting Exts.P5 and P6 representations requesting for appropriate orders, so as to enable them to cultivate their lands after levelling the property to that of the adjacent land and by providing necessary drainages. It was pointed out that the the land was not cultivable as some of the portions were waterlogged and that there are seasonal crops, permanent cash crops and coconut trees of more than 40 years of age in the said property. The representations were rejected as per Exts.P7 and P8 orders on 21.5.2012, informing that he does not have jurisdiction to grant permission.

2. The Village Officer as well as the Agricultural Officer, after inspecting the properties of the petitioners issued Exts.P9 and P10 reports to the effect that as per the entries in the Data Bank maintained in the agricultural office, the

property owned by the 1st petitioner is described as 'cultivation of coconut tress'. In Ext.P10 the property of the 2nd petitioner was described as 'house, nilam and barren', as per the entries in the Data Bank maintained in the Agricultural Office. But the petitioners did not get permission to level their properties to undertake cultivation. Therefore, they approached this court in Writ Petition No.7860/2013 seeking direction to respondents to grant the necessary permission. This court by Ext.P11 judgment directed as follows:-

“After hearing both the sides, this Court finds that the matter requires to be considered by the District Collector as to whether the property is a 'paddy land' or a 'wet land', as defined under Sections 2(2) or 2(18) of the Act 28 of 2008. It shall be considered after conducting a spot inspection to ascertain the physical nature of the property and also with reference to the entries in Exts.P2 and P4 title deeds executed as early as in the year 1988. If the property is actually not a paddy land or a wet as on the date of commencement of the Act 28 of 2008, further proceedings are required to be pursued in accordance with the relevant provisions of the Kerala Land Utilization Order or in view of the law declared by this Court as a decision reported in *Praveena v Land Revenue Commissioner* (2010 (2) KLT 617).”

3. The District Collector conducted a hearing and passed Ext.P15 order rejecting the request of the

petitioners.

4. It is the specific case of the petitioner that no inspection was conducted as directed by this court in paragraph 7 of the judgment before passing orders. The petitioners produced Exts.P12 and P14 reports of the Village Officer recommending grant of permission to the petitioners to carry out any other cultivation in the property, pointing out that the paddy cultivation has not been carried out in the property of the petitioners where there are coconut trees of more than 35 years of age. Because of the waterlogged area cultivation cannot be conducted.

5. I heard the learned Senior counsel appearing for the petitioners and learned Government Pleader.

6. The 2nd respondent has filed a counter affidavit justifying Ext.P15 order. The District Collector, after calling for the reports from the Agricultural Officer as well as the Village Officer, found that the land was already converted without getting permission. and therefore permission to level the land was not found necessary since coconut and arecanut trees were found to be in cultivation for the last about 24 years. Paddy cultivation was not seen carried out

in the property or in the nearby property. It was found that the reclamation of the land was in violation of the Kerala Land Utilisation Order 1967.

7. It is seen that the District Collector has not issued orders in terms of the directions contained in the judgment by conducting a spot inspection. It is also clear that the physical nature and lay of the property were not taken into consideration while passing Ext.P15 order. When the Data Bank has shown the description of the property of the petitioners as coconut trees as well as barren land, and others, the District Collector ought to have considered the request of petitioners, to level their property to enable them to carry out cultivation.

8. The RDO had earlier rejected the representations submitted by the petitioners for permission to level his land, saying that he does not have jurisdiction for the same. Now that the District Collector has found that the land is already reclaimed about 24 years ago and the Data Bank describes the nature of the property as coconut land etc,. The reclamation is found in violation of Kerala Land Utilisation Order. Therefore it is only appropriate for the competent

authority under the Kerala Land Utilisation Order–the RDO to re–consider the representations of petitioners, with reference to the entries made as to nature of the land in the data bank and to issue orders regularising the reclamation and granting necessary permission to level the land of petitioners, so as to enable them to undertake cultivation.

In the above circumstances I quash Ext P15 to the extent it rejects the representation of petitioners to level their lands. The 3rd respondent–Revenue Divisional Officer, Trissur– is directed to re–consider the representations Exts. P5 and P6, with notice to petitioners and to pass appropriate orders, taking note of Exts. P9 and P10 reports, within a period of 1 month from the date of receipt of a copy of the judgment.

Accordingly, this writ petition is disposed of.

P.V.ASHA, JUDGE