

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 1410 of 2014 (A)

PETITIONER:

**SIDHEEQUEL AKBAR,
S/O. MOHAMMED ASHRAF, KOTTUPURATH HOUSE,
CHERUVADI P.O., PIN-673661, KOZHIKODE TALUK
KOZHIKODE DISTRICT.**

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
KOZHIKODE, KOZHIKODE P.O., PIN-673001
KOZHIKODE DISTRICT.**
- 2. THE AGRICULTURAL OFFICER KODIYATHOOR,
KODIYATHOOR P.O., PIN-673602, KOZHIKODE DISTRICT.**
- 3. THE VILLAGE OFFICER KODIYATHOOR,
KODIYATHOOR P.O., PIN-673602, KOZHIKODE DISTRICT.**
- 4. THE KODIYATHOOR GRAMA PANCHAYATH
REPRESENTED BY IT SECRETARY, KODIYATHOOR P.O.
PIN-673602, KOZHIKODE DISTRICT.**

**R1 to R3 BY GOVERNMENT PLEADER
R4 BY ADV. SRI.K.A.SALIL NARAYANAN SRI.P.K.SOYUZ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

vmr.

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1- A TRUE COPY OF THE POSSESSION CERTIFICATE OF THE PETITIONER
DATED 25-03-2013.**

EXHIBIT P2- A TRUE COPY OF THE JUDGMENT IN WPC 12200/2013 DATED 23-05-2013.

**EXHIBIT P3- A TRUE COPY OF THE LAND RELINQUISHMENT APPLICATION FILLED UP
AND SUBMITTED BY THE PETITIONER HEREIN DATED 18-10-2013.**

**EXHIBIT P4- A TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT
DATED 21-12-2013.**

RESPONDENT(S)' EXHIBITS :

**EXHIBIT R1(A)- TRUE COPY OF THE LETTER NO.112/13 DATED 18/10/2013 OF THE 3RD
RESPONDENT.**

EXHIBIT R1 (B) - TRUE COPY OF THE RELEVANT PAGE OF THE DATA BANK.

EXHIBIT R1 (C) - TRUE COPY OF THE RELEVANT PAGE OF THE REGISTER.

/TRUE COPY/

P.S.TO JUDGE

vmr.

K. VINOD CHANDRAN, J.

W.P.(C) No. 1410 of 2014 (A)

Dated this the 28th day of July, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P4 order passed by the District Collector. By Ext.P4 the petitioner was interdicted from digging a pond in his land, which admittedly is a paddy land; so maintained and so described in the Basic Tax Register as also included in the Data Bank prepared under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (for brevity 'Act of 2008').

2. The petitioner's submission is that there is acute drinking water shortage in the area and the petitioner also needs water for cultivation of his land. The petitioner hence, considering the public need, had relinquished two cents of property by Ext.P3 and the Village Officer also had recommended the digging of the pond, as is evident at Ext.R1(a) produced by the State itself. Ext.R1(a) is also referred to in Ext.P4 at reference no.3. However, despite

the need projected by the Village Officer, the Collector has passed the order rejecting sanction.

3. I have heard the learned counsel for the petitioner, the learned Standing Counsel for the Panhayath as also the learned Special Government Pleader appearing for the State.

4. The Special Government Pleader, in fact, would submit that the relinquishment has not been done in the proper manner and the petitioner is intending to dig a pond in his property on the premise that it is for a public need. The same is not permissible under the Act of 2008, is the specific contention.

5. Though, the petitioner would refer to Clause XII of definition 2 of the Act of 2008, to contend that 'paddy land' includes ponds, this Court is of the opinion that, that does not enable anyone to dig a pond in the paddy land and it only indicates that an already existing pond cannot be filled up since it falls under the definition of a paddy land as defined under the Act of 2008.

6. Definitely, the Panchayath would be able to make an application, as provided under Section 10 of the Act of 2008 and Rule 5 of the Rules. However, for the said purpose, the initial relinquishment made in favour of the Local Self Government Institution would have to be placed before the R.D.O., for accepting the same under the Land Relinquishment Act and Rules, 1958. After that, the petitioner could move the Local Level Monitoring Committee (LLMC) with an application under Section 10 of the Act of 2008 and the LLMC would then have to make a recommendation to the State Level Monitoring Committee which will have to consider the issue of exemption.

In such circumstance, leaving open such remedy to the Panchayath, the writ petition would stand closed. It is made clear that the petitioner, by himself, cannot make any excavation on the land for digging a pond and cannot also claim any exemption for public purpose.

Sd/-
K.VINOD CHANDRAN,
JUDGE