

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C) .NO. 5904 OF 2012 (K)

PETITIONER:

M.P.PAUL
AGED 48, S/O.M.D.PAULOSE, MANJOORAN HOUSE,
KODAPUZHA, NEAR CHURCH, CHALAKUDY P.O.
THRISSUR DISTRICT.

BY ADV. SMT.M.R.REENA

RESPONDENTS:

1. THE STATE OF KERALA
REP.BY THE SECRETARY TO THE GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE CHALAKUDY MUNICIPALITY
REP.BY ITS SECRETARY, CHALAKUDY P.O.,
THRISSUR DISTRICT-680 001.
3. THE CONVENER
LOCAL LEVEL MONITORING COMMITTEE
CHALAKUDY MUNICIPALITY, CHALAKUDY P.O.
THRISSUR DISTRICT-680 306.

R2 BY ADV. SRI.M.P.ASHOK KUMAR
R2 BY ADV. SRI.S.A.ABDUL SALEEM
R2 BY ADV. SRI.M.R.DHANIL
R2 BY ADV. SMT.K.B.FAZEELA
RR3 BY ADV. GOVERNMENT PLEADER, SRI. RAFAEEK V.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 A TRUE COPY OF THE TAX RECEIPT IN THE NAME OF THE PETITIONER AND HIS WIFE ISSUED BY THE PADINJARE CHALAKUDY VILLAGE OFFICER DATED 3-2-2012.
- EXT.P2 A TRUE COPY OF THE REQUEST OF THE PETITIONER AND HIS WIFE DATED 11-3-09 BEFORE THE REVENUE DIVISIONAL OFFICER, THRISSUR.
- EXT.P3 A TRUE COPY OF THE DOCUMENT BEARING NO. 6814 OF 2006 OF THE CHALAKUDY SUB REGISTRAR OFFICE DATED 6-11-06.
- EXT.P4 A TRUE COPY OF THE DOCUMENT BEARING NO. 1569/06 DATED 10-3-06 OF THE CHALAKUDY S R O.
- EXT.P5 A TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER, KIZHAKE CHALAKUDY VILLAGE OFFICE DATED 21-5-09.
- EXT.P6 A TRUE COPY OF THE REQUEST OF THE PETITIONER AND HIS WIFE BEFORE THE REVENUE DIVISIONAL OFFICER, THRISSUR DATED 20-5-09.
- EXT.P7 A TRUE COPY OF THE ORDER PASSED BY THE REVENUE DIVISIONAL OFFICER, THRISSUR DATED 20-6-09.
- EXT.P8 A TRUE COPY OF THE ORDER PASSED IN WPC NO. 18385 OF 2009 DATED 15-3-2010 OF THIS HON'BLE COURT.
- EXT.P9 A TRUE COPY OF THE JUDGMENT IN CONTEMPT CASE NO. 738 OF 2010 DATED 15-7-2010 OF THIS HON'BLE COURT.
- EXT.P10 A TRUE COPY OF THE REQUEST OF THE PETITIONER DATED 6-1-2011 BEFORE THE CHIEF EXECUTIVE OFFICER, FISH FARMERS DEVELOPMENT AGENCY, THRISSUR.
- EXT.P11 A TRUE COPY OF THE REQUEST OF THE PETITIONER BEFORE THE REVENUE DIVISIONAL OFFICER, THRISSUR DATED 21-1-2011.
- EXT.P12 A TRUE COPY OF THE ORDER PASSED BY THE REVENUE DIVISIONAL OFFICER DATED 14-11-2011.
- EXT.P13 A TRUE COPY OF THE REQUEST OF THE PETITIONER BEFORE THE SECOND AND THIRD RESPONDENTS DATED 4-2-2012.
- EXT.P14 A TRUE COPY OF THE GUIDELINES ISSUED BY THE FISHERIES DEPARTMENT DATED NIL.
- EXT.P15 A TRUE COPY OF THE ORDER OF THE THIRD RESPONDENT DATED 27-2-2012.
- EXT.P16 A TRUE COPY OF THE DECISION TAKEN BY THE MUNICIPALITY, CHALAKUDY DATED 16.06.2009.

:2:

WP(C) .NO. 5904 OF 2012 (K)

ADDITIONAL EXT.P17	TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER PADINJARE (WEST) CHALAKUDY DATED 18.02.2008 WHICH IS REFERRED IN W.P.(C) 13825/2008.
ADDITIONAL EXT.P18	TRUE COPY OF COMMON JUDGMENT OF W.P.(C) 18385/2009 & W.P.(C) 13420/2010 DATED 14.01.2011.
ADDITIONAL EXT.P19	TRUE COPY OF THE INTERIM ORDER PASSED IN W.P.(C) 28811/2009 AGAINST THE MUNICIPALITY, R2.
ADDITIONAL EXT.P20	TRUE PHOTOGRAPHS OF THE PETITIONER'S PROPERTY, WERE TAKEN IN THE PRESENCE OF THE ADVOCATE COMMISSION DATED 11.10.2015.
ANNEXURE A1	TRUE COPY OF PHOTOGRAPHS (6 NOS.) OF THE PROPERTY OF THE PETITIONER.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.5904 of 2012

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Dated this the 28th day of October, 2015

J U D G M E N T

The petitioner and his wife are the owners in possession and enjoyment of the property having an extent of 0.6382 hectares comprised in survey Nos. 388, 389, 390/1, 390/4, 396 of Padinjare Chalakudy Village. They have purchased the said property, by virtue of Exts.P3 and P4 sale deeds of the year 2006. Way back in the year 2009, they have submitted an application before the Revenue Divisional Officer, stating that they intent to conduct fish farming in the said property. But, their intention cannot be materialised, unless the clay is removed from some sort of pond in the said land. The Revenue Divisional Officer granted permission to remove the clay from the said land on condition that the excavated clay must be deposited in the ridges of the same property. Aggrieved by the said condition, they filed Writ

-: 2 :-

Petition No.18385 of 2009, before this Court and this Court relaxed the condition by permitting them to deposit the excavated clay in any of the petitioner's properties. Now the grievance of the petitioner is that he intent to expand the fish farming in association with Malsyafed by expending a huge amount. But, because of the interruption in the ridges and the bund and the rain water flows into the pond created deposits of clay, the fish farming is not feasible, unless such deposits and interruptions caused by the deposits of clay must be removed from the pond. The Revenue Divisional Officer rejected the application, on a finding that this land included in the data bank of that village as paddy land and the Local Level Monitoring Committee constituted under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (*hereinafter referred to as 'the Act'*) is the competent authority to grant permission to make any kind of conversion in the said land. Consequently, the petitioner filed an application before the

-: 3 :-

Local Level Monitoring Committee, seeking permission to remove the deposits of clay from the said land. The Local Level Monitoring Committee, after inspecting the property, passed Ext.P15 order refusing permission to remove deposits of clay from the said land. The legality and propriety of this order is subjected to judicial review under Article 226 of the Constitution of India, in this Writ Petition.

2. The 3rd respondent filed a counter affidavit stating that the Agricultural Officer of the village in which the land is situating prepared data bank draft in July, 2010 and according to this draft, the petitioner's property is included as 'paddy land'. Even though, the petitioner has personally perused this data bank from the office, no objection was filed against the inclusion of his property in the category of 'paddy land'. There was a civil suit regarding this property as O.S. No.603/2010 before the Munsiff's Court, Chalakudy, and in that suit, a decree was passed against the petitioner restraining him from removing the soil from the said

-: 4 :-

property, without permission of the competent authority. It is also submitted that there is no *bona fides* in the alleged desire to start large scale fish farming in association with Malsyafed and the real intention of the petitioner is to excavate clay from his property to his tile manufacturing unit.

3. The 2nd respondent also filed a counter affidavit stating that the real intention of the petitioner is to extract clay for commercial purpose from his property and transport it to his tile factory namely 'Manjooran Tile Factory' situated in Ward No.14 of the Municipality and he had constructed a new road for the purpose of taking lorry for removal of clay in the said property. That apart, the petitioner has earlier filed W.P.(C) No. 13420/2010 seeking an order granting police protection for the removal of clay from this property to his tile factory and this Court dismissed the said Writ Petition, on a finding that the land, in question, is not a pond and it is a paddy land and the real

-: 5 :-

intention of the petitioner is to extract clay. The question to be considered in this Writ Petition is, whether there is any reason to interfere with Ext.P15 order passed by the 3rd respondent, rejecting the application seeking permission for deepening, widening and excavating soil from the entire property, so as to make it suitable, for fish farming.

4. Going by the impugned order, it is seen that the members of the 3rd respondent, Local Level Monitoring Committee have inspected the property and found that the said land is lying as a 'paddy land' and the same is included in the category of paddy land in the data bank. The 3rd respondent has specifically observed that the property, which is said to be converted for fish farming, is a paddy land and it will not come under the category of 'fish pond'. The Committee apprehended that if the application is allowed and the present lie of the land is converted, the same will affect the ecological status of the land and it will affect the surroundings of paddy lands, as the petitioner's

-: 6 :-

land is situated in the middle of a large extent of paddy land. It is also observed that it will specifically affect the environmental texture of the area, wherein the property is situated.

5. Going by the averments in the counter affidavits filed by the 2nd and 3rd respondents, it is seen that earlier, the petitioner has obtained a conditional order, for removing the soil from the same property and thereafter, he filed a Writ Petition before this Court as W.P(C) No.13420 of 2010, seeking an order granting police protection for the removal of clay from this land to his tile factory and the same was rejected by this Court vide Order dated 14.01.2011. It is pertinent to note that, in the above order, this Court specifically observed that the land, in question, is not a 'fish pond' and it is a 'paddy land' only and no permission can be granted without considering the play of the Act. Here, the specific contention of the 2nd respondent that the attempt of the petitioner to extract clay from the paddy field, by

-: 7 :-

describing the 'paddy land' as 'fish pond' and under the guise of the order, the real intention is to remove clay from the land to his tile factory assumes significance and cannot be brushed aside.

6. Indisputably, the land, in question, forms part of a large extent of padasekharam and the same is situated in the middle portion. Going by Section 5 of the Act, the 3rd respondent is the competent authority to determine and identify the paddy land in the village and in exercise of the power under Section 5, the 3rd respondent has inspected the property and found that the land, in question, was a cultivable one and now left uncultivated. Going by the Act, it is seen that there are provisions in the said Act to compel the owner of the land, who left the paddy land uncultivated. Therefore, even if the land is lying uncultivated, the authorities under the Act have the power to see that the paddy land, which is left uncultivated is cultivated, in exercise of the power under Sections 16 and 17 of the Act.

-: 8 :-

7. Moreover, this Court deputed to an Advocate Commission to ascertain the present lie of the land and the Commissioner has reported that even though, this land and surrounding lands are waterlogged and having some pits, all of them gave appearance of a paddy land. On an over all reading of the commission report, it is discernible that this land, in dispute, is a paddy land left uncultivated for a long period of time. As stated above, Sections 16 and 17 of the Act, provide sufficient remedies to make this type of uncultivated land is cultivated. In view of the commission report, and over all analysis of the sequence of events from the earlier round of litigation, this Court is also constrained to reinforce the finding of the Monitoring Committee that the ultimate aim of the petitioner is to use the clay, for his tile factory under the guise of deepening the land, for fish farming.

8. Therefore, I find that there is no *bona fides* in the application, seeking permission for deepening and widening

-: 9 :-

of the land by removal of clay from the land. So also, there is no reason to interfere with the findings of the 3rd respondent in Ext.P15 order.

This Writ Petition is dismissed accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge