

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 8440 of 2009 (Y)

PETITIONER :

LEKHA PRAKASH
W/O.PRAKASH, AGED 29,
PAVITHRA, PIRAVATHOOR P.O.,
PUNALUR.

BY ADVS.SRI.S.SREEKUMAR
SRI.P.MARTIN JOSE
SRI.T.M.JAFFERKHAN

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
LOCAL SELF GOVT. (RA) DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.
2. THE REVENUE DIVISIONAL OFFICER,
KOLLAM.
3. THE SECRETARY,
PIRAVANTHOOR GRAMA PANCHAYATH,
VETTITHITTA P.O., PIRAVANTHOOR
KOLLAM DIST., PIN-689696.

*ADDL. R4 IMPEADED

*ADDL. R4. SHANAVAS
S/O. SOMASUNDARAM
KISSAN BHAVAN, POOVANUMMOODU
PIRAVANTHOOR P.O., PUNALUR
PATHANAPURAM TALUK
KOLLAM DISTRICT – 680 696.

*IS IMPEADED VIDE ORDER DATED 02/04/09 IN IA NO. 4672/09.

R1 & R2 BY SR. GOVT. PLEADER SRI. C.R. SYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF BUILDING PERMIT ISSUED BY 3RD RESPONDENT DATED 5-11-2008.
- EXT.P2 COPY OF ORDER DATED 24-11-2008 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3 COPY OF ORDER DATED 27-11-2008 ISSUED BY 1ST RESPONDENT.
- EXT.P4 COPY OF REPORT DATED 24-12-2008 OF THE TAHASILDAR DATED 24-12-2008.
- EXT.P5 COPY OF SKETCH SUBMITTED BY THE TAHASILDAR.
- EXT.P6 COPY OF ORDER DATED 19-1-2009 ISSUED BY 1ST RESPONDENT.
- EXT.P7 COPY OF BUILDING PERMIT ISSUED BY 3RD RESPONDENT DATED 6-2-2009.
- EXT.P8 COPY OF STOP MEMO DATED 18-2-2009 ISSUED BY 2ND RESPONDENT.
- EXT.P9 COPY OF DETAILED OBJECTION DATED 20-2-2009 FILED BY PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS :

- EXT.R1(a) : COPY OF THE MAHAZAR PREPARED BY THE VILLAGE OFFICER, PIRAVANTHOOR DATED 10-12-2007.
- EXT.R1(b) COPY OF THE MAHAZAR PREPARED ON 21.1.2008, REGARDING THE SEIZURE OF TIPPER LORRY BY THE TAHSILDAR'S SQUAD.

(Contd...)

- EXT.R1(c) COPY OF GOVERNMENT CIRCULAR NO. 45846/R.A.1/08/LSGD DATED 31.7.2008.
- EXT.R1(d) COPY OF PROCEEDINGS NO. S3-62789/2008 DATED 2.1.2009 OF THE DISTRICT COLLECTOR, KOLLAM.
- EXT.R1(e) COPY OF THE REPORT OF THE AGRICULTURAL OFFICER, PIRAVANTHOOR REGARDING THE SITE INSPECTION CONDUCTED ON 23.1.2009.
- EXT.R1(f) COPY OF REVIEW PETITION DATED 28.1.2009 SUBMITTED BEFORE THE GOVERNMENT TO REVIEW EXHIBIT P6 ORDER.
- EXT.R1(g) COPY OF PETITION DATED 17.2.2009 SUBMITTED BEFORE THE REVENUE DIVISIONAL OFFICER, KOLLAM.

//TRUE COPY//

P.S. TO JUDGE

Mn

A.M. SHAFFIQUE, J.

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W.P. (C) No. 8440 of 2009

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Dated this, the 27th day of October, 2015

J U D G M E N T

Petitioner is the owner of 40 cents of land in Sy.Nos.308/2/1, 308/3; 566/1/128 and 566/1/129 of Piravanthoor village. She has approached this Court challenging Ext.P8 by which stop memo had been issued by the Revenue Divisional Officer stating that the construction of building is against the provisions of the Kerala Land Utilization Order.

2. Petitioner submits that earlier also similar issue had arisen and a stop memo had been issued wherein allegation was that petitioner had encroached into puramboke land. Measurement was conducted and ultimately it was found that there was no encroachment. Thereafter also, building permit has been issued as per Ext.P7. When petitioner started construction and reached up to lintel level, Ext.P8 order had been issued. Petitioner submits that it is neither a paddy field or wet land as contemplated under the provisions of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 and no food crop was being

cultivated in the property to attract Kerala Land Utilisation Order, 1967.

3. Counter affidavit has been filed by the 2nd respondent *inter alia* stating that initially stop memo had been issued to enquire whether there is any encroachment into the puramboke land. Later the same was clarified. Further, it is stated that no sanction was given by the Revenue Divisional Officer for reclamation of paddy land and there is violation of Kerala Land Utilisation Order, 1967 and also of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. It is stated in para 7 of the counter affidavit that *"But the Government stayed the construction work based on the petition filed by the additional 4th respondent in which it is alleged that the above wet land was converted without permission of Revenue Divisional Officer"*.

4. Kerala Land Utilisation Order applies only in instances where the property is being utilized for cultivation of a food crop. If it is a wet land, which was later on filled, the provisions of Kerala Land Utilisation Order, 1967 will not apply. The provision that applies would be the Kerala Conservation of Paddy Land and Wet Land Act, 2008, which came into force only in the year 2008.

-:3:-

Even according to the respondents, the data bank entries disclose that the property is described as reclaimed paddy land. If it is wet land and reclaimed prior to the 2008 Act coming into force, definitely the provisions of 2008 Act have no application.

5. There is no clarity on the fact as to whether the property was originally a paddy land or not. Even according to the Government, it was a wet land filled without permission from the Revenue Divisional Officer, which apparently is not required.

Under such circumstances, I am of the view that Ext.P8 is without any basis and is liable to be set aside. Accordingly, I do so and the writ petition is allowed to the above extent.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

28/10/2015

//True Copy//

PS to Judge