

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No.4346 of 2015 (P)

PETITIONERS:

1. **MR.VIJAYAN,AGED 56 YEARS,
S/O.CHANDRASHEKHARAN KARTHA,
NOW RESIDING AT V-LINE VIHAR,SANTHI NAGAR-74,
VELLOORKUNNAM,MARKET ROAD,MUVATTUPUZHA - 686 673.**
2. **SALINI VIJAYAN,AGED 54 YEARS,W/O.V.S.VIJAYAN
V-LINE VIHAR,SANTHI NAGAR-74,VELLOORKUNNAM,
MARKET ROAD,MUVATTUPUZHA - 686 673.**

**BY ADVS.SMT.JEENA JOSEPH
SRI.G.D.PANICKER**

RESPONDENTS:

1. **DISTRICT COLLECTOR,ERNAKULAM,PIN - 682 030.**
2. **REVENUE DIVISIONAL OFFICER,
FORT COCHIN,PIN-682 001.**
3. **VILLAGE OFFICER,CHOWARA,ALWAYE,PIN-683 101.**
4. **THE LOCAL LEVEL MONITORING COMMITTEE,
SREEMOOLANAGARAM GRAMA PANCHAYATH,
ALWAYE TALUK,REPRESENTED BY ITS CONVENOR,
AGRICULTURAL OFFICER,KRISHI BHAVAN,
SREEMOOLANAGARAM-683 101**

R1 TO R3 BY SPECIAL GOVT. PLEADER SRI.P.K.SOUZ (REVENUE).

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

EXT.P1 - A TRUE PHOTOCOPY OF THE PURCHASE DEED 2336/2008.

EXT.P2 - A TRUE PHOTOCOPY OF THE PURCHASE DEED 2337/2008.

EXT.P3 - A TRUE PHOTOCOPIES OF THE TAX RECEIPTS ISSUED BY THE 3RD RESPONDENT VILLAGE OFFICE.

EXT.P4 - A TRUE PHOTOCOPIES OF THE TAX RECEIPTS ISSUED BY THE SREEMOOLANAGARAM PANCHAYATH FOR THE PAYMENT OF PROPERTY TAX.

**EXT.P5 - A TRUE PHOTOCOPY OF THE APPLICATION GIVEN BY THE PETITIONER
ON 26-12-2014.**

EXT.P6 - A TRUE PHOTOCOPY OF THE APPLICATION SUBMITTED TO THE 3RD RESPONDENT.

EXT.P7 - A TRUE PHOTOCOPY OF THE APPLICATION ON 26-1-2015 BEFORE THE RDO, FORT KOCHI.

EXT.P8 - A TRUE PHOTOCOPY OF THE LETTER DATED 6-2-2015

NIL

//TRUE COPY//

P.S. TO JUDGE

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P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.4346 OF 2015

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Dated this the 19th day of February, 2015

JUDGMENT

The petitioners have approached this Court with the following prayers:

"(i) To issue a writ of mandamus or any other appropriate writ or direction or order directing the 2nd respondent to consider and pass orders on Exhibit P7 on the basis of the Data bank entry and Land Utilization Order, 1967 to grant permission to use the land for any other purposes, as expeditiously as possible;

(ii) To declare that the petitioners property measuring 1 acre 3 cents in re-survey No.295/21, 295/22, 295/23, 295/24 in Alwaye Taluk, Chowara Village is dry land/purayidam as evidenced by Data Bank entry of the 4th respondent;

(iii) To direct the 2nd respondent to correct the BTR records of the petitioners property as dry land; and

(iv) To pass such any other order or direction which are deemed fit and fair in the circumstances of the case."

2. The learned counsel appearing for the petitioners submits with reference to the materials on record, that the properties covered by Exts.P1 to P4 owned, possessed and enjoyed by the petitioners are pucca dry land and it is not a paddy land or wet land as defined under Act 28 of 2008. It is stated that since the property is not a paddy land or wet land, the provisions of Act 28 of 2008 are not attracted and the petitioners can make use of the property for other purposes than agricultural purposes. It is with this intent, that the petitioners have already moved the 2nd Respondent by filing Ext.P7 application under the Kerala Land Utilization Order, which is still to be acted upon. There is also a prayer to cause the B.T.R to be corrected giving appropriate direction to the 2nd respondent.

3. The learned Special Government Pleader, on instructions, submits that the idea and understanding of the petitioners is not correct and the property has actually been included in the draft data bank register as paddy land. If the version of the petitioners is that such an endorsement came to be wrongly made, on the basis of misconceived facts, then the matter has to be considered by the 4th Respondent.

4. In the above circumstances, the petitioners are set at liberty to file an application before the 4th Respondent, if at all their property came to be included wrongly in the draft data bank register, so as to have the same excluded. This shall be done within a period of 'two weeks' from the date of receipt of a copy of this judgment. If any such application is filed, a site inspection shall be conducted by the 4th respondent with notice to the petitioners and appropriate orders have been passed in accordance with law and also taking note of the observations made by the Division Bench of this Court in the decision reported in '**Adani Infrastructure & Developers Pvt. Ltd. v. State of Kerala**' [2015 (1) KLT 651].

5. The writ petition stands disposed of accordingly.

The petitioners shall produce a copy of the judgment along with a copy of the writ petition before the 4th respondent for further action.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

//true copy//

P.S. to Judge

St/-