

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C) .No. 8725 of 2012 (M)

PETITIONER(S) :

1. MANOJ KUMARA KURUP, AGED 38 YEARS,
EDASSERRYATH, PATHIYOOR P.O., KEERIKKADU VIA,
MENAMPALLY, CHETTIKULANGARA, MAVELIKARA,
ALAPPUZHA DISTRICT.

2. PRAMOD KUMAR KURUP,
EDASSERRYATH, PATHIYOOR P.O., KEERIKKADU VIA,
MENAMPALLY CHETTIKULANGARA, MAVELIKARA,
ALAPPUZHA DISTRICT.

BY ADVS.SRI.VAKKOM N.VIJAYAN
SMT.V.RENJU
SRI.P.ANIYAN
SMT.M.A.RAMITHA

RESPONDENT(S) :

1. THE DISTRICT COLLECTOR,
ALAPPUZHA DISTRICT, MULLAKKAI P.O., PIN-688011.

2. THE REVENUE DIVISIONAL OFFICER,
CHENGANNUR, ALAPPUZHA DISTRICT, PIN-689121.

3. THE REVENUE DIVISIONAL OFFICER,
ALAPPUZHA, ALAPPUZHA DISTRICT, PIN-688001.

4. VILLAGE OFFICER,
PERINGALA VILLAGE, ERAZHA SOUTH, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT, PIN-690106.

5. THE LOCAL LEVEL MONITORING COMMITTEE,
PERINGALA REPRESENTED BY AGRICULTURAL OFFICER,
KRISHI BHAVAN, CHETTIKULANGARA, MAVELIKARA-690106.

6. SECRETARY, CHETTIKULANGARA GRAMA PANACHAYAT,
CHETTIKULANGARA P.O., MAVELIKARA-690106.

R3 BY GOVERNMENT PLEADER SRI.ABDUL SALAM S.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS:

- EXT.P1- TRUE COPY OF THE SALE DEED NO.2093/2011 DATED 5-09-2011 OF BHARANIKKAVU P.O.
- EXT.P2- TRUE COPY OF THE SALE DEED NO.2096/2011 DATED 5-09-2011 OF BHARANIKKAVU SRO
- EXT.P3- TRUE COPIES OF THE PHOTOGRAPHS SHOWING THE NATURE OF PROPERTIES
- EXT.P4- TRUE COPY OF THE REPRESENTATION DATED 19-11-2011 SUBMITTED BY THE 1ST PETITIONER TO THE 2ND RESPONDENT
- EXT.P5- TRUE COPY OF THE REPRESENTATION DATED 19-11-2011 SUBMITTED BY THE 2ND PETITIONER TO THE 2ND RESPONDENT.
- EXT.P6- TRUE COPY OF THE MINUTES OF THE PRADESHIKA SAMITHI
- EXT.P7- TRUE COPY OF THE REPORT OF THE AGRICULTURAL OFFICER ALONG WITH THE FORWARDING LETTER TO THE 2ND RESPONDENT.
- EXT.P8- TRUE COPY OF THE LETTER DATED 14-03-2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONERS REJECTING THEIR REQUEST.
- EXT.P9- TRUE COPY OF THE LETTER DATED 22-3-2012 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.
- EXT.P10- TRUE COPY OF CIRCULAR NO.4545/R A.1/11/LSGD DATED 22-1-2011
- EXT.P11- TRUE COPY OF THE REPORT DATED 21-2-2012 ISSUED BY THE 4TH RESPONDENT TO THE 1ST PETITIONER.
- EXT.P12- TRUE COPY OF THE REPORT DATED 21-2-2012 ISSUED BY THE 4TH RESPONDENT TO THE 2ND PETITIONER.
- EXT.P13- TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED TO THE 1ST PETITIONER DATED 13-03-2012 ISSUED BY THE 6TH RESPONDENT.
- EXT.P14- TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED TO THE 2ND RESPONDENT DATED 13-03-2012 ISSUED BY THE 6TH RESPONDENT.
- EXT.P15- TRUE COPY OF THE LETTER DATED 23-3-2012 ISSUED BY THE LIC TO THE 1ST PETITIONER.

RESPONDENTS' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.8725 of 2012

Dated this the 12th day of November, 2015.

JUDGMENT

The petitioners are aggrieved by Exts.P8 & P9 orders rejecting their application for reclassification of their property having an extent of 2.33 Ares (5.5 cents) each in Re-Sy.No.276/7 and 276/8 of Peringala Village, which would fall under the revenue jurisdiction of the 2nd respondent. It is the case of the petitioners that actually their property is lying as garden land and not as 'Nilam'. But, unfortunately, in all the revenue records, the property is shown as 'Nilam' instead of its actual lie. For availing of a loan from the HDFC Bank, they filed Exts.P4 & P5 representations before the 2nd respondent for reclassification of their property as Purayidam and the 2nd respondent called for report from the competent authorities. Pursuant to that, all the competent authorities under the Kerala Land Utilisation Order as

well as Kerala Conservation of Paddy Land and Wet Land Act, 2008 unanimously filed a report by Exts.P6 & P7 stating that their property has been lying as 'Purayidam' since the last more than 20 years and trees, having age of more than 20 years, are standing in the property. In spite of the recommendation made by all the inferior authorities under the relevant statute stating the actual lie of the land, the 2nd respondent rejected the application on the ground that he has no power to re-classify the said land under the Kerala Land Utilisation Order. This is the grievance projected in this writ petition.

2. Heard the learned counsel for the petitioner s and the learned Government Pleader and perused the documents submitted along with this writ petition.

3. Going by the records produced in support of the averments in the writ petition, it is seen that all the competent authorities under the Kerala Land Utilisation Order as well as Kerala Conservation of Paddy Land and Wet Land Act, 2008, who are inferior to the 2nd respondent, have reported that the petitioners'

property is lying as 'Purayida' since the last more than 20 years and the trees having more than 20 years are standing in the said property. Therefore, there is no doubt in my mind as regards the nature of the land for which re-classification is sought for. But going by Exts.P8 & P9 orders, it is seen that the 2nd respondent has rejected the request for re-classification on the ground that as per the existing law the 2nd respondent has no power to make such a re-classification considering the actual lie of the land on the ground. So, the point to be considered is, whether the 2nd respondent has power to re-classify the land on the basis of the recommendation made by all the statutory inferior authorities under the Kerala Land Utilisation Order.

4. Admittedly, even if the property was a paddy land, it stands undisputed that the property had been reclaimed before 20 years; that is, before the commencement of Kerala Conservation of Paddy Land and Wet Land Act, 2008. Then the matter in issue as regards re-classification falls under the Kerala Land

Utilisation Order. The Supreme Court has clarified the power of the District Collector/RDO under clause 2 (a) of the Land Utilisation Order, in the judgment in Revenue Divisional Officer v. Jalaja Dileep [2015(1) KLT 984 (SC)], which reads as follows:

“ “Paddy land” and “Wetlands” are defined under Section 2(xii) and 2(xviii) of the Act respectively. As per Section 5(4), the Committee shall inter alia prepare a Data Bank with details of cultivable paddy land within the jurisdiction of the committee. If the land is not included in the Data Bank or Draft Data Bank prepared under the Kerala Conservation of Paddy Land and Wetland Act, 2008 and if it is not a “Paddy Land” or Wetland” as defined under Act 28 of 2008, at the time of commencement of the Act 12 (sic Act 28) of 2008 and the classification of land is noted as “Nilam” in the revenue records, the provision of Kerala Land Utilisation Order 1967 will be applicable to such land and the Collector as defined in clause 2(a) of the K.L.U. Order 1967 has the power to grant permission to utilise the land for other purpose. As stated in clause 2(a) of the K.L.U. Order, Collectors shall examine such request for residential purpose, on merits on a case to case basis. However, with a view to prevent indiscriminate filling of paddy lands in the State, the Government have also prescribed certain restrictions in the Notification dated 5.2.2002 noted (supra), in which District Collectors have been directed inter alia to ensure that the conversion which are likely to render irrigation

investments infructuous and large scale conversion for commercial purpose are not allowed.”

5. In view of the proposition laid down by the Supreme Court, I find that the 2nd respondent has jurisdiction to consider the request for re-classification of land under the Land Utilisation Order.

6. Consequently, Exts.P8 & P9 will stand quashed and the 2nd respondent is directed to consider and pass orders on Exts.P4 & P5 representations, in view of the report filed by the Village officer, Local level Monitoring Committee, etc., after affording an opportunity of being heard to the petitioners, within three months from the date of receipt of a copy of this judgment. The petitioners shall produce a copy of this writ petition along with all the exhibits before the 2nd respondent.

This writ petition is disposed of as above.

Sd/—
K. HARILAL, JUDGE

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