

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 5169 of 2015 (U)

PETITIONER :

**DR.M.VENUGOPAL, AGED 63 YEARS,
S/O. K.NARAYANA MENON, PADMASREE(H),
SOUTH BRIDGE AVENUE, ERNAKULAM, KOCHI.**

**BY ADVS.SRI.K.REGHU KOTTAPPURAM
SRI.M.MUKESH
SRI.R.MAHESH (KOTTAPPURAM)
SRI.MURUKESH REGHU**

RESPONDENTS :

- 1. THE DISTRICT COLLECTOR,
IDUKKI DISTRICT, PAINAVU, DIST.IDUKKI-685603.**
- 2. THE COMMISSIONER AND SECRETARY TO GOVT.
STATE OF KERALA, GOVT.SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 3. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, GOVT.SECRETARIAT
THIRUVANANTHAPURAM-695001.**

R1 TO R3 BY GOVERNMENT PLEADER SMT. SUSHEELA R. BHAT

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: A PHOTOCOPY OF SALE DEED NO.1363/2012 DATED 18-4-2012
- EXT.P2: A PHOTOCOPY OF LAND TAX RECEIPT DATED 3-5-2014
- EXT.P3: A PHOTOCOPY OF ENCUMBRANCE CERTIFICATE NO.7021/12
DATED 6-9-12
- EXT.P4: A PHOTOCOPY OF FAIR VALUE NOTIFICATION DATED 14-12-2009.
- EXT.P5: A PHOTOCOPY OF FAIR VALUE NOTIFICATION DATED 14-12-2009.
- EXT.P6: A PHOTOCOPY OF JUDGMENT DATED 6-6-2014 IN WP(C)14374/14
- EXT.P7: A PHOTOCOPY OF PETITION DATED 11-8-2014
- EXT.P8: A PHOTOCOPY OF JUDGMENT DATED 21-10-2014 IN W.P(C)24855/14
- EXT.P9: A PHOTOCOPY OF ORDER NO.C-9-44162/2014 DATED 28-1-2015
- EXT.P10: A PHOTOCOPY OF JUDGMENT DATED 28-6-2013 IN W.P(C)14986/07.
- EXT.P11: A PHOTOCOPY OF NOTICE NO.G5-4955/07 DATED 26-8-2013.
- EXT.P12: A PHOTOCOPY OF INTERIM ORDER DATED 12-9-2013 IN
W.P(C)22210/13.
- EXT.P13: A PHOTOCOPY OF THE STATEMENT DATED 1-10-2013 FILED BY
TAHSILDAR.
- EXT.P14: A PHOTOCOPY OF ORDER DATED 8-10-2013 IN W.P(C)22210/13.
- EXT.P15: A PHOTOCOPY OF SAMPLE STOP MEMO DATED 29-11-2006.
- EXT.P16: COPY OF LETTER DT 12/11/2008 ISSUED BY VILLAGE OFFICER.
- EXT.P16: COPY OF ORDER VIDE G.O.(RT) NO. 157/2022/AD DT 5/2/2002
(IA.8154/2015)
- EXT.P17: COPY OF LETTER DT 12/4/2012 ISSUED BY TAHASILDAR.
- EXT.P18: COPY OF LETTER DT 17/7/2007 ISSUED BY TAHASILDAR

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

“CR”

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.5169 of 2015

Dated this the 5th day of October, 2015

JUDGMENT

The petitioner, impugning an order passed by the District Collector under Clause 6 of the Kerala Land Utilisation Order (for short, the ‘KLUO’), has approached this Court.

2. The application filed by the petitioner under Clause 6 of the KLUO to construct a residential house has been rejected by the first respondent as per Ext.P9 order. The impugned order is produced as Ext.P9.

3. The petitioner approached the District Collector under the KLUO for the reason that the land in question was in cultivation of Cardamom. It is submitted by the petitioner that the Cardamom cultivation is no longer in existence for the last more than ten years. It is submitted that only twenty cents of land is available and is not feasible to cultivate the Cardamom.

4. Apparently, the petitioner wants to construct a small leisure house in a portion of land not beyond five cents. The

District Collector appears to have persuaded to believe that the petitioner seeks conversion of entire land and rejected the application stating as follows:

“Application for permission for construction, submitted by the applicant, is taken on file and considered under the provisions contained in the Kerala Land Utilisation Order, 1967. The land for which permission for construction is sought, is part of Cardamom Hill Reserve and assigned for specific purpose of cultivation of Cardamom. The particular piece of land forms part of a larger cluster of land protected for the cultivation of Cardamom. Pattom Proclamation and Royal Proclamation are not applicable to Cardamom Hill Reserve. The construction for which permission is sought is intended for holiday leisures and not for personal housing or cultivation. The paramount objective sought to be achieved by KLU Order is to ensure agricultural operations and cultivations as are made compulsory by KLU Order are carried out to ensure availability of essential commodities. The applicant is not conferred with any right so that permission for conversion shall invariably be granted to him. In the circumstances, the application for conversion

of the land belonging to the petitioner for construction of a holiday leisure house is rejected.”

5. The KLUO is an order issued in exercise of power vested to the State Government in terms of the Essential Commodities Act. The objects and purpose of the Essential Commodities Act to secure free distribution and to retain cultivation of food crops as referred in the KLUO. KLUO refers to cultivation of only certain types of food crops. This was taken into account of the scarcity of food crops at given point of time. By passage of time, several food crops were not in cultivation for variety of reasons. This has resulted in the land holders seeking permission in terms of Clause 6 of the KLUO to utilise the land for other purposes.

6. The power given to the District Collector under the KLUO is not to lift upon any right vested with the State upon the land but to relax enabling power given the State to ensure the production. Therefore, while exercising power under Clause 6 of the KLUO, the District Collector is called upon to decide the question in the larger context of the Essential Commodities Act. The larger perspective of

the KLUO as noted above is to ensure the distribution and production of the food supply. If the Cardamom requires to be continued to remain as essential commodity, necessarily, the power in terms of Clause 7 of the KLUO has to be exercised to ensure the production and distribution of Cardamom. If the Cardamom is not an essential commodity, the District Collector is free to grant such permission to utilise the land for any other purposes. Clause 7 of the KLUO mandates that the Collector has power only to call upon holder of land to cultivate in the land, which was in cultivation at any point of time. It cannot be exercised by the District Collector for commanding the holder of land to cultivate any other food crops other than one was in cultivation. Therefore, when the Cardamom was in cultivation, the District Collector can only ask the holder of land to cultivate Cardamom alone, and not any other food crops. Keeping that fact in mind, the District Collector has to find out whether Cardamom is an essential food crop now for sustenance.

7. The Kerala Land Utilisation Order unlike the Kerala Conservation of Paddy Land and Wet Land Act, 2008, was not

promulgated to sustain the bio-diversity or to keep the environmental issues in balance, but only with a minimal object for distribution of food supply. Keeping that power in mind, the District Collector has to exercise his discretion in terms of Clause 6 of the KLUO.

Therefore, Ext.P9 order is set aside. The matter has to be reconsidered by the District Collector afresh in the light of above. The District Collector also has to keep in mind that the petitioner only seeks reclamation of five cents of land for constructing holiday home. Needful shall be done by the District Collector within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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