

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No.10293 OF 2013(J)

PETITIONER:

GEORGE KUTTY
AGED 50 YEARS
KANNAMBALIL THEKKETHIL, KARUMULAKKAL MURI,
CHUNAKKARA VILLAGE, MAVELIKKARA TALUK, ALAPPUZHA
DISTRICT.

BY ADVS.
SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARTY TO THE DEPARTMENT OF
AGRICULTURE, GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM-695001.
- 2 DISTRICT COLLECTOR
ALAPPUZHA, COLLECTORATE, ALAPPUZHA-688001.
- 3 REVENUE DIVISIONAL OFFICER
CHENGANNUR-689121.
- 4 TAHSILDAR
TALUK OFFICE, MAVELIKKARA-690101.
- 5 AGRICULTURAL OFFICER
CHUNAKKARA, MAVELIKKARA-690534.

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- 6 VILLAGE OFFICER
CHUNAKKARA, MAVELIKKARA-690534.
- 7 MANMADHAN NAIR
ADARSH BHAVANAM, KARUMULAKKAL, CHUNAKKARA,
MAVELIKKARA-690534.
- 8 DAVID JOSHUA
VARIKKOLIL THARAYIL, CHUNAKKARA, MAVELIKKARA-
690534. (ADDRESS OF R8 CORRECTED AS DAVID
JOSHUA, VARIKKOLIL THEKKETHIL, KARIMULACKAL,
KOMALLOOR P.O., CHARUMOODU (VIA), ALAPPUZHA -
690 505. AS PER ORDER DATED 27.08.2013 IN IA
10292/2013)
- 9 SOMAN NAIR
KALEEKKAL THEKKETHIL, CHUNAKKARA, MAVELIKKARA-
690534. (ADDRESS OF R9 CORRECTED AS SOMAN NAIR,
KALEEKKAL THEKKETHIL, KARIMULACKAL, KOMALLOOR
P.O., CHARUMOODU (VIA), ALAPPUZHA - 690 505 AS
PER ORDER DATED 27.08.2013 IN IA 10292/2013)
- R1-R6 RY BY GOVERNMENT PLEADER
SMT.K.A.SANJEETHA
R7 BY ADVS. SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.JOSEPH GEORGE (MULLAKKARIYIL)
SRI.ARUN KRISHNA DHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19.11.2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

This writ petition has been filed challenging Exts.P4 and P6 orders passed by the District Collector and Government respectively under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as '2008 Act').

2. The short facts involved in the writ petition would disclose that the petitioner claimed to have purchased an extent of 13.11 Ares of land in Chunakkara Village as per Exts.P1 and P2 sale deeds dated 17/4/2007 and 9/3/2009. According to him, though the lands were described as 'nilam' in Exts.P1 and P2, it was lying in a reclaimed state and were planted with rubber trees and coconut trees. In the meantime, proceedings were taken by the District Collector under Section 13 of 2008 Act and after hearing the petitioner, Ext.P4 order was passed. Petitioner was called upon to restore the land to the original position. Petitioner preferred a revision before the Government and Government also confirmed the said view.

3. Petitioner contends that the aforesaid orders are passed without relying on sufficient materials and even according

to the respondent authorities, the property was in a reclaimed state at the time when an inspection was conducted during 2012.

4. Counter affidavit has been filed by the 4th respondent *inter alia* stating that the property is described as 'nilam' in resurvey records. When the Village Officer found that conversion was being made out in the dry land by filling with soil, report was forwarded to the Tahsildar. The Tahsildar, Mavelikkara reported the matter to the Revenue Divisional Officer, Chengannur who made a report to the District Collector in terms of Ext.P4 order. It is stated that all the lands referred above are treated as wet land and at the time when Exts.P1 and P2 sale deeds were executed, the lands were fit for paddy cultivation. Later, petitioner had dug a pond in the property and soil thus obtained was dumped in the other portions of the land and it was seen converted to dry land. It is stated that necessary opportunity had been granted to the petitioner to advance his arguments. It is further indicated that there are about 80 rubber trees and 15 tender coconut palms in his property which is harmful to the nearby paddy cultivation.

5. The 7th respondent has also filed a counter affidavit *inter alia* contending that the Agricultural Officer had given a report after visiting the property of the petitioner that the

petitioner had reclaimed the land and the same is causing threat to the nearby paddy cultivation. It is stated that Exts.P4 and P6 had been issued based on clear facts and there is no illegality in the said orders. As far as the existence of rubber and coconut palms are concerned, it is stated that all the adjacent property owners are cultivating paddy and contrary allegation against the 7th respondent was baseless. Respondents also produced Ext.R7(a) series of photographs to show the paddy cultivation in the area.

6. Having regard to the aforesaid factual situation, the question to be considered is regarding the validity of Exts.P4 and P6 orders. In Ext.P4 order, the District Collector had indicated that a complaint had been received stating that the owner of the property has planted rubber saplings in the area which affects the paddy cultivation in the nearby locality. It is observed that report has been obtained from the Agricultural Officer. The District Collector after enquiry has found that petitioner had converted the land after the 2008 Act coming into force. While exercising revisional jurisdiction, the Government has also confirmed the said view. It is observed that the property is shown as paddy field in the data bank and also in the basic tax register.

7. Learned counsel for the petitioner would however submit that the report obtained by the Collector as well as the Government clearly indicates the existence of rubber trees which are about one year old and coconut palms which are about five years old which indicates that atleast the coconut plants were in existence during 2007, as the report is seen prepared in 2012. The age of the trees is only an approximate estimate and it cannot be the basis for taking a contention that the property involved has been converted before the 2008 Act coming into force. It is apparent from the data bank entries that the property was lying as a paddy field and unless the same is corrected, it is not open for the petitioner to contend that the property was not paddy land at the relevant time, when the 2008 Act came into force.

8. It is not in dispute that as matters stand now, no application is pending before the Local Level Monitoring Committee to change the entries in the draft data bank particulars.

9. In so far as the property has been described as 'nilam' in the basic tax register and no materials are produced to indicate that any permission had been obtained from the

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Collector under the Kerala Land Utilization Order, 1967, it has to be assumed that the property has to be treated as a category as mentioned in the data bank entries until it is corrected.

10. As far as the findings in Exts.P4 and P6 are concerned, it is based on materials and nothing has been produced to indicate that the materials relied upon are either irrelevant and findings thereon are illegal in any manner. Under such circumstances, I do not find any error in Exts.P4 and P6 orders. For that reason, the writ petition has to fail and accordingly it is dismissed.

Learned counsel for the petitioner however seeks time to approach the Local Level Monitoring Committee for making change of entry in the data bank particulars. It is always open for the petitioner to take appropriate steps in accordance with law and no such direction is required to be passed in this writ petition.

Sd/-

A.M. SHAFFIQUE

JUDGE

Rp

True Copy

PS to Judge

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	A TRUE COY OF SALE DEED NO. 581/07 OF CHERIYANADU SRO DATED 17-04-2007.
EXHIBIT P2	A TRUE COPY OF SALE DEED NO. 397/09 OF CHERIYANADU SRO DATED 09-03-2009.
EXHIBIT P3	A TRUE COPY OF REPLY DATED 12-10-2011 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXHIBIT P4	A TRUE COPY OF ORDER NO. C8-29643/2011 DATED 18-10-2011 PASSED BY THE 2ND RESPONDENT.
EXHIBIT P5	A TRUE COPY OF REVISION PETITION FILED BEFORE THE 1ST RESPONDENT.
EXHIBIT P6	A TRUE COPY OF G.O.NO. 101/2013/AGRICULTURE DATED 21-01-2013 PASSED BY THE 1ST RESPONDENT.
EXHIBIT P7 SERIES	A TRUE SET OF PHOTOGRAPHS SHOWING THE NATURE AND LIE OF THE PROPERTY UNDER THE CARE OF 7TH RESPONDENT.
EXHIBIT P8 SERIES	A TRUE SET OF PHOTOGRAPHS SHOWING THE NATURE AND LIE OF THE PROPERTY OF 8TH RESPONDENT.
EXHIBIT P9 SERIES	A TRUE SET OF PHOTOGRAPHS SHOWING THE NATURE AND LIE OF THE PROPERTY OF 9TH RESPONDENT.
EXHIBIT P10	A TRUE COPY OF APPLICATION UNDER THE RTI ACT DATED 21-11-2011 FILED BY THE PETITIONER BEFORE THE AGRICULTURE OFFICE, CHUNAKKARA.

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EXHIBIT P11 A TRUE COPY OF REPLY DATED 17-12-2011
 GIVEN BY THE OFFICE OF THE 5TH
 RESPONDENT TO THE PETITIONER.

RESPONDENT(S) ' EXHIBITS

EXHIBIT R7(a) A TRUE COPY OF THE PHOTOGRAPHS OF THE
 PROPERTY OF THE PETITIONER.

EXHIBIT R7(b) A TRUE COPY OF THE REPLY DATED 1.7.2013
 FROM THE AGRICULTURAL OFFICE, KRISHI
 BHAVAN, CHUNAKKARA UNDER THE RIGHT TO
 INFORMATION ACT.

True Copy

PS to Judge