

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937**

**WP(C).No. 9145 of 2015 (P)**  
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**PETITIONER:**  
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**P.K.ASSAN KOYA,  
S/O.P.K.IMBICHI AHAMMED, AGED 69 YEARS,  
SECRETARY, THEERAM RESIDENCE ASSOCIATION,  
REG.NO.KKD/CA/1033/2012, ARAKKINAR,  
RAILWAY LINE ROAD, KOZHIKODE, RESIDING AT  
SHAAD, CHAKKERIKKAL PARAMBA, ARAKKINAR,  
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.P.SUDHEER  
SRI.YJAFAR KHAN**

**RESPONDENT(S):**  
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- 1. THE DISTRICT COLLECTOR,  
KOZHIKODE, COLLECTORATE, CIVIL STATION,  
KOZHIKODE, PIN - 673001.**
- 2. THE REVENUE DIVISIONAL OFFICER,  
KOZHIKODE, CIVIL STATION, KOZHIKODE, PIN - 673001.**
- 3. THE VILLAGE OFFICER, BEYPORE,  
BEYPORE VILLAGE OFFICE, BEYPORE,  
KOZHIKODE, PIN - 673015.**
- 4. THE AGRICULTURAL OFFICER, KRISHI BHAVAN,  
BEYPORE, KOZHIKODE DISTRICT, PIN - 673015.**
- 5. THE SUB INSPECTOR OF POLICE,  
BEYPORE POLICE STATION, BEYPORE,  
KOZHIKODE DISTRICT, PIN - 673015.**
- 6. SURENDRA RAO, S/O.KRISHNA RAO, SURAJ NIVAS,  
NEAR KALPANA TALKIES, KACHERI KUNNU,  
MANKAVU POST, KOZHIKODE-673007.**

**R1 TO R5 BY GOVERNMENT PLEADER SMT.C.K.SHERIN  
R6 BY ADVS. SRI.K.M.FIROZ  
SMT.M.SHAJNA  
SRI.S.KANNAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 21-05-2015 ALONG WITH WPC.10824/2015, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:**

**mbr/**

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1: TRUE COPY OF THE STOP MEMO DATED 4/11/2014 ISSUED BY THE THIRD RESPONDENT TO THE 6TH RESPONDENT.
- EXHIBIT-P2: TRUE COPY OF THE NOTICE DATED 25/11/2014 ISSUED BY THE THIRD RESPONDENT TO THE 6TH RESPONDENT.
- EXHIBIT-P3: TRUE COPY OF THE LETTER DATED 25/11/2014 SUBMITTED BY THE THIRD RESPONDENT TO THE 5TH RESPONDENT.
- EXHIBIT-P4: TRUE COPY OF THE LETTER DATED 7/2/2015 ISSUED BY THE THIRD RESPONDENT.
- EXHIBIT-P5: TRUE COPY OF THE STOP MEMO ISSUED BY THE THIRD RESPONDENT DATED 25/2/2015.
- EXHIBIT-P6: TRUE COPY OF THE LETTER DATED 25/2/2015.
- EXHIBIT-P7: TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO RESPONDENTS 1 AND 2 DATED 4/3/2015.
- EXHIBIT-P8: TRUE COPY OF THE REPLY GIVEN BY THE THIRD RESPONDENT DATED 02.03.2015.
- EXHIBIT-P9: TRUE COPY OF THE SCENE MAHAZAR PREPARED BY THE VILLAGE OFFICER ON 25.3.2015 UPON SEIZING A MINI LORRY BEARING REGISTRATION NO.KL-II-V 2811.

RESPONDENT(S)' EXHIBITS:

- EXT.R6(A) : TRUE COPY OF THE REPORT SUBMITTED BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT DATED 9.1.2015.
- EXT.R6(B) : TRUE COPY OF THE OBJECTION DATED 30.3.2015 SUBMITTED BY THE 6TH RESPONDENT BEFORE THE THIRD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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**K. VINOD CHANDRAN, J.**

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**W.P.C. Nos.9145 & 10824 of 2015**  
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**Dated this the 21<sup>st</sup> day of May, 2015.**

**JUDGMENT**

The petitioners in the above cases are rival contenders and the facts and documents from the first writ petition in point of time, WP(C) No.9145 of 2015, is referred to. The petitioner therein, for and on behalf of a residential association, had filed the above writ petition seeking implementation of the stop memo produced at Exts.P1 and P5 and the notice issued at Exts.P2 and P3 by the Village Officer, Beypur. The stop memo is issued with respect to the property of the 6<sup>th</sup> respondent in Resurvey No.60/2, which allegedly is sought to be filled up by the 6<sup>th</sup> respondent. The 6<sup>th</sup> respondent is the petitioner in the other writ petition challenging the aforesaid orders issued by the Village Officer.

2. The petitioner in WP(C) No.9145 of 2015 would assert

that the property in Resurvey No.60/2 of Beypur Village belonging to the 6<sup>th</sup> respondent is a paddy land and that the 6<sup>th</sup> respondent has not obtained any permission under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 for filling up the same. However, the specific contention taken by the 6<sup>th</sup> respondent is that the petitioner's land is not included in the Data Bank of that area and that the same is not a paddy land.

3. The learned Government Pleader would also affirm that the petitioner's land has not been included in the Data Bank, but however the same is shown as "nilam" in the Revenue Records. The 6<sup>th</sup> respondent also has a contention that he is only constructing a road and building in the property which is a pukka land.

4. In any event, since there is controversy as to the nature of land, it is only proper that the RDO examine the matter and if necessary, conduct a physical inspection as also decide on the issue, after hearing the petitioner and the 6<sup>th</sup> respondent. The Hon'ble Supreme Court has in **Revenue Divisional Officer, Fort Kochi and others v. Jalaja Dileep and another** [2015

(2) KHC 109 (SC)] considered the issue as to the categorisation of the land in the revenue records as also the sanction to be obtained under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 and the Kerala Land Utilisation Order. The Hon'ble Supreme Court with respect to the grant of permission to fill up the lands said so in paragraph 18, which is extracted below:

*"18. If a property is included in the Data Bank or the Draft Data Bank prepared under the Wet Land Act, 2008 as a "Paddy Land" or "Wetland" and the classification of land is noted as "Nilam" in revenue records, the provisions of the Act 28/2008 would apply. As noticed earlier, there is ample provision within the Act to grant permission for such land for residential purpose or public purpose as defined in the Act. And as elaborated earlier, if the property is not included in the Data Bank as "Paddy Land" or "Wetland" as defined under Act 28/2008, it is still governed by the provisions of KLU Order, 1967. Thus, State of Kerala has two Statues-KLU Order, 1967 and Kerala Cultivation of Paddy Land and Wetland Act, 2008 each dealing with delineated areas with respect to preservation, management and process of reclamation of agricultural and paddy land for any other legitimate use."*

It has also been stated that, if any filling up of lands have been made prior to 2008, ie. prior to the introduction of the Paddy Land Act, then there could be no powers invoked by the authorities under Paddy Land Act for restoration of the said land

as a paddy land.

5. In such circumstances, what is required is first an ascertainment of the nature of the land as it physically exists as of now and a decision as to whether any permission is required for filling up of the land, either as per the Kerala Land Utilisation Order or as per the Paddy Land Act. The RDO shall at the first instance look into the issue and if as submitted by the 6<sup>th</sup> respondent, the same is not included in the Data Bank and is not a paddy land under the Paddy Land Act, then necessarily it has to be decided as to whether the land is such, that requires an order of conversion under the Kerala Land Utilisation Order. Till such a decision is arrived at, the 6<sup>th</sup> respondent shall not carry on any construction activities or filling up of the property owned by him in Resurvey No.60/2 of Beypur Village. The petitioner and the 6<sup>th</sup> respondent shall approach the 2<sup>nd</sup> respondent/RDO, Kozhikkode with sufficient material to substantiate their contentions and produce the certified copy of this judgment on or before 15.06.2015. The office of the 2<sup>nd</sup> respondent shall intimate a date of hearing to both the petitioner and the 6<sup>th</sup> respondent and the

matter shall be finalised within three months from the date of production of the certified copy of the judgment.

The writ petitions are disposed of. No costs.

Sd/-  
**K. VINOD CHANDRAN,**  
**JUDGE**

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