

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937H

WP(C).No. 9321 of 2015 (M)

PETITIONER:

**SIRAJ T.I.,
THACHAYIL HOUSE, VAZHAKULAM.P.O., KALLELIMOOLA
CHAMBARAKY, ERNAKULAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE AGRICULTURAL PRODUCTION COMMISSIONER,
ROOM NO.388, MAAIN BUILDING, DEPARTMENT OF AGRICULTURE,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 3. THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANADU, ERNAKULAM-682 030.**
- 4. THE TAHSILDAR,
KUNNATHUNADU, ERNAKULAM-683 544.**
- 5. THE VILLAGE OFFICER
VAZHAKULAM, ERNAKULAM-683 105.**
- 6. SEETHI MARAKKAR
CHIRAYAKKATTIL HOUSE, VAZHAKKULAM.P.O.,
KALLELIMOOLA, CHAMBARAKY, ERNAKULAM DISTRICT-683 105.**

R4 BY ADV. GOVERNMENT PLEADER: SRI. P.K. SOYUZ.

R6 BY ADV. SRI.C.A.CHACKO.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1 - COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER, VAZHAKULAM.
- EXHIBIT P2 - COPY OF THE SALE DEED EXECUTED BETWEEN THE PETITIONER AND SHAMEER DATED 23.11.2013.
- EXHIBIT P3 - COPY OF THE LAND TAX RECEIPT DATED 03.02.2014 ISSUED BY THE 5TH RESPONDENT.
- EXHIBIT P4 - COPY OF THE CERTIFICATE DATED 20.05.2014 ISSUED BY THE VILLAGE OFFICER, VENGOLA.
- EXHIBIT P5 - COPY OF THE CERTIFICATE DATED 24.05.2014 ISSUED BY THE VILLAGE OFFICER, VAZHAKULAM.
- EXHIBIT P6 - COPY OF THE ORDER PASSED BY THE DISTRICT LEVEL AUTHORIZED COMMITTEE DATED 18.02.2015.
- EXHIBIT P7 - COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE SUB INSPECTOR OF POLICE, THADIYATTU PARAMBU POLICE STATION DATED 28.02.2015.
- EXHIBIT P8 - COPY OF THE RECEIPT DATED 28.02.2015.
- EXHIBIT P9 - COPY OF THE STOP MEMO ISSUED BY THE 5TH RESPONDENT DATED 27.02.2015.

RESPONDENT(S)' EXHIBITS:

- EXHIBIT R6(a) - COPY OF RECEIPT FROM THE OFFICE OF 3RD RESPONDENT DATED 17.09.2014.
- EXHIBIT R6(b) - COPY OF REPORT ON 18.09.2014 OF 5TH RESPONDENT.
- EXHIBIT R6(c) - COPY OF CERTIFICATE DATED 30.03.2015 ISSUED BY KATHIROL PADASEKHARA SAMITHY.
- EXHIBIT R6(d) - PHOTOGRAPHS PROPERTY OF 6TH RESPONDENT AND PETITIONER.
- EXHIBIT R6(e) - COPY OF COMPLAINT MADE BEFORE THE RDO, MUVATTUPUZHA.
- EXHIBIT R6(f) - COPY OF APPEAL DATED 27.02.2015 FILED BEFORE THE 3RD RESPONDENT.

//TRUE COPY//

PA TO JUDGE

ANU SIVARAMAN, J.

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Dated this the 21st day of August, 2015

JUDGMENT

Challenge in the writ petition is against the issuance of Ext.P9 stop memo in respect of reclamation of 1.62 Ares of property belonging to the petitioner, by the 5th respondent. It is the contention of the petitioner that he had purchased the property in 2013 and had sought permission for reclamation of the same for construction of a residential house. The petitioner submits that the property is only 4 cents in extent and that the Local Level Monitoring Committee constituted under the Kerala Conservation of Paddy Land and Wet Land Act had recommended the petitioner's application to the District Level Authorised Committee which had, by order dated 18.02.2015, which is produced and marked as Ext. P6, permitted the reclamation on certain conditions appended to the said order. It is stated that Ext.P6 was preceded by Ext.P4 and P5

certificates issued by the Village Officer, stating that the petitioner is not in possession of any other land in the village suitable for construction of a residential house. The petitioner would contend that after the grant of permission by the District Level Authorised Committee by Ext.P6, the Village Officer is incompetent to issue a stop memo in the nature of Ext. P9.

2.The 6th respondent has entered appearance and filed a counter affidavit wherein it is stated that he is the neighboring land owner and has 13.4 ares of paddy land in Re-survey No.397/2 of Vazhakkulam Village, Kunnathunad Taluk, Ernakulam District, and that he had on coming to know that the petitioner was taking steps for the reclamation of the adjoining land, preferred Ext. R6(a) compliant before the 3rd respondent which was duly forwarded to the Village Officer for report with the endorsement "Village Officer to issue stop memo if illegal

reclamation is noticed". Thereafter, he states that Ext.R6(b) report was submitted by the Village Officer dated 18.09.2014 stating that the property now sought to be reclaimed is in the close vicinity of the property owned by the 6th respondent who is conducting paddy cultivation in about 13 Ares of land possessed by him. It is also stated that if the 4 cents of property is reclaimed by the petitioner it will create water logging in the property of the 6th respondent. He has also produced Ext.R6(c) certificate in support of his contention that he is conducting agricultural operations. He states that on coming to know of Ext.P6 order of the District Level Authorised Committee, he had preferred a statutory appeal under Section 9(6) of the Act before the District Collector, the 3rd respondent. Ext.R6(f) produced along with I.A.No. 8308/2015 is the appeal preferred by the 6th respondent.

3. Heard Smt.Smitha Babu, learned counsel appearing for the petitioner and Smt.Charishma, learned counsel appearing for the 6th respondent as well as the learned Government Pleader appearing for the official respondents.

4. It is the contention of the learned counsel for the petitioner that Ext. P9 being a stop memo issued by the Village Officer is completely incompetent. The learned counsel for the 6th respondent on the other hand contended that the 6th respondent has preferred a statutory appeal against Ext.P6 order before the District Collector and it is on the basis of directions issued by the District Collector that the stop memo is issued by the Village Officer. This contention is also adverted to in the statement filed on behalf of the 4th respondent dated 22.06.2015.

5. In any view of the matter, it is evident that after the issuance of Ext.P4 and P5 certificates by the Village Officer, the 6th respondent had preferred Ext.R6(a) and R6(e) dated

17.09.2014 seeking orders preventing the reclamation on the ground that it would lead to water logging in his property and difficulties in his agricultural operations. However, Ext. P6 order has been issued by the District Level Authorised Committee on 18.02.2015. Against Ext. P6 order, the 6th respondent has preferred a statutory appeal as Ext. R6(f). It is the petitioner's contention that even if such an appeal had been preferred against the order of the District Level Authorised Committee, the Village Officer could not have issued Ext.P9 stop memo.

6. Having heard the learned counsel appearing on either side I am of the opinion that since an appeal has been preferred against the order granting permission for reclamation, it is necessary for a meaningful consideration of the appeal that the status quo as regards the reclamation be maintained until the statutory appeal is disposed of. If the reclamation is permitted to go on unabated, the very

purpose of the appeal will be defeated and the adjudication rendered meaningless. In the above view, the stop memo, even though it is issued by a subordinate officer, cannot be said to be an abuse of power. I am not inclined to set aside Ext. P9 stop memo which is issued to facilitate the proper consideration of the appeal. However, the adjudication cannot be prolonged since the petitioner's application is for construction of a house.

7. In the above circumstances, District Collector is to take up the appeal preferred by the 6th respondent as Ext.R6(f) with notice to the 6th respondent as well as the petitioner and pass orders thereon, after considering the contentions of the parties to the appeal. Since the matter involves the construction of residential building and the reclamation sought is in respect of 1.62 Ares of land, the District Collector is directed to take expeditious action in the matter and pass final orders within one month from

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the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-
ANU SIVARAMAN, JUDGE

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