

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 21241 of 2007 (D)

PETITIONER(S):

**REV. FR.GEORGE PIUS, DIRECTOR,
AMALA CANCER HOSPITAL & RESEARCH CENTRE, AMALA NAGAR,
AMALA NAGAR P.O., THRISSUR TALUK, THRISSUR DISTRICT.**

**BY ADVS.SRI.M.NARENDRA KUMAR
SMT.LAYA SIMON**

RESPONDENT(S):

- 1. THE COMMISSIONER OF LAND REVENUE,
THIRUVANANTHAPURAM.**
- 2. THE REVENUE DIVISIONAL OFFICER,
THRISSUR.**
- 3. THE PRESIDENT,
KARIMPADAM PADASEKHARAM, PERAMANGALAM VILLAGE,
THRISSUR TALUK.**
- 4. THE DISTRICT COLLECTOR,
THRISSUR.**

*** ADDITIONAL R5 IMPLEADED**

- 5. C.J.ANTO, PRESIDENT,
KAIPARAMBU GRAMA PANCHAYAT,
THRISSUR DISTRICT.**
- * ADDITIONAL R5 IS IMPLEADED AS PER ORDER IN I.A.3630/2008
DTD.14.3.2008.**

**R1, R2 & R4 BY SENIOR GOVERNMENT PLEADER SMT.SAREENA GEORGE
R3 & R5 BY ADV. SRI.P.C.SASIDHARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-11-2014, THE COURT ON 08-01-2015, DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 21241 of 2007 (D)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF PROCEEDINGS OF THE REVENUE DIVISIONAL OFFICER, THRISSUR UNDER THE KERALA LAND UTILISATION ORDER ACCORDING SANCTION FOR CONVERSION OF AN EXTENT OF 2.0136 HECT OF LAND IN SY.NO.260 & 261 OF PERAMANGALAM VILLAGE.

EXT.P2: TRUE COPY OF SALE DEED NO.4384/2005 OF SRO THRISSUR EXECUTED M/S.V.P.VARUNNI & OTHERS IN FAVOUR OF AMALA CANCER HOSPITAL SOCIETY REPRESENTED BY FR.GEORGE PIUS.

EXT.P3: TRUE COPY OF BASIC TAX RECEIPT IN RELATION TO A PROPERTY HAVING AN EXTENT OF 2.0136 HECT OF LAND IN SY.NO.260 AND 261 (VARIOUS SUB DIVISIONS) OF PERAMANGALAM VILLAGE ISSUED IN FAVOUR OF PETITIONER DATED 30.1.2006.

EXT.P4: TRUE COPY OF NOC ISSUED BY THE SECRETARY, KAIPURAM GRAMA PANCHAYATH DATED 31.1.2006.

EXT.P5: TRUE COPY OF STOP MEMO ISSUED BY THE RDO, THRISSUR DATED 10.4.2006.

EXT.P6: TRUE COPY OF PROCEEDINGS OF RDO, THRISSUR DATED 24.5.2006.

EXT.P7: TRUE COPY OF APPEAL DATED 20.6.2006 FILED BY THE PETITIONER UNDER SEC 11 (1) OF LAND UTILISATION ORDER BEFORE THE LAND REVENUE COMMISSIONER CHALLENGING EXT.P6 ORDER.

EXT.P8: TRUE COPY OF PROCEEDINGS OF THE COMMISSIONER OF LAND REVENUE DATED 14.6.2007.

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): TRUE COPY OF COMMUNICATION ISSUED BY THE PANCHAYAT DATED 21.4.2006.

EXT.R3(a): TRUE COPY OF THE PHOTOGRAPH SHOWING THAT THE CONSTRUCTION IS BEING CARRIED OUT BY THE PETITIONER IN THE PADDY LAND.

EXT.R3(b): TRUE COPY OF THE PHOTOGRAPH SHOWING THAT THE CONSTRUCTION IS BEING CARRIED OUT BY THE PETITIONER IN THE PADDY LAND.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21241 of 2007

Dated this the 8th day of January, 2015.

JUDGMENT

Ext.P6 order passed by the Revenue Divisional Officer, Thrissur (the second respondent) and Ext.P7 appellate order passed by the Land Revenue Commissioner (the first respondent) are under challenge in this writ petition.

2. The petitioner is the Director of Amala Cancer Hospital and Research Centre, Thrissur which is a registered society. The Amala Cancer Hospital & Research Centre, Ayurvedic Hospital and Research Centre and Amala Insitute of Medical Sciences are some of the institutions which are run by the society. For the purpose of establishing a nursing home, the petitioner society purchased a land as per Ext.P2 sale deed. The petitioner alleges that the erstwhile owners of the property had

already applied and obtained permission from the Revenue Divisional Officer, Thrissur under the Kerala Land Utilisation Order, according sanction for conversion of an extent of 2.0136 Hectares of land in Sy.Nos.260 and 261 of Peramangalam Village as per Ext.P1. The petitioner alleges that thereafter the petitioner decided to put up a building for establishment of a nursing college under the auspicious of the petitioner's society in a portion of about 27 cents of land of the said converted land. While the petitioner started construction, the second respondent proceeded to issue Ext.P5 stop memo requiring the petitioner to stop construction of the building on the premise that the construction is not authorised and the District Collector has required the construction to be stopped on the basis of a complaint allegedly lodged by the fourth respondent. Thereafter, Ext.P5 was challenged by the petitioner in W.P.(C) No.11509 of 2006 before this

Court. Initially, a stay order was granted by this Court. Later, this Court disposed of the aforesaid writ petition with a direction to the Revenue Divisional Officer to hear both sides and pass final orders in the matter of stop memo and the petition filed by the petitioner requesting lifting of the restriction. The second respondent passed Ext.P6 proceedings confirming Ext.P5. Though the petitioner filed an appeal against Ext.P6 before the Land Revenue Commissioner, the petitioner's contentions were not accepted by the Land Revenue Commissioner and the appeal was rejected by Ext.P7 proceedings. Thus, the petitioner has come up before this Court.

2. The first respondent filed a counter affidavit wherein they have admitted that the erstwhile owners of the property were granted permission by the Revenue Divisional Officer to convert the land into garden land under the Kerala Land Utilisation Order. However, it was

pointed out that the said land was not converted by the erstwhile land owners and the same was sold to the Director of Amala Cancer Hospital and Research Centre. While the petitioner started to construct a building for Nursing College, the same was opposed by the Karampadam Padasekhara Committee and the Revenue Divisional Officer had issued a stop memo, which was challenged before this Court in the previous writ petition. The definite stand taken by the first respondent is that the previous order was for making the paddy land into a coconut plantation by converting the paddy fields. However, the same was not carried out by the erstwhile owners. The NOC given by the secretary of the panchayat was also withdrawn. The petitioner has not obtained any new valid permission to convert the paddy land. Since the construction is unauthorised, the District Collector has directed to stop the construction on the basis of the

complaint received. The first respondent maintained the stand that the second respondent is competent to issue the direction asking the petitioner to stop construction.

3. The third respondent filed a separate detailed counter affidavit. It is contended that the writ petition is not maintainable as Clause 14 of the Land Utilisation Order provides for a revision before the State Government against the orders passed by the District Collector or Board of Revenue under the order. That respondent also maintained the stand that Ext.P1 only gives permission to the original owner to convert the paddy field to a garden land for the purpose of coconut cultivation and it was issued in the year 1996. The said order was not made use of by the then erstwhile owners and the property was transferred to the petitioner. It is further contended that the Revenue Divisional Officer has considered all aspects in the matter before issuing the

impugned order. It is further contended that if such large scale conversion is permitted the cole cultivation in the area would be impossible. It was only after the sale in favour of the petitioner that the petitioner took steps to fill up the land and started construction of a building. Therefore, the said respondent also prayed for a disposal of the writ petition.

4. The argument have been heard.

5. The property covered by Ext.P2 sale deed was permitted to be converted by the Revenue Divisional Officer, Thrissur into a garden land as per Ext.P1 order. It is the specific case of the petitioner that in pursuance of permission granted under Ext.P1 as early as in 1997, that a portion of the said land was actually converted into coconut garden. Once it is so converted into coconut garden, there is no restriction or otherwise available under the Land Utilisation Order preventing the user of

the said land for construction purpose, so submitted the learned counsel for the petitioner. The finding in Ext.P6 was that the permission which was granted under Ext.P1 was only for the purpose of conversion of land into coconut garden. According to the respondents, as the land was transferred in favour of the petitioner's society without any reclamation, there is no permission currently in operation. This according to the petitioner is a baseless finding. In Ext.P8 order passed by the Land Revenue Commissioner, it was observed as under:

"In the first stage, permission was taken to convert from Kule Wet land to garden land for which the appellant has got RDO's permission. Having done that he has now started to construct a Nursing College of this land which is in violation of RDO's Order. The photographs produced clearly show that the lands were water logged Kule lands, but now the appellant has filled up part of it. The Kule lands are crucial for the agricultural production in this State and to maintain the water table. It is the policy of the Government to protect these lands. The action of the appellant in

brining this to the notice of this authority is commendable. The tendency to buy such land at low rates and then to fill them up has to be arrested. Allowing one plot for conversion means the entire area subsequently will be affected. A Nursing College is necessary, but it can be constructed on any other vacant dry land. The orders of the RDO allowing conversion of Kole land into garden land itself is not in order."

6. The learned counsel for the petitioner relying on the decision of this Court in ***Kaipadath Property Development Company (Pvt) Ltd Vs. State of Kerala and Others (2011(1) KHC 291)*** would contend that as permission was obtained by the erstwhile owners as per Ext.P1 and a portion of the land has been converted thereafter, there cannot be a further restriction under the new Act. The permission originally granted under Ext.P1 will not cease to be operated when the land is transferred by the owners of the land, who are also holders of the permission; it was argued the learned counsel for the petitioner. According to the petitioner, even if only a

portion of the land covered by Ext.P1 permission is converted prior to Ext.P2, the holders of the land are entitled to act on the strength of permission originally granted and convert the same into a garden land. This Court in *Kaipadath Property Development Company (Pvt) Ltd. Vs. State of Kerala and Others (supra)* considered the question whether the orders already issued under the Kerala Land Utilisation Order could be ignored by the authority concerned subsequently. Incidentally, the court also observed the question whether the order issued under the Kerala Land Utilisation Order allowing conversion, loses its force in the light of the prohibitory clauses under Sections 3 and 11 of the Wet Land Act, 2008. It was observed that unless there are words in statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only, because it is settled law that a new law ought to be

prospective, not retrospective in its operation. Provisions which touch a right in existence at the passing of statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. There cannot be any doubt against the proposition that pending applications under the Kerala Land Utilisation Order will have to be considered under the same Act. Since the Act is only prospective in operation, the question to be considered is whether the orders already passed under the Kerala Land Utilisation Order, can be said to be nullified by the provisions of the Act. This Court in *Kaipadath Property's* case has observed as under:

"28. The Act is not retrospective in operation, evidently. There is no provision in the Act which nullifies the orders issued under the Kerala Land Utilisation Order. In fact, even in a case of repeal the effect of such repeal will have to be understood in the light of the provisions of the General Clauses Act. The question is no longer res integra. Going by Section 6(c) of the General Clauses Act, 1897,

the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed unless a different intention appears.

Viewed in that profile, a permission granted under the Kerala Land Utilisation Order cannot be taken away by the new Act.

7. Now the question is whether Ext.P1 passed under the Kerala Land Utilisation Order could be enforced by a transferee of the property. Respondents 1 and 3 have referred to a circular which is said to have been issued by the District Collector on 16.12.2004 for inferring that permission under Ext.P1 will not survive the assignment Ext.P2. Firstly, no such inference can be drawn by reference to the Land Utilisation Order. Secondly, there is no power inferable from the provisions of the said order enabling the District Collector to issue any circular. Thirdly, the District Collector is only an authorised officer under the Land Utilisation Order and

therefore can exercise such powers as are strictly conferred on him by the Land Utilisation Order. If that be so, the circular stated to have been issued by the District Collector obviously cannot operate against the validity of a proceedings issued by the RDO in exercise of the statutory powers conferred by the order itself.

8. Though the petitioner alleges that the erstwhile owners had converted a portion of the land on the basis of Ext.P1, the respondents denied the same. This Court while disposing of the previous writ petitions directing the Revenue Divisional Officer to reconsider the issue has observed as under:

"5. All these controversies can be easily solved, by the R.D.O first addressing himself to the question as to whether the stop memo requires to be recalled or not. If the stop memo stands, the action of the Panchayat may also stand since it wholly depends on the stop memo issued by the R.D.O.

6. In the aforesaid circumstances, the

R.D.O is directed to consider the request of the petitioner to recall the stop memo issued. This shall be done within a period of one week from the date of receipt of a copy of this order. An opportunity shall be given to the petitioner and the contesting respondents, who may, if so advised, file vakalath namas before the R.D.O, even without waiting for any notice by the R.D.O. In the peculiar circumstances of the case, it is directed that R.D.O need not issue any fresh notice to the parties. To aid the aforesaid being done, status quo will be maintained for a period of ten days."

9. Though such a clear direction was there, the Revenue Divisional Officer still reaffirmed his stand while issuing Ext.P5. The Revenue Divisional Officer ought to have gone into the question whether any portion of the property had been converted by the erstwhile owners on the basis of Ext.P1. Had it been done, there cannot be any restriction otherwise available under the Kerala Land Utilisation Order preventing the use of the said land for construction purpose. As

evidence regarding this is lacking, this Court is of the definite view that the matter requires a reconsideration by the Revenue Divisional Officer. Therefore, the impugned orders are to be quashed.

In the result, Exts. P5 and P6 are quashed. The matter is remitted back to the second respondent for fresh consideration of the matter in the light of what has been stated above, after affording both sides an opportunity of being heard. The entire exercise shall be completed with a period of three months from the date of production of a copy of this judgment. If it is found that any portion of the land covered by Ext.P2 sale deed had been converted by the erstwhile owner, the petitioner shall be entitled to proceed with the proposed construction.

A.V. RAMAKRISHNA PILLAI
JUDGE