

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937**

**WP(C).No. 15020 of 2014 (B)**  
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**PETITIONER(S):**  
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1. N.PRASANTH, AGED 39 YEARS,  
S/O.V.V.NARAYANAN, 'KANMANI', KUNHIPARA,  
KODAKKAD P.O., KASARAGOD DISTRICT.
2. V.K.ANEESH KUMAR, AGED 36 YEARS,  
S/O.KUNHIRAMAN NAMBIAR, 'AMRITHAPRASADAM', KUNHIPARA,  
KODAKKAD P.O., (VIA) TRIKARIPUR, KASARAGOD DISTRICT.

**BY ADVS.SRI.P.SANKARANKUTTY NAIR  
SRI.K.SANDESH RAJA**

**RESPONDENT(S):**  
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1. THE DISTRICT COLLECTOR,  
KASARAGOD - 671 121.
2. THE VILLAGE OFFICER,  
KODAKKAD VILLAGE, KODAKKAD P.O.,  
KASARAGOD DISTRICT - 671 121.
3. THE TAHSILDAR,  
HOSDURG, KASARAGOD DISTRICT - 671 121.
4. THE ADDITIONAL TAHSILDAR,  
HOSDURG, KASARAGOD DISTRICT - 671 121.
5. USHA P.V.,  
W/O.RAMANAN, KANNADIPARA, KODAKKAD VILLAGE,  
KODAKKAD P.O., KASARAGOD DISTRICT - 671 121.

**R1-R4 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR  
R5 BY ADVS. SRI.T.K.VIPINDAS  
SRI.K.V.SREE VINAYAKAN  
SRI.K.M.MUHAMMED HUSSAIN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**

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- EXT.P-1: A TRUE COPY OF THE RELEASE DEED EXECUTED BY THE  
IST PETITIONER IN FAVOUR OF THE 2ND PETITIONER.
- EXT.P-2: A TRUE COPY OF THE RELEASE DEED EXECUTED BY THE  
2ND PETITIONER IN FAVOUR OF THE IST PETITIONER.
- EXT.P-3: A TRUE COPY OF THE QUESTIONNAIRE SUBMITTED BY THE  
IST PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P-3(A): A TRUE COPY OF THE FURNISHED TO THE EXHIBIT P3 QUESTIONNAIRE.
- EXT.P-4: A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE  
THE DISTRICT COLLECTOR, KASARAGOD.
- EXT.P-5: A TRUE COPY OF THE NOTICE ISSUED BY THE SECRETARY OF THE  
PILICODE GRAMA PANCHAYATH TO THE 5TH RESPONDENT.
- EXT.P-6: A TRUE COPY OF THE PROCEEDINGS OF THE ADDITIONAL TAHSILDAR,  
HOSDURG DATED 19.5.2014.
- EXT.P-7: A TRUE COPY OF THE COMMUNICATION ISSUED BY THE SUB  
COLLECTOR TO THE IST PETITIONER.
- EXT.P-8: A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE IST PETITIONER  
BEFORE THE IST RESPONDENT.
- EXT.P-8(A): A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE IST PETITIONER  
BEFORE THE 3RD RESPONDENT.

**RESPONDENT(S)' EXHIBITS:**

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- EXT.R5(a); TRUE COPY OF THE RECEIPT OF THE ASSIGNMENT APPLICATION  
DTD.23.9.2013.

//TRUE COPY//

P.S.TO JUDGE

Msv/

**A. MUHAMED MUSTAQUE, J**

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**W.P.(C).No.15020 of 2014**  
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**Dated this the 30<sup>th</sup> day of September, 2015**

**JUDGMENT**

The petitioners are the absolute owners in possession of 42 cents of landed property in Re-survey No.21/1A of Kodakadu Village in Kasargode District.

2. The 5th respondent is occupying Government land in front of the petitioner's land. The petitioners raised the complaint. The petitioner's complaint was enquired by into and dropped by the Additional Tahsildar, Hosdurg. In the order, the following findings have been made :

“The encroacher has assigned 0.03 acres of land under the Zero land less project at Padikkeel which is about 5 km away from her residential house in the encroached land. The individual has stated that she is not in a financial position to remove and replace the shed from the encroached land to the assigned land.

The individual is eligible for the assignment of government land as she has sanctioned land under Zero Land Less Project. Further the individual has stated that she is ready to submit application for assigning the

encroached portion of 0.04 ½ acres of land in R.S. No.21/1A8 of Kodakkad Village.

In these circumstances under rule 7 (exception) of KLC rules 1958 the KLC action against Smt.Usha P.V. W/o. Ramanan, Kannadippara, Kodakkad Village for the encroachment of 0.04 ½ acres of land in R.S. No.21/1A8 of Kodakkad Village, is hereby dropped. The Tahsildar, Hosdurg will consider the I.A. Application of the individual as per the Kerala Land Assignment Act.”

3. The learned counsel for the petitioners would submit that the Tahsildar had erred in finding that the petitioners are entitled for the benefit of rule 7. It is submitted that the petitioners encroachment is in a near past and not before the enactment of the Kerala Land Conservancy Act.

4. It is further submitted by the learned counsel for the petitioners is that the Tahsildar do not have any jurisdiction to pass such an order.

5. The learned counsel for the 5th respondent on the other hand, would submit that the 5<sup>th</sup> respondent has already applied for the assignment of this land and they cannot move to the land allotted to them under the 'Zero Landless Project' on account of the fact that it is inaccessible and it is not suitable for putting up any residential building. It is further submitted that the 5<sup>th</sup> respondent also has no financial capacity to move to the new place.

6. The fact now remains that the 5th respondent has encroached upon the Government land. It is not clear that the date on which the 5th respondent has encroached. Therefore, without making any clear finding to that effect, the Tahsildar erred in finding that the petitioners and the 5th respondent are entitled for the benefit of rule 7 of the Kerala Land Conservancy Rules. The fact also remains that the 5th respondent has also applied for assignment of the land.

7. In such circumstances, this Court is of the view that the District Collector, Kasargode shall take a decision in this matter after hearing the petitioners as well as the 5th respondent. If the application for the assignment is rejected necessarily, the question relating to the encroachment has to be considered by the District Collector. The District Collector shall also consider whether the 5th respondent is entitled for the benefit of Rule 7. The parties are free to produce necessary materials before the District Collector. The District Collector shall also advert whether the land allotted to the 5th respondent under the Zero Landless Project is also feasible for re-location. The District Collector shall take appropriate decision, in the light of the discussion as above, within a period of two months after hearing the petitioners and

the 5<sup>th</sup> respondent. In view of the fact that the District Collector has to take a decision in this matter, impugned order is set aside. The status quo shall be maintained till the decision is taken by the District Collector.

The writ petition is disposed of as above.

Sd/-  
**A. MUHAMED MUSTAQUE,**  
**JUDGE**