

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 18541 of 2015 (P)

PETITIONER(S):

**SURESH KUMAR, AGED 54 YEARS,
S/O.BHARATHAN, PAYYAPPATTU, NATTIKA P.O.,
NATTIKA VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE REVENUE DIVISIONAL OFFICER,
(R.D.O), THRISSUR, THRISSUR DISTRICT - 680001.**
- 2. THE DISTRICT COLLECTOR,
THRISSUR, CIVIL STATION, THRISSUR DISTRICT -680001.**
- 3. THE VILLAGE OFFICER,
NATTIKA VILLAGE, THRISSUR DISTRICT -680001.**

*** ADDL.R4 IMPEADED**

- 4. TRIPRAYAR SPORTS & GAMES ASSOCIATION,
REG.NO.234/88 , INDOOR STADIUM, TRIPRAYAR P.O.,
NATTIKA, THRISSUR-680566,
REPRESENTED BY ITS GENERAL SECRETARY.**

ADDL.R4 IMPEADED AS PER ORDER DATED 5/10/2015 IN IA.13711/2015

**R1-3 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN
R4 BY ADV. SRI.P.B.KRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-10-2015,
ALONG WITH WPC. 18813/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1:** TRUE COPY OF THE TITLE DEED DATED 31.10.1966 NO.1262/1966 OF THRIPPRAYAR SUB REGISTRAR OFFICE.
- EXT.P-2:** TRUE COPY OF THE TAX RECEIPT DATED 4.11.2014 ISSUED BY THE NATTIKA VILLAGE OFFICER.
- EXT.P-3:** TRUE COPY OF THE LOCATION CERTIFICATE DATED 3.10.2013 ISSUED BY THE NATTIKA VILLAGE OFFICER.
- EXT.P-4:** TRUE COPY OF THE SITE PLAN DATED 3.10.2013 ISSUED BY THE NATTIKA VILLAGE OFFICER.
- EXT.P-5:** TRUE COPY OF THE RELEVANT PAGES OF DRAFT DATA BANK ISSUED BY THE VILLAGE OFFICER, NATTIKA VILLAGE.
- EXT.P-6:** TRUE COPY OF THE APPLICATION DATED 19.12.2014 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT WITH COPY TO THE FIRST RESPONDENT UNDER THE PROVISIONS OF THE KERALA LAND UTILIZATION ORDER, 1967
- EXT.P-7:** TRUE COPY OF THE JUDGEMENT OF THIS HONOURABLE COURT DATED 30.1.2015 IN WPC NO.2483/2015
- EXT.P-8:** TRUE COPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT DATED 25.4.2015
- EXT.P-9:** TRUE COPY OF THE COMMUNICATION DATED 12.5.2015 ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT
- EXT.P-10:** TRUE COPY OF THE RECEIPT ISSUED BY THE FIRST RESPONDENT DATED 12.5.2015

RESPONDENT(S)' EXHIBITS

- EXT.R1(A):** A TRUE COPY OF THE ORDER NO.B2-6898/2015 DATED 30/5/15
- EXT.R3(A):** TRUE COPY OF ORDER NO.B2-6898/2015 ISSUED BY THE RDO, THRISSUR
- EXT.R3(B):** TRUE COPY OF THE COMPLAINT DATED 17/6/15 SUBMITTED BEFORE THE RDO, THRISSUR
- EXT.R3(C):** TRUE COPY OF THE COMPLAINT DATED 7/7/15 SUBMITTED BEFORE THE RDO, THRISSUR.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 18541 & 18813 of 2015

Dated this the 5th day of October, 2015

J U D G M E N T

The petitioner was granted a permission to utilise the land covered by the Kerala Land Utilisation Order, 1967 (hereinafter referred to as 'KLU Order' for short) situated in Resurvey 175/9 having an extent of 10 cents of land out of 88 cents of land as per the order of the Revenue Divisional Officer dated 25.4.2015. The permission was granted with the following conditions.

- "1) Any earth deposited/removed in the plot will have to be done with the prior information.
- 2) There should be obstruction to agriculture in the surrounding land.
- 3) No water channel shall be obstructed in the process.
- 4) There shall be no discharge of harmful substance/chemical/fertilizer into the surrounding lands.
- 5) All work should be carried out without any disturbance to persons residing in the area.

6) Cultivation must be carried out as per the food crops referred in the KLU Order, 1967.

7) The land cannot be used for commercial activity.

8) The conversion should be completed within a maximum period 6 months from the date of receipt of this order.

9) After completing the conversion activity the petitioner must obtain a completion certificate from this office.

2. It appears that in violation of the above conditions, the petitioner has reclaimed the entire land. On account of this, the Revenue Divisional Officer cancelled the order dated 25.4.2015 as per the order dated 30.5.2015. The order of cancellation is under challenge in W.P.(C) No.18813/2015.

3. The petitioner filed W.P.(C) No.18541/2015 challenging the imposition of condition under Clause 6 of the KLU Order by the Revenue Divisional Officer .

4. This Court called upon to decide the validity of the imposition of the condition under KLU Order as well as the cancellation of the order on account of the violation of that

condition. In W.P.(C) 18541/2015, a third party got impleaded. They alleged that on account of the violation of the Revenue Divisional Officer's order, their land is affected.

5. KLU Order enables the Collector to grant permission to utilise the land for any other purposes. As per the order of the Revenue Divisional Officer dated 25.4.2015, he has granted permission to utilise 10 cents of land towards the road for the purpose of construction of residential building. It is not discernible in what basis he has restricted the 10 cents of land. It is further ordered that no commercial activity can be undertaken in the above land.

6. This Court is of the view that the purpose of exercise of power in terms of Clause 6 of the KLU Order, is to secure objectives of Clause 7 of the KLU Order. Clause 7 of the KLU Order, gives the power to the Collector to ensure that food crop which was in cultivation can be ordered to be cultivated by the holder of the land. Therefore, if food crop which were in cultivation in the land required to be cultivated, the Collector can order the holder of the land to cultivate the food crops in the land in terms of Clause 7 of the KLU Order and to permit the

petitioner to utilise the land for other purpose if bonfide required for other purposes. There is no finding in the order of the Revenue Divisional Officer that any of the food crop as referred in the KLU order were in cultivation or in cultivation in the land. Therefore, in the absence of such findings that the land is required for cultivation under Clause 7 of the KLU Order, the Sub Collector ought not to have restricted reclamation of only 10 cents of land. If the petitioner bonafide request for even commercial purpose, he is free to do so. Therefore, this Court is of the view that restriction of reclamation of 10 cents of land for commercial purposes is to be set aside. However, the Collector is competent to impose such other terms and conditions to protect the neighbouring property. There is no infirmity with such condition in the order.

6. It is pointed out by the intervenor in W.P.(C) No.18541/2015 that due to the illegal reclamation of the property of the petitioner in the above writ petition, serious damage is being caused to them. If that be so, Revenue Divisional Officer shall conduct a site inspection and find out that any obstruction is being caused to the intervenor in

violation of the KLU Order. If any obstruction is caused and any violation has been taken place pursuant to the condition granting permission under KLU Order, that shall be remedied by taking appropriate action to secure neighbouring property after notice to the petitioner and the intervenor within a period of one month from the date of receipt of a copy of this judgment.

7. In that view of the matter, this Court is of the view that even though the petitioner is illegally reclaimed the entire land, that need not be interfered, in view of the finding that restriction of 10 cents of land in the order of the Sub Collector is unsustainable.

The writ petition is disposed of with the following conditions:

- i) The impugned order in W.P.(C) No. 18541/2015 is set aside.
- ii) The condition for restricting the utilisation of only 10 cents of land and also to the extent of restricting 10 cents for commercial purpose is also set aside.
- iii) The petitioner is permitted to use the entire land based on the permission granted under KLU Order without

restriction as to the extent of land.

- iv) The petitioner shall abide by all other condition in the KLU Order.
- v) The Revenue Divisional Officer shall take appropriate steps to protect the neighbouring lands on account of reclamation of land by the petitioner within one month from the date of receipt of the copy of the judgment it it has caused by loss to the neighbouring owners.

sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/

“W.P.(C) No.18541/2015” occurring in condition No.1 of the operative portion at page 5 of the common judgment dated 05/10/2015 is corrected as “W.P.(C) No.18813/2015” as per orders dated 30/11/2015 and 21/11/2015 in I.A.No.16594/2015

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in W.P.(C) No.18813/2015 (B) and I.A.16527/2015 in W.P.(C)
No.18541/2015 (P) respectively.

Registrar (Judicial)