IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 23435 of 2008 (M)

PETITIONER(S):

P.C.VISALAKSHIAMMA, D/O.KELAPPAN NAIR,
ELLOLATHIL HOUSE, KURIYEDAM, AIKKARAPADY
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, DEPARTMENT OF, REVENUE TRIVANDRUM.

2. THE DISTRICT COLLECTOR, MALAPPURAM.

3. THE REVENUE DIVISIONAL OFFICER, PERINTHALMANNA, MALAPPURAM DISTRICT.

4. THE TAHSILDAR, ERNAD TALUK, MALAPPURAM DISTRICT.

5. THE VILLAGE OFFICER, CHERUKAVU VILLAGE, MALAPPURAM DISTRICT.

BY GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23435 of 2008

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: COPY OF SKETCH OF THE PETITIONER'S PROPERTY, COMPRISED IN R.S.NO.99/11, 12 OF THE CHERUKAVU VILLAGE.

EXHIBIT P2: COPY OF ORDER OF THE 3RD RESPONDENT DATED 17.1.2004 AS NO.K.DIS.7034/2003/M.

EXHIBIT P3: COPY OF STOP MEMO ISSUED BY THE 5TH RESPONDENT DATED 25.7.2008 AS NO.354/2008.

EXHIBIT P4: COPY OF REPRESENTATION SUBMITTED BY THE SON OF THE PETITIONER TO THE 5TH RESPONDENT DATED 26.7.2008.

EXHIBIT P5: COPY OF LETTER ISSUED BY THE PRESIDENT OF CHERUKAVU VILLAGE DATED 23.7.2008.

EXHIBIT P6: COPY OF ORDER OF THIS HON'BE COURT IN W.P(C). NO.29467/2006 DATED 9.11.2006.

/TRUE COPY

PS TO JUDGE

vgs

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.23435 of 2008

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Dated this the 11th day of September, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P3 stop memo issued by the 5th respondent though the Revenue Divisional Officer concerned has already issued Ext.P2 under the KLU order.

2. The petitioner has obtained Ext.P2 exemption order from the 3rd respondent for his properties. The petitioner alleges that respondents 2 and 3 are the authorities under the KLU order to grant exemption for any land from the purview of the said statue and it is the 3rd respondent, who after conducting all necessary enquiries, had issued Ext.P2 order of exemption for the land owned by her. The petitioner further alleges that on the strength of Ext.P2 when she wanted to convert the land, some of the DYFI activists wanted the same to be stopped and for this purpose, the Village Officer was made a tool to get Ext.P3 stop memo issued.

3. The petitioner alleges that the Village Officer cannot sit in appeal over the decision by the 3rd respondent and the Land Revenue Commissioner is the appellate authority against a decision taken either by the 2nd respondent or by the 3rd respondent. The petitioner points out that, however, nobody challenged Ext.P2 order and so long as Ext.P2 is in existence, the 5th respondent cannot prevent her from converting the properties. It is with this background, the petitioner has approached this Court.

4. In the counter affidavit filed by the first respondent, it was contended that on the basis of the report submitted by the Additional Tahsildar, Ernad, the 3rd respondent had issued an order dated 17.1.2004 for the conversion of the land in question to construct commercial buildings, house and other buildings. The 3rd respondent issued the order favourably since the applicant is his mother in law and she retired from service on 30.9.2004. It was further contended the property in question is classified as wetland as per the village

records and it can be used only for paddy cultivation. The other sides of the road at the northern and western boundary are wetlands which can be used for paddy cultivation. The boundaries are as follows:

East	: House property
South	: National Highway
West	: Narrow Mud Road
North	: Narrow Mud road

5. They further contended that the purpose of conversion shown in the application dated 6.5.2003 was to construct a commercial building and the petitioner was permitted to construct a residential house by the order. Besides these, the petitioner had owned 0.8660 hectares of house property in R.S No.11/7 of Block No.3 of Cherukavu village. Above all, the Government have issued order dated 17.11.2007 directing that no application for conversion would be granted as well as the action taken earlier in such cases should be ceased since the Neivayal Samirakshana Bill has been introduced in the State Legislative Assembly w.e.f 19.9.2007.

Therefore, the 5th respondent acted in accordance with the order.

6. They would further contend that the President of the grama panchayat has no legal right to issue such a letter and the Village Officer has the absolute right to issue a stay memo if the conditions are violated. In this case the petitioner has violated the instruction in the order dated 17.1.2004. Therefore, they prayed for a dismissal of the writ petition.

7. Arguments have been heard.

8. Opposing the writ petition, the learned Senior Government Pleader submitted that though it is true that the petitioner was granted exemption order in the year 2004 by the Revenue Divisional Officer concerned, she has not reclaimed the property till 2008. In answer to the said submission, the learned counsel for the petitioner would submit that respondents 2 and 3 are the authorities under the KLU order to grant exemption from the purview of the said statute. It is the third respondents, who after conducting all enquiries, issued

Ext.P3 stop memo for the land owned by the petitioner. Now, when the petitioner claimed conversion of the land on the strength of Ext.P2, some local people wanted the same to be stopped and the Village Officer has issued the impugned order.

9. The learned counsel for the petitioner would submit that the land in question is surrounded by dry lands and roads, and it appears that it is not at all cultivable as the same is a waterlogged area. It is further stated that no nearby residents have any objection in converting the property and it was so reported before granting exemption by respondents 4 and 5 to the 3rd respondent.

10. The decision of this Court in **Mohammed Abdul Basheer C.P.** v. **State of Kerala and another** [2012 (3) KLT 86] lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted to construct a house. It is settled position that the applicant can choose the best land suited for construction of his house [**Sunil** v.

Killimangalam-Panjal 5th Ward Nellulpadaka Samooham 2012(4) KLT 511]. Only if there is cultivation presently then it will be considered as cultivating paddy land so as to attract the provisions of the Kerala Conservation of Paddy Land and Wetland Act and Rules.

11. In **Jalaja Dileep** v. **Revenue Divisional Officer** [2012(3) KLT 333] this Court observed that the description in the title deed or in the revenue records would not be crucial if the property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

12. The learned counsel for the petitioner invited my attention also to the decision of this Court in **Adani Infrastructure & Developers Pvt. Ltd., Mumbai** v. **State of Kerala and Others** [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of

jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

13. The learned counsel for the petitioner invited my attention to the decision of this Court in **Mohanan** v. **R.D.O** [2010 (3) KLT 67] which states that the Wetland Act does not provide for nullifying the orders already passed under the Kerala Land Utilisation Order. The learned Special Government Pleader would submit that though exemption was granted to the petitioner to convert the same, it was subject to certain conditions to see that no water logging happens in the area on account of the conversion. Here, the learned counsel for the petitioner undertook that the conversion that would be undertaken by the petitioner shall be only subject to the conditions that had imposed by respondents 4 and 5 in Ext.P2.

Therefore, the writ petition is disposed of quashing Ext.P3 and permitting the petitioner to convert the land on the strength of Ext.P6. It shall be open to the Revenue Divisional Officer concerned to ensure that whether the conditions in Ext.P2 are strictly complied with by the petitioner while effecting conversion.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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