

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 23558 of 2014 (S)

PETITIONER:

**PUNATHILTHAZHAM PUTHANVALLIVAYAL
SAMRAKSHANA SAMITHI, EDAKKAD,
KOZHIKODE, REPRESENTED BY ITS CHAIRMAN
M.C.SUDESH KUMAR.**

**BY ADVS.SRI.R.KRISHNA RAJ
SRI.P.SAJU
SRI.BIJITH S.KHAN
SRI.VENU VALIYA PARAMBIL**

RESPONDENTS:

- 1. DISTRICT COLLECTOR, KOZHIKODE, PIN - 673 001**
- 2. REVENUE DIVISIONAL OFFICER,
KOZHIKODE, PIN - 673 001.**
- 3. TAHSILDAR, KOZHIKODE, PIN - 673 001.**
- 4. VILLAGE OFFICER, PUTHIYANGADI, PIN - 673 004.**
- 5. CORPORATION OF KOZHIKODE,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE MUNICIPAL CORPORATION,
KOZHIKODE, PIN - 673 001.**
- 6. SUB INSPECTOR OF POLICE, ELATHOOR, PIN - 673 009.**
- 7. CIRLCE INSPECTOR OF POLICE, NADAKKAVU, PIN - 673 002.**
- 8. COMMISSIONER OF POLICE, CALICUT, PIN - 673 001.**
- 9. PERFECT HEALTH CARE SERVICES, AVINASHI ROAD,
JAYA ENCLAVE, COIMBATORE REPRESENTED BY K.E.MOIDU,
2/78 B, P.K. BUILDING, EAST HILL,MINI BYE PASS ROAD,
CALICUT - 673 010.**

**R1 TO R4,R6 TO R8 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R5 BY SRI.K.D.BABU,SC,KOZHIKODE CORPORATION
R9 BY ADV. SRI.C.P.MOHAMMED NIAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-12-2014, THE COURT ON 07-01-2015 DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : COPY OF LETTER ISSUED BY THE VILLAGE OFFICER DATED
19.02.2013
- EXHIBIT P2 : COPY OF THE LETTER ISSUED BY THE VILLAGE OFFICER DATED
21.07.2014
- EXHIBIT P3 : COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE
OFFICER DATED 01.01.2013
- EXHIBIT P4 : COPY OF THE PROCEEDINGS OF THE CORPORATION GRANTING
BUILDING PERMIT DATED NIL
- EXHIBIT P5 : COPY OF THE REPORT OF THE ADV.COMMISSIONER DATED
17.07.2014
- EXHIBIT P6 : COPY OF THE COMPLAINT FILED BEFORE THE RDO DATED 19.05.2014
- EXHIBIT P7 : COPY OF THE REPORT OF THE VILLAGE OFFICER DATED 23.06.2014
- EXHIBIT P8 : COPY OF THE DATA BANK DATED NIL
- EXHIBIT P9 : COPY OF THE APPLICATION OF THE 9TH RESPONDENT DATED NIL
- EXHIBIT P10 : COPY OF THE COMPLAINT FILED BEFORE THE CORPORATION
DATED NIL
- EXHIBIT P11 : COPY OF THE COMPLAINT FILED BEFORE THE DISTRICT
COLLECTOR, DATED 09.05.2014
- EXHIBIT P12 : COPY OF THE REPORT OF THE ASSISTANT EXECUTIVE ENGINEER
DATED 04.07.2014
- EXHIBIT P13 : COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P14 : COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P15 : COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P16 : COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P17 : COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P18: COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P19: COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P20: COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P21: COPY OF THE PHOTOGRAPH DATED NIL
- EXHIBIT P22: COPY OF THE PAPER REPORT DATED 24/09/2014

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EXHIBIT P23: COPY OF THE PAPER REPORT DATED 24/09/2014

EXHIBIT P24: COPY OF THE PAPER REPORT DATED 24/09/2014

EXHIBIT P25: COPY OF THE REPORT OF THE ADDL.TAHSILDAR DATED 01/08/2014

EXHIBIT P26: COPY OF THE ORDER OF THE MUNSIFF'S COURT DATED 09/10/2014.

EXHIBIT P27: COPY OF THE ORDER OF THE TAHSILDAR DATED 27/06/2012

EXHIBIT P28: COPY OF THE NOTICE OF THE CORPORATION DATED 14/01/2013

EXHIBIT P29: COPY OF THE RELEVANT PAGE OF THE DATA BANK DATED NIL

EXHIBIT P30: COPY OF THE PHOTOS PRODUCED BY THE 9TH RESPONDENT DATED NIL.

EXHIBIT P31: COPY OF THE LETTER FROM THE DISTRICT INDUSTRIES CENTRE DATED 29/10/2014

EXHIBIT P32: COPY OF THE LETTER FROM THE TALUK OFFICE DATED 17/10/2014

EXHIBIT P33: COPY OF THE LETTER FROM COLLECTORATE DATED 17/10/2014.

EXHIBIT P34: COPY OF THE LETTER FROM KSIDC DATED 14/10/2014

EXHIBIT P35: COPY OF THE LETTER FROM THE CORPORATION DATED 05/09/2014

EXHIBIT P36: COPY OF THE LETTER OF THE VILLAGE OFFICER DATED 21/10/2014

EXHIBIT P37: COPY OF THE SKETCH SUBMITTED TO THE CORPORATION DATED NIL

EXHIBIT P38: COPY OF THE RELEVANT PAGE OF THE DATA BANK DATED NIL

EXHIBIT P39: COPY OF THE RELEVANT PAGE OF THE DATA BANK DATED NIL

EXHIBIT P40: COPY OF THE GOOGLE MAP DATED 13/12/2002

EXHIBIT P41: COPY OF THE GOOGLE MAP DATED 03/02/2011

EXHIBIT P42: COPY OF THE PAPER REPORT DATED 21/11/2014

EXHIBIT P43: COPY OF THE PAPER REPORT DATED 12/03/2014

EXHIBIT P44: COPY OF THE LETTER OF PWD DATED 12/11/2014

RESPONDENT(S)' EXHIBITS

EXHIBIT R9(A): COPY OF THE REPLY SUBMITTED BY THE VILLAGE OFFICER TO THE 9TH RESPONDENT UNDER THE RTI ACT

EXHIBIT R9(B): COPY OF THE REPLY SUBMITTED BY THE AGRICULTURAL OFFICER TO THE 9TH RESPONDENT UNDER THE RTI ACT.

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- EXHIBIT R9(C): COPY OF THE LETTER DATED 17/09/2014 ADDRESSED BY THE KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED.**
- EXHIBIT R9(D): COPY OF THE RELEVANT EXTRACTS OF THE DATABANK PUBLISHED BY THE 4TH RESPONDENT FOR THE YEARS 2010 AND 2012.**
- EXHIBIT R9(E): COPY OF THE CERTIFICATE DATED 01/11/2013 ISSUED IN FAVOUR OF THE 9TH RESPONDENT BY THE 4TH RESPONDENT.**
- EXHIBIT R9(F): COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF THE PETITIONER BY THE AGRICULTURAL OFFICER OF PUTHIYANGADI VILLAGE.**
- EXHIBIT R9(G): COPY OF THE ORDER DATED 16/07/2012 ISSUED IN FAVOUR OF THE 9TH RESPONDENT BY THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY KERALA.**
- EXHIBIT R9(H): COPY OF THE BUILDING PERMIT DATED 07/05/2014 ISSUED IN FAVOUR OF THE 9TH RESPONDENT BY THE 5TH RESPONDENT.**
- EXHIBIT R9(I): COPY OF THE CERTIFICATE DATED 01/01/2014 ISSUED IN FAVOUR OF THE 9TH RESPONDENT BY THE DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES DEPARTMENT, KOZHIKODE**
- EXHIBIT R9(J): COPY OF THE INTEGRATED CONSENT TO ESTABLISH/AUTHORIZATION ISSUED IN FAVOUR OF THE 9TH RESPONDENT BY THE KERALA STATE POLLUTION CONTROL BOARD.**
- EXHIBIT R9(K): COPY OF THE ORDER DATED 08/05/2014 ISSUED IN FAVOUR OF THE 9TH RESPONDENT BY THE ASSISTANT EXECUTIVE ENGINEER, KYIP SUB DIVISION, KAKKODI.**
- EXHIBIT R9(L): COPY OF THE LOCATION PLAN OF THIS RESPONDENT'S PROPOSED HOSPITAL PROJECT.**

/TRUE COPY/

P.S.TO.JUDGE

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Ashok Bhushan, Ag. C.J & A.M. Shaffique, J.

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W.P (C) No. 23558 of 2014

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Dated this, the 7th day of January, 2015.

J U D G M E N T

Shaffique, J.

This writ petition is filed by an unregistered organization claiming to consist of 4 residents associations of Edakkad in Puthiyangadi Village. The writ petition is filed as a public interest litigation. Their complaint is regarding reclamation of 2.705 hectares of land in Puthiyangadi Village by the 9th respondent, inter alia contending that the entire area is either wet land or paddy land as defined under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as 'the Act'). According to them, filling of the said area has caused obstruction to the free flow of water during rainy season and has affected the irrigation canal which passes on the northern side of the property.

2. According to the petitioner, though this matter was taken up before various authorities, no action has been taken in the matter. The petitioner relies upon Exts. P1 and P2 communications issued by the Village Officer on 19.2.2013 and 21.7.2014 respectively indicating that as per the village records, the entire property is classified as "paddy land." The contention is that despite the said fact, building permit has been issued to the 9th respondent as per

Ext. P4 decision.

3. One of the residents in the locality has filed O.S. No. 62/2014 before the Munsiff's Court, Kozhikode alleging obstruction to the free flow of water to the canal and obstruction caused to the pathway which passes through the property in question. An Advocate Commissioner was appointed, who had submitted a report stating that the property is either wet land or paddy land and reclamation activities are going on. The petitioner submitted a representation to the Revenue Divisional Officer to interfere in the matter. The Revenue Divisional Officer directed the Village Officer to conduct an enquiry and file a report. The report of the Advocate Commissioner is Ext. P5 and the report of the Village Officer is Ext. P7. It is further contended that as per the data bank prepared by the authorities under the Act, the property is included and shown as paddy land and wet land. The same was prepared in the year 2010. Further, in the remarks column, it is shown that the entire property has been filled up. Ext. P8 is the data bank particulars in regard to the property in question. The petitioner had also submitted complaints to the Corporation as well as the District Collector as per Exts. P10 and P11. But, since no action has been taken in the matter, this writ

petition has been filed seeking for a direction to take appropriate action on Exts. P10 and P11 by invoking Sections 13 and 18 of the Act and to restore the portion of the property illegally reclaimed by the 9th respondent and for other consequential reliefs.

4. Counter affidavit has been filed by the 9th respondent, a partnership firm. According to them, even before filing the writ petition, one of the members of the petitioner association has filed a suit as O.S. No. 627/2014 before the Munsiff's Court, Kozhikode. No interim orders were passed in the said suit. At that time, another petition was filed before the Revenue Divisional Officer, Kozhikode. The petitioner was unable to obtain any interim orders and it is thereafter that this writ petition is filed. Therefore, according to the 9th respondent, the writ petition is not maintainable as the petitioner has approached this Court when they were unsuccessful in getting orders in other proceedings. It is also alleged that the petitioner has forged Ext. P8 document and has changed the date as 13.3.2014, whereas the actual date is 13.3.2007.

5. According to 9th respondent, they proposed to construct a six storeyed hospital building with all modern amenities to provide adequate medical facilities in an affordable manner. Phase I is being

constructed on an estimated cost of Rs. 253 crores to develop the same into a 200 bed hospital and the future expansion plan is to increase the capacity to 500 beds. The project was sanctioned by the Government of Kerala as part of the Emerging Kerala Summit. It is contended that the land is neither wet land or paddy field, coming within the meaning of the Act and the entries in the revenue or village records cannot be a decisive factor for the purpose of the Act. They relied upon the extract of the data bank published by the 4th respondent during the year 2010-2012 as Ext. R9(d). The properties were converted prior to 13.3.2007 and as on the date when the Act had come into force, no part of the land was lying as paddy land., They had relied upon Ext. R9(e) issued by the Village Officer and Ext. R9(f) issued by the Agricultural Officer.

6. In respect of the alleged obstruction to the irrigation canals, it is contended that the construction is being taken up after getting all permits and clearance from the Chief Town Planner, Thiruvananthapuram, State Environment Impact Assessment Authority Kerala, Kerala State Pollution Control Board, Department of Environment and Climate Change, Chief Engineer, Irrigation Projects, Fire and Rescue Services Department, Village Officer,

Puthiyangadi etc. According to them, the Assistant Executive Engineer has given permission to construct RCC culvert across Edakkad field in terms of Ext. R9 (k) dated 8.5.2014. This is to avoid any flooding in the neighbouring area.

7. Counter affidavit is also filed by the 1st respondent further indicating that when allegations were raised by the petitioner, the District Collector directed the Additional District Magistrate and the Deputy Collector (General) to inspect the site along with the local Tahsildar and Village Officer and to submit a detailed report in respect of the said allegations of illegal conversion or whether there is any violation of the provisions of the Act. A team of officers conducted site inspection and report was submitted indicating that the land was purchased by the firm during the period 2005-2011 from about 35 persons. Some of the documents indicated that there were buildings in the property at the time of purchase. There were 16 houses in the aforesaid survey numbers owned by the 9th respondent. Thereafter, they have constructed a compound wall around the property in which the building is being constructed. Though the land is shown as 'Nilam' in the Village records, it has been filled up with soil years ago and even in the sale

deed, the description of the property is shown as 'land filled with soil'. About 70 persons have constructed houses and are living for years in the vicinity of the road which is located on the south east, which is about 3 metres away from the land, which is recorded as 'Nilam'. 7 wells are still seen in the property. The irrigation canal is not used as a canal, whereas it is used as a road for many years, several single/double storeyed houses were constructed about 10 to 40 years back, which could be seen in the locality of the adjoining property which is recorded as 'Nilam' as per Village records. It is further indicated that 80% of the land aforesaid had already been category changed years before the enactment of the Act and in the remaining land, people were living with houses constructed and that there are several fruit bearing trees, viz. 129 coconut trees, 28 mango trees, 3 jack fruit trees, 13 arecanut trees and 8 other big trees in the land. In the data bank particulars, the property is shown as completely filled up with soil during 2007. On a site inspection as well as enquiry with local people, it was understood that the irrigation canal was filled up long back and local residents are plying vehicles. It is further indicated that the Agricultural Field Officer has informed that there are no record to show that paddy

has been cultivated in the said land after the enactment of the Act and the farmers have not received any agricultural subsidy for the said purpose. The coconut trees in the property are about 20 years age. It is therefore submitted that the property is neither wet land nor paddy land.

8. Reply affidavit is also filed by the petitioner producing several documents.

9. The 1st respondent has filed additional counter affidavit to controvert the allegations made in the reply affidavit filed by the petitioner.

10. Having regard to the factual issues involved in the matter, the short question to be considered is whether the property involved in this litigation is either paddy land or wet land as defined under the Act.

11. First of all, the petitioner has no consistent case as to whether the property is paddy land or wet land. A paddy land coming within the meaning of the Act and wet land coming within the meaning of the Act have different concepts and a particular property cannot be paddy land as well as wet land. Paddy land and wet land are defined under the Act as under:

“paddy land” means all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation but uncultivated and left fallow, and includes the allied constructions like bunds, drainage,

channels, ponds and canals.

"wetland" means land lying between terrestrial and aquatic systems, where the water table is usually at or near the surface or which is covered by shallow water or characterized by the presence of sluggishly moving or standing water, saturating the soil with water and includes backwaters, estuary, fens, lagoon, mangroves, marshes, salt marsh and swam forests but does not include paddy lands and rivers."

From the definition itself it is evident that paddy land cannot be wet land and vice versa.

12. The main contention urged is that as per the data bank particulars available, the property is described as paddy land. This contention is prima facie wrong as the data bank particulars clearly indicate that reclamation has been done on 13.3.2007, ie., even prior to the Act coming into force. Ext. P8, which is relied upon by the petitioner does not contain all the particulars. A true extract is produced by the 9th respondent as Ext. R9(d) from which it is evident that the property had been converted as on 13.3.2007. The learned counsel for the petitioner however submits that data bank particulars does not give a correct picture and the Government is intending to reconstruct the whole data bank and to prepare a new data base for the same.

13. But from the available materials, if it is admitted by the Government that the property is not

included as a paddy land or wet land in the available data bank and the property is shown as filled up land even prior to the Act coming into force, admittedly, the Act has no application. This position is well stated by a Division Bench judgment of this Court in **Aishabeevi & Another v. Superintendent of Police, Ernakulam & Others**, 2014 (3) KHC 678 DB). This Court held at paragraphs 19 and 20 as under:

“19. Going by the definition it could be seen that two conditions must be satisfied to bring a land under paddy land defined under Section 2. (1) It must be a land where paddy is cultivated at least once in a year or (2) suitable for paddy cultivation but uncultivated and left fallow. Therefore, a land which does not satisfy either of these conditions will not come under the definition of paddy land and whereby under the application of the new Act. We are also in agreement with the decisions cited above, which held that question, whether a land in question would come under paddy land defined in Conservation of Paddy Land and Wet Land Act, 2008 is to be determined on the basis of facts as they exist on ground and not on the basis of description in the revenue records or in the deeds. But here, the respondents 4 and 5 have no specific case that at preset, the land in question is lying as a paddy land on ground and the elements constituting the paddy land under the Conservation of paddy Land and Wet land Act, 2008 is present in the case of land in question. Going by the pleadings, they themselves admit that at preset it is a land illegally converted in contravention of the Conservation of Paddy Land and Wet Land Act, 2008.

20. Therefore, we find that the land in question where the construction is proposed to be made cannot be treated as a 'paddy land' coming under the purview of Conservation of Paddy Land and Wet Land Act, 2008 on the basis of the entries of descriptions in the revenue records or to title deed and there is no violation of the said Act."

In the said circumstances, when the material on record clearly suggests that the property is neither paddy land or wet land, we do not think that the writ petition has any basis. In fact, the petitioner relied upon Ext. P8 which is now demonstrated as an incomplete document. The 9th respondent had a case that there was material alteration in the document. However, the document produced before this Court does not contain any such entries aforesaid and only a part of the document is seen produced before this Court. It is based on Ext. P8 that the petitioner claimed that the property is paddy land. In fact the date on which the property is reclaimed is conspicuously not seen in Ext.P8, whereas in Ext.R9(d) all particulars are available. There is no material to indicate that the property is paddy land or wet land as on the date when the Act had come into force.

14. From the definition of wet land it is clear that water logging in an area during rainy season will not

transform the land into wet land. Water logged area is different from wet land as defined under the Act. Therefore, we are of the view that the District Collector was justified in forming an opinion that the land has not been converted after the Act had come into force.

15. The learned counsel for the petitioner further would urge that no action had been taken on Exts P10 and P11.

16. A perusal of Exts.P10 and P11 also does not indicate that the petitioner has a consistent case. In Ext. P11, the petitioner's contention is that the property is wet land, whereas the data bank particulars show that the property was filled up prior to the Act coming into force. Therefore, the petitioner cannot complain that the District Collector has not invoked the provisions under Section 13 of the Act. The petitioner does not have any material to indicate that the paddy land has been filled up after the Act had come into force. Document relied upon by the petitioner does not reveal any such factual data. In the absence of any such factual materials, it is not open for this Court to come to a conclusion that the matter requires further verification by the District Collector.

17. The District Collector, after receiving the representation of the petitioner, conducted appropriate

enquiry into the matter as revealed from the counter affidavit and has formed an opinion that the contentions urged are totally baseless.

Under such circumstances, the petitioner is not entitled for any relief in the writ petition and the same is dismissed.

Sd/-

Ashok Bhushan, Ag. Chief Justice

Sd/-

A.M. Shaffique, Judge.

Tds/