

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 27457 of 2011 (F)

PETITIONER:

R.SYAM, S/O.RAMACHANDRAN,
SYAM NILAYAM, VENNIYOOR,
NELLIVILA PO, VENGANOOR.

BY ADVS.SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR
SRI.K.S.PRAVEEN

RESPONDENTS:

1. THE GOVERNMENT OF KERALA REP. BY
SECRETARY, LOCAL ADMINISTRATION
DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM-695 001.
3. THE VENGANOOR GRAMAPANCHAYATH
REP. BY ITS SECRETARY, VENGANOOR PO,
THIRUVANANTHAPURAM-695 523.
4. PRASAD, S/O.SOMAN,
KUNTHALAMVILA PUTHEN VEEDU, VENGANOOR PO,
THIRUVANANTHAPURAM- 695 523.

R1 & R2 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR
R4 BY ADV. SRI.SUMAN CHAKRAVARTHY
R3 BY ADVS. SRI.POOVAPPALLY M.RAMACHANDRAN NAIR
SRI.R.V.ABHISHEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 27457/2011

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF THE ORDER DATED 28.3.2011 IN APPEAL NO.38/11 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
- EXT.P2 TRUE COPY OF THE REPORT DATED 6.1.2011 ISSUED BY VILLAGE OFFICER, VENGANOOR.
- EXT.P3 TRUE COPY OF THE STOP MEMO DATED 6.1.2011 ISSUED BY THE VILLAGE OFFICER, VENGANOOR.
- EXT.P4 TRUE COPY OF THE BASIC TAX REGISTER.
- EXT.P5 TRUE COPY OF THE ORDER DATED 4.1.2011 ISSUED BY THE 3RD RESPONDENT.
- EXT.P6 TRUE COPY OF THE REPORT DATED 10.2.2011.
- EXT.P7 TRUE COPY OF THE COMPLAINT DATED 28.2.2011 SUBMITTED TO THE 2ND RESPONDENT.
- EXT.P8 TRUE COPOY OF THE ORDER DATED 5.8.2011 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:

- EXT.R4A TRUE COPY OF THE PHOTOS OF NEARBY HOUSES
- EXT.R4B TRUE COPY OF THE PHOTO OF 4TH RESPONDENT'S HOUSE

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.27457 of 2011 F

Dated this the 6th day of January, 2015

JUDGMENT

Shorn of extraneous particulars, the facts in brief are that the fourth respondent owns an extent of 38.152 cents of land in R.S.No.160/2 of Venganoor Village. In course of time, he was granted permission for constructing a residential house by the third respondent Grama Panchayat through proceedings dated 10.12.2010. When the fourth respondent in compliance with the said permission substantially completed the construction, on 04.01.2011, the third respondent Grama Panchayat issued Exhibit P5 (R (A)C) stop memo, on the complaint of he petitioner.

2. Questioning Exhibit P5, the fourth respondent approached the Tribunal for Local Self Government Institutions, Thiruvananthapuram by filing statutory Appeal

No.38/2011. It appears that initially the Grama Panchayat issued the stop memo which was the subject matter of the appeal proceedings before the Tribunal based on the complaint lodged by the petitioner herein, who later on got himself impleaded as a party in the appeal proceedings.

3. On appreciation of the rival contentions as well as the records made available, the Tribunal allowed the appeal through Exhibit P1 order dated 28.03.2011. Assailing Exhibit P1, the petitioner, who was the second respondent in the appeal proceedings, filed the present writ petition.

4. In the above factual background, the learned counsel for the petitioner has strenuously contended that the fourth respondent's land is Nilam, i.e. paddy field, and as such, the third respondent Panchayat in the first place ought not to have granted any construction permission. He has further contended that when he complained to the authorities, on appreciation of the truth of the matter, the

Grama Panchayat issued Exhibit P5 stop memo. According to the learned counsel for the petitioner, as could be seen from Exhibit P4 and also Exhibit P2, the report of the Village Officer dated 06.01.2011, there is no dispute concerning the fact that the land in question is Nilam. In further elaboration of his submissions, the learned counsel has submitted that once any piece of land has been reclaimed, it cannot be used for any purpose other than agriculture, and as such, there is no justification on the part of the Tribunal in interdicting Exhibit P5 by rendering Exhibit P1 order. Accordingly, he has urged this Court to allow the writ petition by setting aside Exhibit P1 order.

5. The learned counsel for the fourth respondent has strenuously opposed the claims and contentions of the petitioner. He has submitted that the fourth respondent has purchased the land way back on 07.06.2000, whereas the Kerala Conservation of Paddy Land and Wet Land Act, 2008

came into force much later. According to him, the learned Tribunal has elaborately discussed the issue and on appreciation of all the aspects involved, it eventually held that Exhibit P5 cannot be sustained.

6. The learned counsel for the fourth respondent has drawn my attention to certain decided cases of this Court to lay emphasis on the fact that mere recital in revenue records is not conclusive of the nature of the land and that by efflux of time, the land could have been rendered unfit for cultivation, or in the alternative, fit for construction. The learned counsel has also submitted that since there is no reclamation or conversion after the enforcement of the Act 2008, the state of the land prior to the said enactment shall not come in the way of the owner putting the land to beneficial use. Accordingly, the learned counsel has submitted that taking into account all the relevant aspects, initially the Grama Panchayat has issued necessary

permission, but subsequently, only based on the complaint of the petitioner, who does not, according to the fourth respondent, have any locus, has issued Exhibit P5 without application of mind. Eventually, the learned counsel for the fourth respondent has urged this Court to dismiss the writ petition, since Exhibit P1 order of the learned Tribunal cannot be found fault with, inasmuch as it does not suffer from any legal infirmity which otherwise provides for any judicial interference or intervention by exercising the power of certiorari by this Court.

7. Heard the learned counsel for the petitioner and the fourth respondent, as well as the learned Standing Counsel for the Grama Panchayat, apart from perusing the record.

8. At the outset, it is to be kept in mind that this Court is called upon to exercise its power of certiorari vis-a-vis Exhibit P1, an order passed by a competent Tribunal.

Since the adjudicatory parameters have been well entrenched concerning the judicial intervention in respect of the orders passed by the judicial or quasi-judicial authorities, this Court at best can consider the jurisdictional errors or any error apparent on the face of the record, such as not considering the relevant material or considering the irrelevant material.

9. Keeping the above principle in mind, if Exhibit P1 order is examined, it appears to be a well considered one. The learned Tribunal has elaborately discussed the issue of tenability of Exhibit P5 stop memo issued by the Grama Panchayat. With specific reference to the statutory terms, it has eventually come to a conclusion that the said order of the Grama Panchayat cannot be sustained and the fourth respondent has not committed any illegality in constructing the building in terms of the permission granted earlier. At any rate, the learned Tribunal has made it clear that if there

is any deviation from the sanctioned plan, the authorities are at liberty to take remedial steps.

10. As could be seen from the record, on 04.01.2011 the Grama Panchayat issued Exhibit R(A)D notice to the fourth respondent directing him to submit an explanation within fifteen days concerning what appears to be the deviation pointed out by the authorities. To this day, the authorities do not seem to have moved further pursuant to Exhibit R(A)D.

11. It is settled law that if the land in question was converted prior to the enactment of the Act, the said land cannot be described as paddy field or wet land coming within the purview of the said Act [See **Jalaja Dileep v. Revenue Divisional Officer** (2012 (3) KLT 333), **Mohammed Abdul Basheer v. State of Kerala** (2012 (3) KLT 86) and **Shahanaz Shukkoor v. Chelannur Grama Panchayat** (2009 (3) KLT 899)].

12. In the light of the above settled legal proposition, as has been judicially affirmed by this Court, I do not see any legal infirmity in Exhibit P1 to be interdicted by exercising the power of certiorari by this Court. At any rate, it is made clear that though the fourth respondent is at liberty to continue with the construction of the residential building in terms of the permission granted by the Grama Panchayat, if there is any deviation, the Grama Panchayat is at liberty to take all necessary steps in strict compliance with the relevant statute.

With the above observation, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv