

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 26315 of 2014 (L)

PETITIONER :-

**M.M.RAJENDRAN, AGED 50 YEARS,
S/O. MADHAVAN, MATHANKALATHIL,
NAYARAMBALAM, ERNAKULAM DISTRICT.**

BY ADV. SRI.B.BALAPRASANNAN

RESPONDENTS :-

**1. THE SECRETARY,
NAYARAMBALAM SC/ST SERVICE
CO-OPERATIVE BANK LTD. NO. E 337,
ERNAKULAM DISTRICT - 682 509.**

**2. THE PRESIDENT,
NAYARAMBALAM SC/ST SERVICE
CO-OPERATIVE BANK LTD. NO. E 337,
ERNAKULAM DISTRICT - 682 509.**

**R1 & R 2 BY ADVS. SRI.K.S.MADHUSOODANAN
SRI.THOMAS CHAZHUKKARAN
SRI.M.M.VINOD KUMAR
SMT.K.M.RAMYA
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS :-

EXHIBIT P1 : TRUE COPY OF AGREEMENT DATED 06-07-2013 BETWEEN THE PETITIONER AND THE 2ND RESPONDENT.

EXHIBIT P2 : TRUE COPY OF APPLICATION ISSUED BY THE ERNAKULAM MATSYA KARSHAKA VIKASANA AGENCY TO THE PETITIONER.

EXHIBIT P3 : TRUE COPY OF REPRESENTATION DATED 06-08-2013 SUBMITTED BY THE PETITIONER BEFORE THE 1ST AND 2ND RESPONDENT.

EXHIBIT P4 : TRUE COPY OF REPRESENTATION DATED 28-02-2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P5 : TRUE COPY OF REPRESENTATION FILED BY PETITIONER BEFORE THE 1ST RESPONDENT DATED 19-09-2014.

EXHIBIT P6 : TRUE COPY OF PROJECT AND FINANCIAL ANNOUNCEMENT OF THE MALSYA KARSHAKA VIKASANA AGENCY ON THE FINANCIAL YEAR 2014-15 DATED NIL.

RESPONDENT(S)' EXHIBITS :-

EXHIBIT R1(a) : PHOTOCOPY OF THE GUIDELINE ISSUED BY THE FISHERIES DEPUTY DIRECTOR, ZONAL, ERNAKULAM.

EXHIBIT R1(b) : PHOTOCOPY OF THE APPLICATION FOR REGISTRATION OF COASTAL AQUACULTURE FARM.

EXHIBIT R1(c) : PHOTOCOPY OF THE DEMAND DRAFT DATED 24.12.2013.

EXHIBIT R1(d) : PHOTOCOPY OF THE WRITTEN COMPLAINT ON 29.08.2013 TO THE SUB INSPECTOR OF POLICE, NARAKKAL.

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//TRUE COPY//

P.A. TO JUDGE

ANIL K.NARENDRA, J.

W.P.(C)No.26315 of 2014

Dated this the 9th day of March, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to issue the documents referred to in Ext.P5 representation dated 19.09.2014 and Ext.P6 notice dated nil, in respect of the land covered by Ext.P1 lease agreement dated 06.07.2013 entered into between the petitioner and the second respondent, who is the President of Nayarambalam SC/ST Service Co-operative Bank Ltd.

2. The petitioner has entered into Ext.P1 lease agreement dated 06.07.2013, in respect of 1.33 acres of land owned by Nayarambalam SC/ST Service Co-operative Bank Ltd. (hereinafter referred to as 'the respondent Bank') for a period of three years, for doing prawn farming. On the strength of Ext.P1 lease agreement, the petitioner has approached the Ernakulam

Malsya Karshaka Vikasana Agency for availing financial assistance and technical aid. The said Agency has issued Ext.P2 application for registration and also for availing financial assistance and technical aid for doing prawn farming. The main grievance of the petitioner is that, in spite of Ext.P4 representation dated 28.02.2014, which was followed by Ext.P5 representation dated 19.09.2014, the respondent Bank failed to furnish copy of the possession certificate and location sketch of the land in question and also copy of the registration certificate issued by the Coastal Aquaculture Society and the current license for prawn farming issued by the Fisheries Department. According to the petitioner, he could not complete the preliminary steps for conducting prawn culture in the land in question due to the failure on the part of the respondent Bank in furnishing those documents, resulting in huge financial loss to the tune of Rs.2,40,000/-. The further grievance of the petitioner in Ext.P3 representation dated 06/08/2013 is that, as a

result of the defaults on the part of the respondent Bank in honouring various commitments made at the time of execution of Ext.P1 lease agreement, he could not start prawn farming in time. It was in such circumstances, the petitioner has approached this Court in the above writ petition seeking various reliefs.

3. A counter affidavit has been filed on behalf of the respondent Bank contending that, Ext.P1 lease agreement entered into with the petitioner is in respect of 1.33 acres of land owned by the respondent Bank and the balance extent of 2.8 acres was auctioned by one Gireesan. According to the respondent Bank it is the petitioner who has committed default in performing his part of the agreement. Regarding registration of the farm under the Coastal Aquaculture Authority, the respondent Bank would contend that, they have submitted Ext.R1(b) application dated 18.01.2014 before that authority, after remitting the requisite fee vide Ext.R1(c) Banker's cheque dated 24.12.2013. Therefore, the respondent Bank would

contend that, it has complied with the terms of Ext.P1 lease agreement. The respondent Bank would contend further that, even if the petitioner has any claim for compensation or damages, the remedy lies elsewhere and in any event, the writ petition filed under Article 226 of the Constitution of India is not the proper remedy. The learned counsel for the respondent Bank would also contend that, going by the terms of Ext.P1 lease agreement, the Bank has no obligation to furnish to the petitioner the documents referred to in his representations.

4. Heard the arguments of the learned counsel for the petitioner and also the learned counsel for the respondents.

5. The petitioner has entered into Ext.P1 lease agreement with the respondent Bank for prawn farming in the property owned by the Bank. The respondent Bank is a Co-operative Bank registered under the Kerala Co-operative Societies Act, 1969. The contract entered

into between the respondent Bank and the petitioner is a non-statutory contract and the rights and liabilities of the parties are governed by the terms of that contract. In **Noble Resources Ltd. v. State of Orissa and another (2006 (10) SCC 236)** the Apex Court held that, ordinarily, a specific performance of contract would not be enforced by issuing a writ of or in the nature of mandamus, particularly when keeping in view the provisions of the Specific Relief Act, 1963 damages may be an adequate remedy for breach of contract.

6. In Exts.P3 and P5 representations, the petitioner complains about the breach of contract committed by the respondent Bank. But, the respondent Bank would contend that it is the petitioner who committed breach of contract. Adjudication of such disputed questions of fact cannot be entertained in a writ petition filed under Article 226 of the Constitution of India, as this Court cannot reach any conclusion on such disputed questions of fact, merely based on the pleadings on record.

7. In **K.C. John v. Liquidator, Wadakkancherry Housing Co-operative Society Ltd. (2006 (1) KLT 11)** a Full Bench of this Court held that, a writ will lie against a Co-operative Society only when the duty owed by the Co-operative Society is of a public nature or when there is infringement of any statutory rules by such a Co-operative Society. The law laid down by the Full Bench in **John's case (supra)** has been approved by a Larger Bench of this Court in **Association of Milma Officer's Ksheera Bhavan and another v. State of Kerala and others (2015 (1) KHC 779)**.

8. As I have already noticed, the grievance of the petitioner is that after the execution of Ext.P1 lease agreement, the respondent Bank failed to furnish copy of the possession certificate and location sketch of the land in question and also copy of the registration certificate issued by the Coastal Aquaculture Society and the current license for prawn farming issued by the Fisheries Department and that, due to the defaults on the part of

the respondent Bank in honouring various commitments made at the time of execution of Ext.P1 lease agreement, the petitioner could not start prawn farming in time, resulting in huge financial loss to the tune of ₹2,40,000/-. The action complained of as above by the petitioner is neither an infraction of any statutory provisions by the respondent Bank nor violation of any public duty owed by it. In such circumstances, the present writ petition is not maintainable under Article 226 of the Constitution of India.

In the result, the writ petition is dismissed as not maintainable. But, it is made clear that, the dismissal of this writ petition will not stand in the way of the petitioner pursuing other appropriate remedy, in accordance with law.

No order as to costs.

Sd/-
ANIL K.NARENDRA
JUDGE

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P.A. TO JUDGE