

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

WP(C).No. 30421 of 2010 (C)

PETITIONER(S) :

- 1. PREM RAVEENDRAN,
S/O.REVEENDRAN, 'PRASANTH', SAKTHIKULANGARA P.O.,
KAVANAD, KOLAM.**
- 2. VISHNU BHAKTHAN, S/O.CHELLAPPAN,
V.B.HOUSE, VALIYAKADA, CHIRAYINKEEZHU,
THIRUVANANTHAPURAM.**
- 3. D.RAJESH KUMAR,
S/O.DEVADASAN, RADHABHAVAN, VANAMBOOR,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.M.SASINDRAN
SRI.JOHN Y THOMAS**

RESPONDENT(S) :

**THE REVENUE DIVISIONAL OFFICER,
THALASSERY, KANNUR DISTRICT.**

BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

- EXHIBIT P1: A TRUE COPY OF THE PERMIT ISSUED BY THE KALLIASSERY GRAMA PANCHAYAT DATED 11.08.2005 FOR CONSTRUCTION OF THE COMPOUND WALL.
- EXHIBIT P2: A TRUE COPY OF THE ORDER IN REF.K/963/2006 DATED 21.03.2006 OF THE REVENUE DIVISIONAL OFFICER, THALASSERY.
- EXHIBIT P3: A TRUE COPY OF THE JUDGMENT DATED 28.06.2006 IN W.P.(C).NO.15146 OF 2006 ON THE FILES OF THIS HON'BLE COURT.
- EXHIBIT P4: A TRUE COPY OF THE ORDER OF THE COMMISSIONER OF LAND REVENUE.
- EXHIBIT P5: A TRUE COPY OF THE SITE PLAN OF THE PROPOSED BUILDING.
- EXHIBIT P6: A TRUE COPY OF THE RECEIPT DATED 16.06.2005 ISSUED FROM THE OFFICER OF THE KALLIASSERY GRAMA PANCHAYATH.
- EXHIBIT P7: A TRUE COPY OF THE RECEIPT DATED 16.05.2006 ISSUED BY THE KALLIASSERY GRAMA PANCHAYAT.
- EXHIBIT P8: A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C).NO.21023 OF 2006 DATED 08.08.2006.
- EXHIBIT P9: A TRUE COPY OF THE BUILDING PERMIT GRANTED TO THE 3RD PETITIONER.
- EXHIBIT P9(A): A TRUE COPY OF THE LICENSE TO THE 3RD PETITIONER.
- EXHIBIT P10: A TRUE COPY OF THE PHOTOGRAPHS EVIDENCING THE CONSTRUCTION WORK CARRIED OUT IN THE PROPERTY.
- EXHIBIT P11: A TRUE COPY OF THE NOTICE ISSUED AS PER SECTION 12(2)(B) OF THE KERALA CONSERVATION OF PADDY LAND AND WET LAND ACT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.
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W.P.(C) No.30421 of 2010 - C
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Dated this the 6th day of July, 2015

J U D G M E N T

The petitioners are aggrieved by Ext.P11 order passed by the Revenue Divisional Officer under the provisions of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (for brevity, Act of 2008). The back ground facts are that the 1st petitioner had been in possession of 109.54 cents of land comprised in Survey No.310/1B of Kalliasseri Amsom, Desom in Kannur Taluk and and the 2nd and 3rd petitioners respectively are in possession of 54.14 cents and 122.79 cents of property in Re-Survey No.312/1D.

2. The petitioners obtained a building permit produced at Ext.P1 from the Local Self Government Institution for building a compound wall enclosing the entire

property. The petitioners intended to carry on an industrial activity in the said premises. When the construction of the compound wall was proceeding, the Principal Agricultural Officer, Kannur requested the R.D.O, Thalassery to take appropriate action under the Kerala Land Utilisation Order, 1967 (for brevity 'KLUO). While the R.D.O initiated such proceedings, the 2nd petitioner herein had approached the District Collector to proceed with the work, since the Tahsildar, Kannur had issued a stop memo against the land owners. The District Collector forwarded the said application also to the R.D.O. The R.D.O, Thalassery considered both the issues together.

3. By Ext.P2, the R.D.O found that the land in question was owned by the petitioners herein and on an inspection, a compound wall having two metres had been constructed around the property. Five acacia trees having

about 10 years of age and two palm trees aged about 8 years were also standing in the land. The surrounding lands also had residential buildings and hence the R.D.O found that the land would not be one covered under the KLUO. It was also specifically found that there is absolutely no evidence to find that there had been any cultivation in the land for five consecutive years.

4. When the construction was proceeded with, the petitioners were obstructed and the petitioners approached this Court with a writ petition for police protection. The same seems to have been granted by Ext.P3 dated 28.06.2006. Subsequently an appeal is said to have been filed from Ext.P2, by one of the residents of the locality before the Land Revenue Commissioner. The Land Revenue Commissioner sustained Ext.P2 order by Ext.P4. The petitioners also obtained licence to carry on stocking of

marbles, granites and tiles in the said property from the Local Self Government Institution. It was then that Ext.P11 order was issued.

5. The learned Government Pleader takes me through the counter affidavit to contend that, though the petitioners had obtained order under the KLUO, no proceedings to fill up the property was taken. Even in Ext.P2, the R.D.O found that the Adankal Register showed the description of land as 'wet land'. In such circumstance, on the introduction of the Act of 2008, the property could not be converted; for reason of it being a 'wet land' coming under the said definition under the Act of 2008. It is also submitted that Ext.P9 building permit talks about the permit being subject to a suit.

6. Primarily it is to be noticed that the petitioners had never approached the authorities under the KLUO for

permission to fill up the property. The petitioners always asserted that the land would not come under the categorisation of cultivable lands as found in KLUO. It was on the complaint of the Agricultural Officer that the R.D.O initiated proceedings against the petitioners. The petitioners too were before the R.D.O, as directed by the District Collector against a stop memo issued as against the subject property. The R.D.O had conducted an inspection and found that the property would not be a paddy land, but that the Adankal Register showed the description as wet land.

7. The KLUO does not speak of a wet land and the same only speaks of cultivable lands, which cannot be converted or utilised for any other purpose, if there has been cultivation in the land for three consecutive years prior to the enactment of the Act in 1967 or any consecutive three year period after the enactment.

8. The R.D.O in Ext.P2 order specifically found that there was absolutely no evidence to show that the property was cultivated for a consecutive five year period when the R.D.O had conducted the inspection. There also could not have been any evidence as to the cultivation having been carried on prior to the KLUO also. The statements made in the counter affidavit is on a wrong understanding of Ext.P2. The petitioners' property hence has to be found to be one, not requiring any permission under the KLUO. It was in the year 2010 that the then incumbent in the office of the R.D.O issued Ext.P11, purportedly on the ground that the same had not been converted at the time of introduction of the Act of 2008. It is not discernible as to what is the evidence to show that the property remained as such at the time of the introduction of the Act of 2008.

9. In any event going by the earlier order at Ext.P2,

it cannot be said that there was no filling up or that the property remained as a wet land when the Act of 2008 came into force. The findings of the R.D.O in Ext.2 itself was that though the property is described as a wet land in the Adankal Register, the inspection shows it to be otherwise. The R.D.O categorically found that the property to be utilised for purpose other than cultivation, is not one requiring permission under Clause (6) of the KLUO. In such circumstance, Ext.P11 proceedings are set aside.

The writ petition would stand allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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// true copy //

P.A to Judge.