

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No. 28160 of 2015 (T)

PETITIONER(S):

1. M/S.CONFIDENT PROJECTS INDIA PVT.LTD.,
CONFIDENT HOUSE, 868/2, S.A.ROAD - VYTTLA,
KOCHI - 19, REPRESENTED BY ITS MANAGING
DIRECTOR, T.A.JOSEPH, AGED 51 YEARS,
S/O.LATE ALEXANDER THERUVIPARAMBIL, 33/265D,
THERUVIPARAMBIL HOUSE, VENNALA P.O., KOCHI,
ERNAKULAM.
2. DR.ASHOK KUMAR, AGED 65 YEARS,
S/O.VAGEESWARI AMMA, 'KARMA',
T.C. 17/411, POOJAPPURA P.O.,
SASTHAMANGALAM VILLAGE,
THIRUVANANTHAPURAM.

**BY ADVS.SRI.S.SHANAVAS KHAN
SMT.S.INDU**

RESPONDENT(S):

1. THE DISTRICT COLLECTOR, COLLECTORATE,
CIVIL STATION, THIRUVANANTHAPURAM - 695 001.
2. THE SUB COLLECTOR,
THIRUVANANTHAPURAM - 695 001.
3. THE ADDITIONAL TAHSILDAR,
TALUK OFFICE, THIRUVANANTHAPURAM - 695 001.
4. THE VILLAGE OFFICER, KADAKAMPALLY VILLAGE,
THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: TRUE COPY OF THE JUDGEMENT DATED 1.7.2014 IN WPC NO.3546/2014 OF THIS HON'BLE COURT.
- EXT.P-2: TRUE COPY OF THE TAX RECEIPT EVIDENCING THE PAYMENT OF TAX IN RESPECT OF FIRST PETITIONER'S PROPERTY.
- EXT.P-3: TRUE COPY OF THE TAX RECEIPT EVIDENCING THE PAYMENT OF TAX IN RESPECT OF SECOND PETITIONER'S PROPERTY.
- EXT.P-4: TRUE COPY OF THE RELEVANT PAGE OF DATA BANK EXTRACTS.
- EXT.P-5: TRUE COPY OF THE ORDER DATED 7.7.1995 OF THE LOCAL ADMINISTRATION DEPARTMENT.
- EXT.P-6: TRUE COPIES OF THE PHOTOGRAPHS EVIDENCING THE NATURE AND LIE OF PETITIONER'S PROPERTIES AS WELL AS THE NEIGHBOURING PROPERTIES.
- EXT.P-7: TRUE COPY OF THE APPLICATION SUBMITTED BY THE FIRST PETITIONER BEFORE THE FIRST RESPONDENT ON 30.3.2015.
- EXT.P-8: TRUE COPY OF THE APPLICATION SUBMITTED BY SECOND PETITIONER BEFORE FIRST RESPONDENT ON 30.3.2015.
- EXT.P-9: TRUE COPY OF THE REPORT DATED 16.4.2015 PERTAINING TO THE PROPERTY OF THE FIRST PETITIONER.
- EXT.P-10: TRUE COPY OF THE REPORT DATED 16.4.2015 PERTAINING TO THE PROPERTY OF THE SECOND PETITIONER.
- EXT.P-11: TRUE COPY OF THE COMMUNICATION DATED 8.6.2015 OF THE 1ST RESPONDENT PERTAINING TO PROPERTY OF PETITIONERS.
- EXT.P-12: TRUE COPY OF THE JUDGEMENT DATED 15.7.2015 IN WPC NO.19668/2015 OF THIS HON'BLE COURT.
- EXT.P-13: TRUE COPY OF THE ORDER DATED 9.9.2015 OF THE SECOND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.28160 of 2015

Dated this the 6th day of October, 2015

J U D G M E N T

The petitioner has approached the Sub Collector, Thiruvananthapuram under Clause 6 of the Kerala Land Utilisation Order (KLU order). This was rejected by the Sub Collector as per Ext.P13 stating that the petitioners have unauthorisedly filled up the paddy land and have started construction of a building without obtaining necessary orders.

2. KLU order is in a subordinate legislation issued invoking power under Essential Commodities Act. The Essential Commodities Act is an enactment to ensure free supply and distribution of certain essential commodities. The KLU order issued in the year 1967 in the wake of scarcity of food and to subserve the larger interest of the community. It does not fetter any right of the person in respect of the land to enjoy in accordance with law. The Collector has power in terms of Clause 7 of KLU order to command the holder of the land to utilise the land for the cultivation of food crops referred in the KLU Order, if it is satisfied that the holder of the land is not

utilising the land for the cultivation of the food crops.

3. In this case, the Collector has not exercised any power under Clause 7 of the KLU order. This would indicate that the authorities have a view that there is no necessity to invoke Essential Commodities Act or the KLU Order to subserve the interest of the community by ensuring the production of food crops. Therefore, there is no impediment in granting permission to the holder of the land to construct an apartment complex in the land. The Collector has refused permission to construct the building noting that the petitioner has already constructed the pillar in the land without obtaining necessary orders in terms of the KLU order. This cannot be a reason to reject the application of the petitioner. As held in several judgments that conversion of land without obtaining orders from the Collector is not a ground to deny the application in terms of Clause 6 of KLU order. In **Joseph John v. Land Revenue Commissioner** [2014 (1) KLT 706], it was held that reclamation or conversion of the land is not bar in considering the application under Clause 6 of KLU order.

4. Since there is no other reason stated in the impugned order to refuse the permission, this Court is of the view that the

petitioner's application in terms of Clause 6 of the KLU ought to have been allowed by the Collector. Accordingly impugned orders are set aside. Therefore, there shall be a direction to the Sub Collector, Trichur to grant permission to the petitioners to utilise the land for the construction of apartments. However, the Sub Collector is free to impose any condition to protect the surrounding land and also for taking any measures that surrounding land are not affected by the construction being undertaken. Needful shall be done by the Sub Collector within one months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

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The words "Sub Collector, Trichur" occurring in the operative portion of the judgment dated 6.10.2015 in W.P.(C) No.28160/2015 are corrected as "Sub Collector, Thiruvananthapuram" as per order dated 2.11.2015 in I.A. 15711/2015 in W.P.(C) No.28160/2015.

Registrar (Judicial)