

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 31584 of 2013 (W)

PETITIONER:

**SMT.LATHA.C.PILLAI, AGED 43 YEARS,
W/O.CHADRAN NAIR, "NANDEESWARAM",
KUMBALAM VILLAGE, KOCHI, PIN - 682 506.**

**BY ADVS.SRI.K.J.MOHAMMED ANZAR
SRI.A.D.SURESH BABU**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE PRINCIPAL SECRETARY TO REVENUE,
GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 2. THE REVENUE DIVISIONAL OFFICER,
ERNAKULAM, RDO OFFICE, FORTKOCHI, PIN - 682 001.**
- 3. THE TAHSILDAR, KANAYANNUR TALUK OFFICE,
ERNAKULAM, PIN - 682 012.**
- 4. THE VILLAGE OFFICER, CHERANALLUR VILLAGE,
CHERANALLUR, ERNAKULAM DISTRICT, PIN - 682 034.**

BY GOVERNMENT PLEADER SRI.RAFEEK.V.K.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF THE SETTLEMENT DEED NO.5271/2005 OF ERNAKULAM SUB REISTRY DATED 30.07.2005.
- EXHIBIT P2 : TRUE COPY OF THE PRIOR TITLED DEED NO.1601 DATED 24.06.1967 OF EDAPALLY SUB REGISTRY.
- EXHIBIT P3 : TRUE COPY OF THE ADVOCATE COMMISSIONER REPORT DATED 26.02.2007 IN I.A.NO.12080/2006 IN OS NO.1502/2006 OF MUNSIF COURT, ERNAKULAM.
- EXHIBIT P4 : TRUE COPY OF THE APPLICATION DATED 09.10.2007 SUBMITTED BY THE PETITIONER BEFORE THE TAHSILDAR, KANAYANNUR.
- EXHIBIT P5 : TRUE COPY OF THE REPORT DATED NIL OF THE VILLAGE OFFICER, CHERANELLUR.
- EXHIBIT P6 : TRUE COPY OF THE JUDGMENT IN WP(C)NO.500/2010 DATED 16.06.2011 OF THE HON'BLE HIGH COURT OF KERALA.
- EXHIBIT P7 : TRUE COPY OF THE APPLICATION DATED 28.06.2011 OF THE PETITIONER SUBMITTED TO THE RDO FORTKOCHI.
- EXHIBIT P8 : TRUE COPY OF THE ORDER DATED 06.02.2012 ISSUED BY THE 2ND RESPONDENT RDO FORTKOCHI.

RESPONDENT(S)' EXHIBITS:

- EXT.R2(A) : TRUE COPY OF THE RELEVANT PAGES OF DRAFT DATA BANK.

/TRUE COPY/

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.31584 of 2013

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Dated this the 6th day of March, 2015

JUDGMENT

Ext.P8 order passed by the 2nd respondent, in accordance with the directions issued by this Court in Ext.P6 judgment, is under challenge in this writ petition.

2. By Ext.P6, the petitioner was directed to file a fresh application seeking reclamation of her property covered by Ext.P1 instead of Ext.P4 application which was pending since January, 2007 before the Tahsildar. The petitioner alleges that the said directions are issued when she approached this Court with W.P(C) No.500 of 2010 for expeditious disposal of Ext.P4 and when the said writ petition came up for consideration it was pointed out by the learned Government Pleader that the petitioner's application was one under the Kerala Land Utilisation (KLU) order and the competent authority is the concerned RDO to deal with the same.

3. Since the RDO was not a party to the said writ petition, he was *suo moto* impleaded as additional 5th respondent and accordingly, Ext.P6 judgment was passed. Thereafter, Ext.P7 application was filed as directed by this Court and treating the same as one filed under the Kerala Conservation of Paddy Land and Wetland Act, 2008, the RDO passed Ext.P8 order without understanding the spirit of Ext.P6.

4. The petitioner further alleges that his property was not a paddy land or wetland. However, as per the report of the Advocate Commissioner evidenced by Exts.P3 and P5 report of the Village Officer, large number of yielding coconut trees and its sapling and other plantations are standing there. The petitioner points out that the request made by him was for reclamation of the inner marshy patches of the land to protect the coconut trees. Since the land was being used for the cultivation of coconut trees, the said request should have been dealt with the provisions of KLU order.

5. In the counter affidavit filed by the 2nd respondent, they have contended as follows:

It was stated that the petitioner submitted an application before the 3rd respondent to grant permission for reclamation of land comprised in Block No.4, Re. Sy. Nos.60/8 and 60/9 of Cheranallur village, Kanayannur taluk. The petitioner approached this Court by filing W.P(C) No.500 of 2010 and this Court vide Ext.P6 judgment dated 16.6.2011 directed the 2nd respondent Revenue Divisional Officer to consider and dispose of the application submitted by him. As directed by this Court, Ext.P8 order was passed by the 2nd respondent.

It was further stated that the property owned by the petitioner comprised in Sy. No.60/8 is classified as 'purayidam' in basic tax register. The property comprised in Re. Sy. No.60/9 is classified as 'Nilam' in the BTR and it is included as 'paddy land' in the draft data bank prepared as per Act 28 of 2008. The true copy of

the relevant pages of the draft data bank is produced herewith as Ext.R2(a).

It was stated that since the property comprised in R.S No.60/9 owned by the petitioner is a paddy land as defined in the Act, the provisions of of the Act 28 of 2008 is applicable to the above said. Permission for reclamation of the above said land can be granted only in accordance with the provisions of Act 28 of 2008.

Ext.P8 order passed by the 2nd is legal and valid. The major portion of the property owned by the petitioner (36 ares) is paddy land as defined in Section 2(xii) of Act 28 of 2008. Therefore, the conversion of that land can be permitted only in accordance with the provisions of Act.

6. Arguments have been heard.

7. The dismissal of Ext.P7 application submitted by the petitioner by Ext.P8 order was making use of the provisions of the Paddy Land and Wetland Act. Ext.P4 application was filed by the

petitioner during the beginning of the year 2007 before the 3rd respondent for granting a permission to fill up the inner marshy patches of her property. This was with an intention to protect large numbers of coconut trees and coconut saplings standing on all four sides of the marshy area. Since the application did not evoke any positive response, the petitioner approached this Court with WP(C) No.500 of 2010. In that case, the RDO was additionally impleaded and he was directed to pass appropriate orders on the petitioner's fresh application to be filed before the RDO. The spirit of the direction of this Court was to treat the petitioner's fresh application as if the same has been filed under the KLU order.

8. In Ext.P3 report of the Advocate Commissioner and Ext.P5 report of the Village Officer, the nature of the land has been described and reference was made to the number of coconut trees, growing saplings and other plantations in the property owned by the petitioner as per Ext.P1. Therefore, at any stretch of imagination, it

could not be treated as Nilam, fit for paddy cultivation. In **Jalaja Dileep v. Revenue Divisional Officer** [2012(3) KLT 333], this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the panchayat authorities while rejecting the petitioner's application.

9. Ext.P4 application with the request for reclamation was submitted prior to the commencement of the Kerala Conservation of Paddy Land and Wetland Act, 2008. It can be seen from the impugned order that there was total non-application of mind by the 2nd respondent.

10. On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioner is entitled to the relief prayed for.

Therefore, the writ petition is allowed. Ext.P8 order is quashed. The 2nd respondent shall issue formal orders permitting the

petitioner to reclaim the marshy portion of his property subject to the condition made mention of in Column No.19 of Ext.P5 report submitted by the Village Officer. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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