

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WP(C).No. 29215 of 2015 (B)

PETITIONER(S):

1. PAULOSE M.P.,
MENACHERY HOUSE, KARAPPASSERY SOUTH,
NEDUMBASSERY P.O.,
ALUVA, ERNAKULAM - 683 585.
2. M.P. JAIJU, S/O.PAULOSE M.P.,
MENACHERY HOUSE, KARAPPASSERY SOUTH,
NEDUMBASSERY P.O.,
ALUVA, ERNAKULAM - 683 585.
3. M.P. MARTIN, S/O.PAULOSE M.P.,
MENACHERY HOUSE, KARAPPASSERY SOUTH,
NEDUMBASSERY P.O.,
ALUVA, ERNAKULAM - 683 585.

**BY ADVS.SRI.BENOY K.KADAVAN
SRI.GOUTAM SURESH TAMPI**

RESPONDENT(S):

1. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695 001.
2. SUB COLLECTOR,
REVENUE DIVISIONAL OFFICE, FORTKOCHI,
KOCHI-682 001.
3. TAHSILDAR, ALUVA TALUK,
MINI CIVIL STATION, ALUVA - 683 101.
4. VILLAGE OFFICER,
CHENGAMANAD, KOCHI - 683 578.
5. AGRICULTURAL OFFICER,
KRISHI BHAVAN, CHENGAMANAD, DESOM P.O.,
ALUVA, KOCHI -683 578.

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6. M.P. POLACHAN,
MENACHERY HOUSE, NEDUMBASSERY P.O,
KAPPRASSERY SOUTH,
ERNAKULAM -683 585.

R1 TO R5 BY SPL. GOVERNMENT PLEADER SRI.P.K.SOYUZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE SETTLEMENT DEED DATED 16.05.2012 IN THE NAME OF 2ND PETITIONER BY 1ST PETITIONER IN RELATION TO 3.91 ARES OF PROPERTY IN SURVEY NO.203/2 OF BLOCK NO.8 OF CHENGAMANADU VILLAGE, ALUVA TALUK.
- P2 - TRUE COPY OF THE SETTLEMENT DEED DATED 16.05.2012 IN THE NAME OF 3RD PETITIONER BY 1ST PETITIONER IN RELATION TO 3.10 ARES OF PROPERTY IN SURVEY NO.203/2 OF BLOCK NO.8 OF CHENGAMANADU VILLAGE, ALUVA TALUK.
- P3 - TRUE COPY OF THE DATABANK SHOWING DESCRIPTION OF THE PROPERTY OF PETITIONERS
- P4 - TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTY OF THE PETITIONERS AND ADJACENT PROPERTIES (5 NOS.)
- P5 - TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED BY THE CHENGAMANAD GRAMA PANCHAYATH DATED 19.10.2012
- P6 - TRUE COPY OF THE FIR FILED AGAINST RESPONDENT NO.6 AND HIS MEN BEFORE NEDUMBASSERY AIRPORT POLICE STATION.
- P7 - TRUE COPY OF THE PROHIBITORY ORDER DATED 08.06.2015 SERVED AGAINST THE PETITIONERS BY THE 2ND RESPONDENT, RDO
- P8 - TRUE COPY OF THE COMPLAINT FILED BY 6TH RESPONDENT AND THEIR MEN BEFORE THE 2ND RESPONDENT, RDO
- P9 - TRUE COPY OF THE REPORT GIVEN BY 5TH RESPONDENT, AGRICULTURAL OFFICER OBTAINED THROUGH RTI ACT
- P10 - TRUE COPY OF THE ORDER PASSED BY 2ND RESPONDENT, RDO TO RESTORE THE PADDY LAND.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO JUDGE

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.29215/2015**

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Dated this the 14th Day of December, 2015

J U D G M E N T

The petitioners' land comprised in survey No.203/2 of Block No.8 of Chengamanadu Village, Aluva Taluk. The petitioner submits that it is not included in the draft bank prepared under the Act 28 of 2008. The petitioners also deny the fact that they are illegally reclaiming the land. An order has been passed to restore the land to its original position. Exhibit P10 is the said order. The petitioners' case is that the aforesaid land originally is a converted land and no reclamation has taken place as stated in the order.

2. This Court is of the view that the Sub Collector cannot pass an order to the effect that the petitioners shall restore the land to its original position unless the land is included in the draft data bank. It is open for the Sub Collector to command the holders of the land to cultivate the land with food crops which were in cultivation. However, going by the nature of the order passed by the Sub Collector, there is no such power referable to the Sub Collector to pass the order of restoration of land to its original position. Therefore, the impugned order is unsustainable.

4. It is seen from the impugned order that originally the land was '*nilam*' and converted before the enactment of the Act 28 of 2008. In that case, the petitioners are free to approach the District Collector under the amended provision of Section 3A of the Act 28 of 2008 to regularise the land. If the petitioners make a requisite application under Section 3A, the same shall be considered by the District Collector within two months from the date of receipt of the application.

5. In view of the above, Ext.P10 is set aside.

The writ petition is disposed of as above. No costs.

**Sd/-
A.MUHAMED MUSTAQUE, JUDGE**

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