

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 31544 of 2014 (P)

PETITIONER(S):

**BAVA K.M.,
S/O.MUHAMMED HUSSAIN, KALLAKKERY HOUSE, CHALACKA,
N.KUTHIYATHODU P.O., PUTHENVELIKKARA VILLAGE,
ERNAKULAM DISTRICT - 683 594.**

BY ADV. SMT.P.S.PREETHA

RESPONDENT(S):

- 1. DISTRICT COLLECTOR,
COLLECTORATE, ERNAKULAM, PIN - 682 030.**
- 2. REVENUE DIVISIONAL OFFICER,
ERNAKULAM, KOCHI - 682 018.**
- 3. THAHASILDAR,
THALUK OFFICE, N.PARAVOOR, ERNAKULAM DISTRICT - 683 513.**
- 4. VILLAGE OFFICER,
PUTHENVELIKKARA VILLAGE, ERNAKULAM DISTRICT - 683 594.**
- 5. THE CONVENER,
LOCAL LEVEL MONITORING COMMITTEE, KRISHIBHAVAN,
KUNNUKARA, KUNNUKARA P.O., 683 578.**

BY GOVERNMENT PLEADER SRI.P.K.SOYUZ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 31544 of 2014 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE TAX RECEIPT DATED 22/9/2014 ISSUED BY THE
VILLAGE OFFICER.**

EXHIBIT P2: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER.

EXHIBIT P3: TRUE COPIES OF PHOTOGRAPHS.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J.

W.P(C). No.31544 of 2014

Dated this the 11th day of June, 2015.

JUDGMENT

The petitioner, along with his brother, is in possession and enjoyment of a total of 20.23 Ares of property comprised in Survey No.131/5 of Puthenvelikkara Village in Ernakulam District. The petitioner contends that, he and his brother were enjoying the properties for the last 50 years and both of them have constructed two residential houses in the said property, in which they are residing with their families. The land however, has been included in the Data Bank as a 'wet land' and the petitioner contends that such inclusion is bad for reason of reclamation having been effected long prior to the introduction of Kerala Conservation of Paddy Land and Wet Land Act, 2008 (for brevity, Act of 2008).

2. The Local Level Monitoring Committee having included

the said property in the Draft Data Bank and the same having been finalised by inclusion in the Data Bank itself, there is an element of fait accompli. The authorities under the Act of 2008 would hence be functus officio.

3. The petitioner had approached this Court under Article 226 of the Constitution of India to redress the grievance of the petitioner for wrongful inclusion of the land under the Data Bank and for removal of the same as also effecting change in the description of property. The petitioner also relies on a judgment of this Court in WP(C) No.3280 of 2015 dated 30.03.2015, in which a report was called for from the Tahsildar, based on which the removal from the Data Bank of the property, which was the subject matter of the said writ petition , was directed to be carried out.

4. In the above writ petition also, on the directions of this Court, a report has been filed as under:

"1. It is submitted that as per interim order dated 03.12.2014, this Honourable Court directed the Agricultural Officer (5th Respondent) Kunnukara to file a report regarding the nature of the land, as on date of enactment of the Act 28 of 2008, comprised in Sy.

No.131/5 of Puthenvelikkara Village owned by the Petitioner. The above said 50 cents of land is included as Paddy land (Nilam) in the Final Data Bank notified in Kerala Gazette on 24.03.2012. As directed by this Honourable Court, the Agricultural Officer along with other members of Local Level Monitoring Committee, Kunnukara inspected the land on 23.12.2014. The area of the plot is 50 cents of land in which about 35 cents of land is seen as 'Converted paddy land' with a residential building and few trees like Coconut, Mango tree, Poovarashu etc. which are about 15-20 years old. But the northern side of the plot, approximately 15 cents of land is found to be filled after commencement of Act 28 of 2008 and which is found planted with few coconut seedlings about 4 years old.

2. On inspection and enquiry it is found that, as on the date of enactment of Act 28 of 2008, the southern portion of the plot, about 35 cents was a Nikathubhoomi with building and other trees but the northern portion of the plot approximately 15 cents was a paddy land which was filled and planted with seedlings of coconut about 4-5 years back and it was a paddy land in 12.08.2008. Now the Petitioner has constructed a compound wall also around the 15 cents of paddy land. The illegal conversion in the above said 15 cents of land was reported to the District Collector, Ernakulam and Revenue Divisional Officer, Fort Kochi by the Agricultural Officer."

5. Going by the factual report so filed by the Agricultural Officer, who is the Convenor of the Local Level Monitoring Committee, it is evident that out of the 50 cents of property, 35 cents were reclaimed prior to the Act of 2008 and 15 cents, even according to the report, was reclaimed recently after the

enforcement of the Act of 2008. The report specifically indicates the nature of the trees in the property, ie., the 35 cents, which was reclaimed prior to the Act of 2008 and the 15 cents, which remained as wet land at the introduction of the Act 28 of 2008. The Draft Data Bank, as is evident from the reading of the provisions of the Act of 2008, is prepared on the basis of the satellite pictures and it is on the strength of that, the Agricultural Officer reports that 15 cents was reclaimed later to the introduction of the Act of 2008. There are also two residential buildings said to be existing in the 35 cents, which is reported to be reclaimed prior to the Act of 2008.

6. In such circumstances, the Local Level Monitoring Committee, the 5th respondent herein, is directed to re-classify the 35 cents of property reported as reclaimed prior to Act 28 of 2008 comprised in Survey No.131/5 of Puthenvelikkara Village in Ernakulam District out of the 50 cents from the Data Bank for that area and correct it as "reclaimed land before 2008". The petitioner would be entitled to then approach the authorities under the Kerala Land Utilisation Order, 1967 for utilisation of the

land for residential purposes as has been held in **Dileep Kumar v. State of Kerala - 2014 (4) KLT 200** and on such utilisation being granted, the petitioner could also seek for a fresh assessment under the Kerala Land Tax Act, 1961, as has been laid down in **Kizhakkambalam Grama Panchayath V. Mariumma - 2015(2) KLT 516**. On the correction being made in the Data Bank, the same shall also be notified as prescribed. With respect to the 15 cents stated in the report, the same shall be subject to the proceedings under the Act of 2008, wherein all contentions of the petitioner would be considered.

The writ petition is disposed of. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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