

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).NO. 31688 OF 2014 (I)

PETITIONER:

**A.K.G MEMORIAL CO-OPERATIVE HOSPITAL
AND RESEARCH CENTRE SOCIETY LTD.,
THAPPY'S TOWER, COURT ROAD, PARAPPANANGADI-676 303,
REPRESENTED BY ITS SECRETARY, MITHUN LAL E.M.
S/O E.M. BHARGAVAN, AGED 27 YEARS,
"VIPANJIKKA", ANJARAKANDY POST
KANNUR, PIN:670 612.**

**BY ADVS.SRI.P.K.SURESH KUMAR (SR.)
SRI.K.P.SUDHEER**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF AGRICULTURE, SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE LOCAL LEVEL MONITORING COMMITTEE
PARAPPANANGADI GRAMA PANCHAYATH
REPRESENTED BY ITS CONVENOR
(THE AGRICULTURAL OFFICER), KRISHI BHAVAN, P.O. NEDUVA
PARAPPANANGADI, MALAPPURAM DISTRICT, PIN:676 303.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

WP(C).NO. 31688 OF 2014 (I)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF SALE DEED DATED 3.5.2010 REGISTERED AS DOCUMENT NO.1304/2010 OF PARAPPANANGADI SRO.
- EXHIBIT P2: TRUE COPY OF THE REPORT SUBMITTED BY THE LOCAL LEVEL MONITORING COMMITTEE.
- EXHIBIT P3: TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT LEVEL AUTHORIZED COMMITTEE DATED 13.8.2010.
- EXHIBIT P4: TRUE COPY OF G.O.(MS)NO.116/2014/AGRICULTURE DATED 31.5.2014 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P5: TRUE COPY OF JUDGMENT DATED 23.7.2014 IN WPC NO.18114/2014 PASSED BY THIS HON'BLE COURT.
- EXHIBIT P6: TRUE COPY OF APPLICATION DATED 26.7.2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P7: TRUE COPY OF COMMUNICATION DATED 04.10.2014 FROM THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P8: TRUE COPY OF MINUTES OF THE MEETING OF THE LOCAL LEVEL MONITORING COMMITTEE DATED 17.09.2014 WHICH CONSISTS OF THE OPINION OF THE AGRICULTURAL OFFICER, THE VILLAGE OFFICER, THE PANCHAYATH PRESIDENT, THE OPINIONS OF THE MEMBERS OF THE MONITORING COMMITTEE AND FINALLY THE DECISION OF THE COMMITTEE ALONG WITH COVERING LETTER DATED 13.11.2014 ISSUED UNDER RIGHT TO INFORMATION ACT.
- EXHIBIT P9: TRUE COPIES OF FOUR PHOTOGRAPHS SHOWING THE NATURE OF THE LAND OF THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

AS

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.31688 of 2014

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Dated this the 27th day of January, 2015

JUDGMENT

Rejection of the claim of the petitioner to delete the property from the Data Bank Register prepared by the concerned authority, so as to enable the petitioner to set up a hospital in the co-operative sector, with intent to extend benefit to the general public is under challenge herein. It has been allegedly done contrary to the facts and figures as discernible from the reports of the concerned Agricultural Officer, Village Officer and also the Advocate Commissioner appointed by this Court. There is also a case for the petitioner that, the request made by the petitioner earlier, to proceed with the construction by filing necessary application for conversion (which is stated as filed on a misconception) was considered and recommended by the authorities concerned vide Exts.P2 and P3, but the same came to be rejected by the Government, as per Ext.P4 order stating that the construction of hospital is not a 'public purpose'. However, a somersault has been taken by the Government in

recognising similar event as a 'public purpose', in the case of another private hospital, in favour of whom Ext.P10 order has been passed, which is cited an instance of discrimination and mala fides.

2. The petitioner, as mentioned above, is a Co-operative Society running and maintaining a hospital, catering to the needs of the general public, ensuring such operations, as per the relevant provisions of the Co-operative Societies Act and Rules. The hospital was earlier being run in a rented premises and with intent to serve the general public in a better manner, the petitioner purchased an extent of 1 acre 59.5 cents of land comprised in Re-survey No.198/3 and 200/2 of Neduva Village in Tirurangadi Taluk, as per sale deed No.1304/2010 of Parappanangadi SRO. It is pointed out that, the said property was lying as a reclaimed land and no paddy cultivation has been effected in the said property for the past more than four decades. On the other hand, there is a number of coconut palms and areacanut palms with such other improvements, which by itself shows the nature of the property.

3. After the purchase of the property as above, so as to

facilitate the construction, some additional filling was also required and the petitioner was given to understand that the property, since was described as a paddy land in the revenue records, necessary exemption should be obtained from the Government. It was accordingly, that an application was filed before the 2nd respondent, who conducted an inspection and submitted Ext.P2 report, wherein the nature, lie and location of property has been mentioned in detail. The property is stated as not remaining as a paddy land. The topography mentioned with reference to the neighbouring lands discloses existence of residential buildings, improvements already effected, existence of the trees and that the boundary is guarded by a compound wall. The District Level Committee also considered the matter and submitted Ext.P3, virtually recommending the cause projected by the petitioner. However, without any regard to the actual facts and figures, the application was turned down by the 1st respondent as per Ext.P4 dated 31.05.2014, holding that construction of the hospital, by the petitioner in the said premises was not a 'public purpose' and hence that no exemption could be granted under Act 28 of 2008.

4. It is pointed out that the petitioner had approached this Court, by filing W.P.(C) No.18114 of 2014, challenging Ext.P4. In the course of the proceedings, it was also mentioned by the petitioner that such a course was pursued by the petitioner on a wrong advice and later, the petitioner has given to understand that the petitioner could very well seek for a remedy by approaching the Local Level Monitoring Committee, by filing necessary application, to delete the property from the Data Bank Register. The said writ petition was disposed of as per Ext.P5 judgment dated 23.07.2014 with liberty to have such an exercise. The petitioner filed necessary application in this regard before the 2nd respondent. Ext.P6 is the application dated 26.07.2014. Eventhough observations have been made by the concerned officers including the Agricultural Officer and the Village Officer as to the nature of the property, the surroundings, existence of boundary walls and such other improvements including age old trees, an observation has been made to the effect that the property is a 'cultivable land' and hence the application to delete the same from the Data Bank Register was rejected as per Ext.P7 order dated 04.10.2014.

Ext.P8 is a copy of the minutes of the proceedings procured by the petitioner in connection with Ext.P7. Exts.P7 and P8 orders are under challenge in this writ petition.

5. When the matter came up for consideration on an earlier occasion, this Court felt the need to ascertain the facts and figures with regard to the nature of the property and accordingly, an Advocate Commissioner was appointed to ascertain the same. Pursuant to the inspection as aforesaid, a detailed report has been submitted before this Court also producing photographs showing the properties covered and also the neighbouring properties and the improvements, including compound wall, building, trees and such other aspects. The contents of said report, as evident from paragraphs 4 to 7, are relevant, which hence is extracted below:-

4. The property is bounded by compound wall on all three sides and in the front portion there is a gate. On the southern side there is no compound wall. On the western side of the property lies the pathway that leads to the property in question. On the either side of the pathway lies the property of a private person and the said areas are planted with different types of trees. On the eastern side of

the property lies 'Parambas' wherein there are residential houses and trees. On the northern side also there are 'Parambas' with residential houses and on the southern side lies pond, which formed in due course by the removal of earth for making tiles. Photographs revealing the surrounding properties are produced along with the commission report.

5. The entire property is filled with grass, weeds, shrubs and other trees. The main trees are coconut and arecanut and they are spread here and there over the property. The trees are aged around 10-12 years and the Principal Agricultural Officer opined that the age comes to around 14 years. Stumps of coconut trees were also noted.

6. It is submitted that the property is surrounded by residential houses and just 150 meters North West from the property lies a Co-operative College and School. 200 metres towards South West lies a SSI unit manufacturing gates, grills and there is also a saw mill. A tile factory is situated 250 metres towards the north western side of the property. It was also pointed out by the Secretary of the Society that just 100 metres west, an Arabic College is functioning and construction of the new college building is going on. Photographs revealing the aforesaid aspects is produced along with the commission report.

7. It is respectfully submitted no where in the adjacent

areas paddy cultivation is going on except plantain cultivation. To conclude, going by the age of the trees standing in the property and taking into account the entire area as such, it can be safely concluded that as on the date of enactment of Act 28 of 2008, the property was not a paddy field. I am also producing the photographs that throw light into trees that stand in the property.”

6. An objection has been filed from the part of the respondents to the said Commission Report. The only objection as given in paragraph 2 is in the following terms:-

“As directed by this Hon'ble Court, Advocate Commission inspected the property on 06.12.2004 after give notice to the respondents. It is submitted that there are 28 Coconut Trees and 15 Arecanut trees in 1.59½ cents of land comprised in Re.Sy.Nos.198/3 and 200/2 of Neduva Village owned by the petitioner. The Coconut Trees and Arecanut Trees standing in the boundaries and bunds formed in the paddy land. The finding of the Advocate Commissioner that the property was not a paddy field is absolutely incorrect. The above said land is not yet converted and which is suitable for paddy cultivation. Advocate Commissioner is not competent to say whether the land is suitable for paddy cultivation or not. As per Exhibit P5 judgment, the Local Level Monitoring Committee inspected the land and found that the land owned by the petitioner is a paddy land as defined in 2(XII) of Act 28 of 2008, thereafter decision was taken. The above matter was communicated

to the petitioner vide Exhibit P7 letter.”

From the nature of the contentions raised from the part of the respondents, it is seen that, the stand now taken is that the Advocate Commissioner is not competent to say whether the land is suitable for paddy cultivation or not. According to the respondents, the land is very much suitable for paddy cultivation as certified by the Agricultural Officer and the Village Officer and as such, the claim is not liable to be entertained.

7. During the course of hearing, the learned Government Pleader points out that the existence of trees, though is conceded, the same is stated as not in the property of the petitioner but on the boundary of the property. This Court finds it difficult to accept the said proposition, as there is no mention in the report submitted by the Agricultural Officer or the Village Officer in Ext.P2 or even in Ext.P6, that the age old trees are situated only on the boundary of the property or that the property concerned herein was lying as paddy land or wet land as on the date of commencement of the Act. The legal position has been settled by a Full Bench of this Court, as per the verdict passed in **Praveen K. v. Land Revenue Commissioner,**

Thiruvananthapuram & Others (2010 (2) KLT 617) to the effect that the physical nature of the property has to be ascertained and mere description of the land in the revenue records by itself is not sufficient. It is also declared by another Bench of this Court in **Jafarkhan v. K.A. Kochumarakkar & Others (2012 (1) KLT 491)**, that provisions of Act 28 of 2008 will not be attracted, if the property was not remaining as a paddy land or wet land as defined under Sections 2(xii) and 2(xviii) of the Act 28 of 2008. So the crucial question to be considered is whether the property herein was lying as a paddy land or wet land as on the date of commencement of the Act.

8. There is no observation or any material from the part of the Agricultural Officer or Village Officer or anybody else to the effect that the property was remaining as a paddy land or wet land as on the date of commencement of the Act. On the other hand, the version of the Agricultural Officer and also the Village Officer virtually support the case projected by the petitioner, to the effect that the same is remaining as a 'reclaimed land' for the past several decades and that, a lot of improvements are there.

The point to be considered is whether the stand taken by the respondents that the property is “suitable for paddy cultivation”, even as on this day, is a matter which is to be looked into. Neither the Statute nor the binding precedent, if any, does stipulate it as a relevant consideration. In other words, the point to be looked into is not whether the land is suitable for paddy cultivation, but is whether the land was remaining as a paddy land or wet land as on the date of commencement of the Act. Viewed in the above perspective, the materials brought on record in no manner do support the case projected by the respondents.

9. There is another contention advanced by the learned Government Pleader, to the effect that the petitioner has already admitted that the land was a 'paddy land' and as such, no further exercise does require to be made by this Court to ascertain the nature of the land. The said submission is made with reference to the fact that the petitioner had already filed an application for conversion/exemption, finally leading to Ext.P2 order passed by the Government and hence that the petitioner cannot take a U turn by contending something else. The said

contention does not appear to be much palatable to this Court, for the reason that the 'rule or pleadings' does not prevent anybody from taking different contentions, even inconsistent contentions. The point to be considered is whether the relief sought for by the petitioner with reference to the provisions of the Act 28 of 2008 can be denied, if the actual nature of the property is something else, which does not come within the purview of the above Statute. It was with this intent that this Court thought it fit and proper to depute an Advocate Commissioner to collect the necessary data, which in fact has been done. Though an objection has been preferred by the respondents to the report of the Advocate Commissioner, there is no version to the effect that the said report is factually wrong or perverse in any manner. The factual position is virtually supported by the observations and notings made by the Agricultural Officer and the Village Officer vide Ext.P2 and P6, though they have incorporated in Ext.P6 that the property could be made use of for paddy cultivation. Whether the property could be made use of for paddy cultivation, is not the question to be looked into as the question to be considered as mentioned

earlier is whether the land was lying as a paddy land or wet land on the date of commencement of the Act, which can't but be answered in the negative. In the above circumstances, this Court finds that the version of the respondents is not liable to be entertained.

10. Coming to the facts and figures as disclosed from the materials on record and the sustainability of Exts.P4 and P10, there is total silence with regard to the course pursued by the Government while passing Ext.P10 granting exemption to the land belonging to somebody else, where construction of a private hospital was intended to be effected, in turn holding that it was for a 'public purpose'. The property belonging to the petitioner, which is a Co-operative Society, has however been declared as not for a public purpose, while passing Ext.P4. The course pursued by the Government cannot, but be deprecated in the strongest possible terms, for the fact that the State is aprobating and reprobating simultaneously or blowing hot and cold simultaneously. In other words, they do not have a consistent case at all. This Court, however, does not intend to express anything further with regard to the plea of mala fides, as

the petitioner is even otherwise entitled to succeed in view of the observations made herein before.

In the above circumstances, the impugned proceedings are set aside. It is declared that the property belonging to the petitioner covered by Ext.P1 was never lying as a paddy land or wet land as on the date of commencement of Act 28 of 2008. The petitioner is set at liberty to approach the concerned local authority to get necessary permit for effecting construction in the property in accordance with the relevant provisions of law and to proceed to further steps.

The writ petition stands allowed. No costs.

**P.R.RAMACHANDRA MENON,
JUDGE**

sj