

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 35292 of 2011 (J)

PETITIONER(S):

**M/S. D.M.HEALTH CARE PRIVATE LIMITED,
1ST FLOOR, PDR BHAVAN, PALLIYIL LANE,
FORESHORE ROAD, KOCHI-16,
REPRESENTED BY ITS DIRECTOR P.P.NOUSHIQUE.**

**BY ADVS.SRI.E.K.NANDAKUMAR
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI**

RESPONDENT(S):

**1. THE REVENUE DIVISIONAL OFFICER,
FORT KOCHI, KOCHI-682 001.**

**2. THE VILLAGE OFFICER
CHERANALLOOR VILLAGE,
CHERANALLOOR, KOCHI-682 030.**

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT P1 TRUE COPY OF THE BUILDING PERMIT BEARING NO.C6-7830/2010, DATED 11.05.2011 ISSUED BY THE CHERANALLOOR GRAMA PANCHAYAT TO THE PETITIONER.
- EXT P2 TRUE COPY OF THE MINUTES OF THE SPECIAL COMMITTEE MEETING DATED 23.11.2010.
- EXT P3 TRUE COPY OF THE PROCEEDINGS OF THE CHERANALLOOR GRAMA PANCHAYAT ON 17.12.2010.
- EXT P4 TYPED COPY FO THE REPORT BEARING NO.64/2010, DATED 09.04.2010 FROM THE VILLAGE OFFICER CHERANALLOOR TO THE REVENUE DIVISIONAL OFFICER, FORT COCHIN.
- EXT P5 TRUE COPY OF THE REPORT PREPARED FOR THE CENTRE FOR EARTH SCIENCE STUDIES IN MAY 2011.
- EXT P6 TRUE COPY OF THE LETTER DATED 17.08.2009 FROM THE SENIOR TOWN PLANNER, ERNAKULAM TO ONE OF THE EMPLOYEES OF THE PETITIONER.
- EXT P7 TRUE COPY OF THE STOP MEMO ISSUED BY THE VILLAGE OFFICER CHARANALLOOR ON 23.08.2011.
- EXT P8 TRUE COPY OF THE LETTER DATED 24.08.2011 FROM THE PETITIONER TO THE VILLAGE OFFICER, CHERANALLOOR (MINUS ITS ANNEXURES).
- EXT P9 TYPED COPY OF THE MAHAZAR DATED 29.12.2011 PREPARED BY THE VILLAGE OFFICER, CHERANALLOOR.
- EXT P10 PHOTOGRAPHS OF THE SITE PRIOR TO THE CONSTRUCTION ACTIVITY OF THE PETITIONER.
- EXT P11 PHOTOGRAPHS SHOWING THE PRESENT STAGE OF THE CONSTRUCTION ACTIVITY.
- EXT P12 TRUE COPY OF THE RELEVANT PAGES OF G.O.(MS)NO.143/07/LSGD DATED 31.05.2007.
- EXT P13 TRUE COPY OF THE MAHAZAR DATED 3.1.2012 UNDER WHICH THE LORRY BEARING REGISTRATION NO.KL-40C-4999.
- EXT. P14 TRUE COPY OF THE NOTICE BEARING NO.K-8858/2010 DTD.31.1.2011 ISSUED BY THE REVENUE DIVISIONAL OFFICER.

Msv/

WP(C).No. 35292 of 2011 (J)

-
- EXT.P15 TRUE COPY OF THE REPLY DTD.7.2.2011 SUBMITTED BY THE PETITIONER BEFORE THE REVENUE DIVISIONAL OFFICER.
- EXT.P16 TYPED COPY OF THE REPORT BEARING NO.J-6313/01/(17) DTD.13.5.2010 FROM THE REVENUE DIVISIONAL OFFICER, FORT KOCHI TO THE DISTRICT COLLECTOR, ERNAKULAM.
- EXT P17 TRUE COPY OF THE PETITIONER'S REPRESENTATION TOT HE 2ND RESPONDENT DTD.14.2.2012, ALONG WITH ANNEXURES AND ENDORSEMENT OF RECEIPT.
- EXT.P18 TRUE COPY OF THE MAHAZAR DTD.7.4.2014 ALONG WITH THE REPORT DTD.8.4.2014 PREPARED BY THE VILLAGE OFFICER, CHERANALLOOR.
- EXT P19 TRUE COPY OF THE LETTER DTD.7.4.2014 FROM THE SUB INSPECTOR OF POLICE, CHERANALLOOR ADDRESSED TO THE DISTRICT COLLECTOR, ERNAKULAM.

RESPONDENT(S)' ANNEXURES:

- ANNEXURE R2(A): TRUE COPY OF THE T.P.REGISTERS.
- ANNEXURE R2(B): TRUE COPY OF THE STOP MEMO DTD.4.12.2010 ISSUED BY THE 2ND RESPONDENT.
- ANNEXURE R2(C): TRUE COPY OF THE REPORT DTD.4.12.2010.
- ANNEXURE R2(D): TRUE COPY OF THE PROHIBITORY ORDER ISSUED BY R1 TO THE PETITIONER.
- ANNEXURE R2(E): TRUE COPY OF THE PHOTOGRAPHS TAKEN AT THE RELEVANT TIME OF SEIZURE.
- ANNEXURE R2(F): TRUE COPY OF THE PHOTOGRAPHS TAKEN AT THE RELEVANT TIME OF SEIZURE.
- ANNEXURE R2(G): TRUE COPY OF THE PHOTOGRAPH OF THE SITE BEFORE THE UNAUTHORIZED RECLAMATION.
- ANNEXURE R2(H): THE MAHAZAR PREPARED AT THE TIME OF POSSESSION OF THE VEHICLE.

RESPONDENT(S)' EXHIBITS:

-
- EXT. R1(a): PHOTOCOPY OF THE THANDAPER REGISTER NO.14153 IN FAVOUR OF DM HEALTH CARE PRIVATE LIMITED ISSUED BY THE VILLAGE OFFICER, CHERANALLOOR.

Msv/

WP(C).No. 35292 of 2011 (J)

EXT. R1(b): PHOTOCOPY OF THE THANDAPER REGISTER NO.13780 IN FAVOUR OF DM HEALTH CARE PRIVATE LIMITED ISSUED BY THE VILLAGE OFFICER, CHERANALLOOR.

EXT. R1(c): PHOTOCOPY OF THE THANDAPER REGISTER NO.13781 IN FAVOUR OF DM HEALTH CARE PRIVATE LIMITED ISSUED BY THE VILLAGE OFFICER, CHERANALLOOR.

EXT.R1(d): PHOTOCOPY OF THE DATA BANK CONTAINED IN SY.NO. OF LAND OWNED BY THE DM HEALTH CARE PRIVATE LIMITED AND SHOWN AS PADDY LAND.

EXT.R1(e): PHOTOCOPY OF THE BTR SHOWN IN SY.NO. OF LAND OWNED BY THE DM HEALTH CARE PRIVATE LIMITED (PETITIONER) ISSUED BY THE VILLAGE OFFICER, CHERANALLOOR.

EXT.R1(f): THE PHOTOCOPY OF THE PROHIBITORY ORDER ISSUED BY THE REVENUE DIVISIONAL OFFICER DTD.15.12.2010.

EXT.R1(g): THE PHOTOCOPY OF THE PROHIBITORY ORDER ISSUED BY THE REVENUE DIVISIONAL OFFICER DTD.31.1.2011.

EXT.R1(h): THE PHOTOCOPY OF THE HEARING NOTICES DTD.15.5.2012.

EXT.R1(i): THE PHOTOCOPY OF THE HEARING NOTICES DTD.9.6.2012.

EXT.R1(j): PHOTOCOPY OF THE REQUEST DTD.4.7.2012 SUBMITTED BY THE COMPLAINANT FOR WITHDRAWAL OF THE COMPLAINT.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

=====

W.P(C)No.35292 of 2011

=====

Dated this the 2nd day of December, 2015

JUDGMENT

This writ petition is filed challenging Exts.P7 and P9 Stop Memos and Seizure Mahazar issued by the Village Officer. The allegation against the petitioner is that, the petitioner has contravened provisions of Act 28/2008 by reclaiming the land in Re. Sy. Nos.213/11, 220/9, 212/4, 219/1 and 212/16 of Cheranalloor Village.

2. In the counter, it is stated, the land is recorded as 'Nilam' in the Draft Data Bank. Therefore, filling up the Nilam is in violation of provisions of Act 28/2008.

3. The learned counsel for the petitioner refers to various judgments in relation to the above land. It is submitted that they have already constructed a Hospital in the alleged land. It is further submitted that one Antony Jayan has filed a writ petition before this Court in W.P.(C) No.19635/2013 challenging reclamation. Learned counsel referred to the judgment of the

Division Bench and submits that it has been already found by this court that it cannot be treated as Nilam under Act 28/2008. It is also pointed out that the above judgment has been affirmed by the Hon'ble Supreme Court in S.L.P No.15017/2015.

4. It is to be noted, in the Division Bench judgment in W.P.(c) No.19635/2013, this court has held as follows:

“Coming to the Conservation of Paddy Land and Wet Land Act, in Shahanaz Shukkoor v Chelannur Grama Panchayath [2009(3) KLT 899], this Court held that the Conservation of Paddy Land and Wet Land Act operates on the basis of the facts as they exist on the ground realities and not on its description in the revenue records. We have found on the facts that at the time when Ext.P1 recommendation was made by the committee, the property sought to be developed by the tenth respondent was lying filled. As such, it cannot be contended that the development activities permitted as per Ext.P1 recommendation violates the provisions of the Conservation of Paddy Land and Wet Land Act.”

5. In the light of the above finding of the Division Bench, this Court is of the view, the Stop Memo and Seizure Mahazar are unsustainable. Accordingly, Stop Memo and Seizure Mahazar are set aside. If any movables of the petitioner has been seized, they shall be released to the petitioner. If the petitioner has furnished any Bank Guarantee for release of the movables pursuant to interim direction of this Court, necessary release order of Bank Guarantee shall also be issued to the petitioner.

Writ petition is disposed of.

Sd/-
A.MUHAMED MUSTAQUE,
JUDGE

vdv/04/12/15