

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 32382 of 2015 (W)

PETITIONER :

**AMRUTHA KUMARI I.,
MANASWINI, THENGAMAM P.O., SOORANAD
PATHANAMTHITTA DISTRICT- 690 522.**

**BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT IN
THE DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE LAND REVENUE COMMISSIONER,
OFFICE OF LAND REVENUE
THIRUVANANTHAPURAM - 695 001.**
- 3. THE DISTRICT COLLECTOR
COLLECTORATE, PATHANAMTHITTA - 688 001.**
- 4. THE REVENUE DIVISIONAL OFFICER
REVENUE DIVISIONAL OFFICE, ADOOR - 689 121.**
- 5. TAHSILDAR
TALUK OFFICE, ADOOR - 689 121.**
- 6. VILLAGE OFFICER
VILLAGE OFFICE, PALLICKAL - 690 563.**
- 7. AGRICULTURAL OFFICER
KRISHI BHAVAN, PALLICKAL 690 563.**
- 8. INDIAN OIL CORPORATION LTD.,
THIRUVANANTHAPURAM
REPRESENTED BY ITS CHIEF DIVISIONAL RETAIL SALES MANAGER
GROUND FLOOR, PREMIER PARK, INCHAKKAL BYEPASS ROAD
VALLAKKADAVU P.O., THIRUVANANTHAPURAM - 695 008.**

9. CHIEF DIVISIONAL RETAIL SALES MANAGER
INDIAN OIL CORPORATION LTD., GROUND FLOOR
PREMIER PARK, INCHAKKAL BYPASS ROAD, VALLAKKADAVU P.O.,
THIRUVANANTHAPURAM - 695 008.

R1 TO R7 BY GOVT. PLEADER SRI. BIJU MEENATTOOR
R8 & R9 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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...3/-

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1. COPY OF SALE DEED NO.3416/2006 OF SRO, ADOOR IN THE NAME OF PETITIONER.
- EXHIBIT P2. COPY OF TAX RECEIPT EVIDENCING REMITTANCE OF TAX IN THE NAME OF THE PETITIONER.
- EXHIBIT P3. COPY OF PHOTOGRAPHS SHOWING THE LIE, LOCATION AND NATURE OF LAND.
- EXHIBIT P4. COPY OF DATABANK OF PADDY LANDS AND WETLANDS OF PALLICKAL GRAMA PANCHAYAT NOTIFIED AS PER THE KERALA CONSERVATION OF PADDY LAND AND WET LAND ACT, 2008.
- EXHIBIT P5. COPY OF LETTER OF INTENT FOR PROPOSED B SITE KISAN SEVA KENDRA DEALERSHIP UNDER OPEN (WOMEN) CATEGORY.
- EXHIBIT P6. COPY OF REPORT NO.111/2011 DATED 30.5.11 OF THE 6TH RESPONDENT.
- EXHIBIT P7. COPY OF THE REQUISITION MADE BY THE 8TH RESPONDENT TO THE 3RD RESPONDENT.
- EXHIBIT P8. COPY OF B4-3160/11/13 DATED 5.9.12 OF THE 3RD RESPONDENT.
- EXHIBIT P9. COPY OF REPORT DATED 3.8.14 OF THE 7TH RESPONDENT.
- EXHIBIT P10. COPY OF ORDER NO.B4-3160/2011/3 K.DIS DATED 2.9.14.
- EXHIBIT P11. COPY OF COMMUNICATION NO.TDO.KSK.THENGAMAM DATED 25.9.14.
- EXHIBIT P12. COPY OF COMMUNICATION NO.7837/12/B4 DATED 14.11.14.
- EXHIBIT P13. COPY OF REPRESENTATION DATED 5.1.15 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P14. COPY OF REPORT SUBMITTED BY THE DEPUTY COLLECTOR BEFORE DISTRICT COLLECTOR AND TO OBTAINED UNDER RIGHT TO INFORMATION ACT.
- EXHIBIT P15. COPY OF COMMUNICATION DATED 10.3.15 FROM THE 9TH RESPONDENT.
- EXHIBIT P16. COPY OF COMMUNICATION DATED 18.3.15 OF THE 3RD RESPONDENT.
- EXHIBIT P17. COPY OF APPEAL FILED BEFORE THE 2ND RESPONDENT AND THE ACKNOWLEDGEMENT RECEIVED FROM THE OFFICE OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 32382 of 2015

Dated this the 20th day of November, 2015

JUDGMENT

The petitioner is the owner of 10.80 Ares of land and property comprised in Re-survey Nos.330/9 and 330/9-1 in Block No.35 of Pallickal Village. She approached the District Collector for NOC for the purpose of establishing a petroleum retail outlet. The 3rd respondent was rejected the application as per Ext.P10 stating that the land in question has been reclaimed illegally, violating provisions of enactment of Act 28/2008. The petitioner also has preferred an appeal before the Land Revenue Commissioner as per Ext.P17.

2. The learned Government Pleader submits that the Draft Data Bank has been finally notified. In the Draft Data Bank, the land has been classified as a converted land.

3. In view of the fact as above, rigour of enactment of Act 28/2008 would not apply to the land. This Court is of the view that the petitioner shall approach the District Collector under clause 6 of the Kerala Land Utilisation Order. It is to be noted originally, the paddy was cultivated in this land. The District Collector, under clause 7 of the Kerala Land Utilisation Order, has the power only to command the holder of the land to cultivate food crops which were in cultivation in the land. In view of the fact that it cannot be classified as a paddy land, this Court is of the view that there is no impediment in granting a permission to the petitioner to establish a petroleum retail outlet in the land in question, as the District Collector cannot command the petitioner to cultivate the paddy in the land.

4. Therefore, appropriate permission shall be granted within one month from making of such application under clause 6 of the Kerala Land Utilisation Order by the

petitioner. Once permission is granted as above, the petitioner's application for NOC shall be considered in accordance with law without delay. However, it is open for the District Collector to impose any conditions to protect the surrounding land while granting permission under clause 6 of the Kerala Land Utilisation Order. In view of the above, the petitioner's appeal before the Land Revenue Commissioner has become redundant.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE