IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 33090 of 2015 (I)

PETITIONER(S):
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1. **K.M.MOIDEENKUTTY HAJI,**
   S/O.MOTHIKUTTY HAJI, KUDUKKIL MACHINGAL HOUSE,
   ANTHIYOORKUNNU, PULICKAL,
   VALIYAPARAMBU P.O, ERNAD - 673 637.

2. **KUNHIRAYI,**
   S/O.MOTHIKUTTY HAJI, KUDUKKIL MACHINGAL HOUSE,
   ANTHIYOORKUNNU, PULICKAL,
   VALIYAPARAMBU P.O, ERNAD - 673 637.

3. **NAZEERA,**
   W/O.MOIDEENKUTTY HAJI, KUDUKKIL MACHINGAL HOUSE,
   ANTHIYOORKUNNU, PULICKAL, VALIYAPARAMBU P.O, ERNAD,
   MALAPPURAM DISTRICT - 673 637.

   BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
   SMT.N.DEEPA

RESPONDENT(S):
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1. **STATE OF KERALA,**
   REPRESENTED BY THE CHIEF SECRETARY,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM695 001.

2. **THE REVENUE DIVISIONAL OFFICER, TIRUR - 673 637.**

3. **THE VILLAGE OFFICER, CHERUKAVU - 673 637.**

   BY GOVERNMENT PLEADER SRI.P.PADMALAYAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 33090 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF DOCUMENT NO.644/2002

EXT.P-2: TRUE COPY OF DOCUMENT NO.1117/2004

EXT.P-3: TRUE COPY OF DOCUMENT NO.3341/2005

EXT.P-4: TRUE COPY OF DOCUMENT NO.3106/2013

EXT.P-5: TRUE COPY OF THE BUILDING TAX RECEIPT ISSUED BY THE CHERUKAVU GRAMA PANCHAYATH IN THE NAME OF IST PETITIONER DATED 1.3.2007

EXT.P-6: TRUE COPY OF BUILDING TAX ASSESSMENT REGISTER WITH RESPECT TO SHOP ROOM NOS.582 TO 588

EXT.P-7: TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE CHERUKAVU GRAMA PANCHAYATH

EXT.P-8: TRUE COPY OF PHOTOGRAPHS OF THE SHOPPING MALL BY NAME "KADEEJA MALL"

EXT.P-9: TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED BY THE CHERUKAVU GRAMA PANCHAYATH DATED 19.11.2008

EXT.P-10: TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 23.8.2005

EXT.P-11: TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 20.7.2015

EXT.P-12: TRUE COPY OF THE REPORT OF THE 3RD RESPONDENT DATED 22.6.2015

EXT.P-13: TRUE COPY OF THE DATA BANK PREPARED BY THE REVENUE AUTHORITIES

EXT.P-14: TRUE COPY OF PROCEEDINGS OF THE 2ND RESPONDENT WITH REFERENCE TO FILE NO.4800/15 DATED 26.8.2015 & 4.9.2015

EXT.P-15: TRUE COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT DATED 15.9.2015

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

PJ

P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.33090/2015

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Dated this the 16th Day of November, 2015

J U D G M E N T

The petitioners are the owners of an extent of 48.45 cents of land comprised in resurvey Nos.119/6, 119/7 & 119/10 of Cherukavu Village in Malappuram District. They have constructed a building based on a building permit. Exhibit P7 is the building permit. The land referred as above is shown as converted land in the Data Bank as evident from the communication of the Village Officer produced as Ext.P12 and the copy of the Data Bank produced as Ext.P13. The petitioners have approached this Court aggrieved by Exhibit P15 notice issued by the Revenue Divisional Officer, Tirur. The Revenue Divisional Officer informed the petitioners that they have reclaimed land in violation of the Kerala Land Utilisation Order (for short, the "KLUO") and directed them to cultivate paddy, and it was also informed that on failure, the right to cultivate paddy will be auctioned.

2. If the property is not included in the Draft Data Bank as paddy land, the Revenue Divisional Officer cannot pass such an order. Once the Act 28 of 2008 came into force, the entire matter relating to Paddy land has to be dealt under that Act.

3. In view of the fact that the aforementioned property is not included in the Draft Data Bank, the petitioners can utilise the land in terms of clause 6 of the KLUO for any other purposes. It is apparent that the petitioners have not obtained any order under the KLUO. Merely because the land was a converted land and the petitioners utilised the land for other purposes without permission under clause 6 of KLUO, is not an impediment for granting permission under clause 6 of KLUO.

4. However, it is to be noted that the Revenue Divisional Officer has no case that permission under clause 6 of KLUO cannot be granted. Permission is required under KLUO for cultivation of food crops other than paddy. KLUO is a subordinate legislation issued under the Essential Commodities Act to secure essential food crops which were The power given to the Collector under KLUO is to relax or to give exemption to utilise land for other purposes, if it is not required for cultivation of food crops which were in cultivation. Considering the fact that the land originally was a wet land and it was converted much before the enactment of the Act 28 of 2008, this Court is of the view that there is no impediment in granting permission under clause 6 of KLUO. In the backdrop of the above circumstances, this Court is of the view that Exhibit P15 is unsustainable and it is liable to set aside.

5. In the result, the following directions are issued:

Exhibit P15 is set aside. The petitioners shall approach the Revenue Divisional Officer under clause 6 of the KLUO within two weeks from the date of receipt of a copy of this judgment. Thereafter, the Revenue Divisional Officer shall grant permission to the petitioners after safeguarding the interest of nearby properties within two months thereafter.

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

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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