

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 35102 of 2014 (K)

PETITIONER:

M.A. ABDUL NASEER, AGED 44 YEARS  
S/O.M.M.ALIKUTTY, MULLAPPILLY HOUSE, NEDUMTHODU  
MUDICKAL P.O., PERUMBAVOOR, PIN-683 542.

BY ADVS.SRI.M.A.ABDUL HAKHIM  
SRI.C.A.ANAS

RESPONDENTS:

1. DISTRICT COLLECTOR  
ERNAKULAM, CIVIL LANE, KAKKAND  
COCHIN-682 030.
2. THE REVENUE DIVISIONAL OFFICER  
MUVATTUPUZHA-683 516.
3. THE VILLAGE OFFICER  
PERUMBAVOOR, PIN-683 542.
4. THE AGRICULTURAL FIELD OFFICER  
KRISHI BHAVAN, PERUMBAVOOR, PIN-683 542.
5. MUHAMMED YARSHIN  
S/O.P.M.UMMER, PERUMANATHOTTATHIL, THETTIKOT LANE  
PARAPPURAM, PERUMBAVOOR, PIN-683 542.
6. C.M.ALIKUNJU  
S/O.MUHAMMED CHENTHARA, THETTIKOT LANE  
PARAPPURAM PERUMBAVOOR, PIN-683 542.
7. C.B.ABDUL RAHMAN  
S/O.BEERAN, CHENTHARA, THETTIKOT LANE  
PARAPPURAM, PERUMBAVOOR, PIN-683 542.

R6 & R7 BY ADV. SRI.KALEESWARAM RAJ  
GOVERNMENT PLEADER SRI. MUHAMMED SHAFI. M.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

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- EXT.P1.        A TRUE PHOTOGRAPH OF THE PROPERTY OF THE PETITIONER
- EXT.P2.        A TRUE PHOTOGRAPH OF THE PROPERTY OF THE PETITIONER
- EXT.P3A        TRUE PHOTOSTAT COPY OF THE STOP MEMO ISSUED BY THE 3RD  
RESPONDENT
- EXT.P4.        A TRUE PHOTOSTAT COPY OF THE RELEVANT PAGES OF THE DATA  
BANK LIST ISSUED BY THE 4TH RESPONDENT
- EXT.P5.        A TRUE PHOTOSTAT COPY OF THE REPORT OF THE 1ST  
RESPONDENT
- EXT.P6.        A PHOTOSTAT COPY OF THE REPORT OF THE 1ST  
RESPONDENT
- EXT.P7.        A PHOTOSTAT COPY OF THE JUDGMENT IN WPC NO.12122/2013  
OF THIS HONOURABLE COURT.
- EXT.P8.        A TRUE PHOTOSTAT COPY OF THE ORDER PASSED BY THE 1ST  
RESPONDENT

RESPONDENTS' EXHIBITS : NIL

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//TRUE COPY//

P.A. TO JUDGE

smv

**A.M. SHAFFIQUE, J.**

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**W.P.(C) No.35102 of 2014**  
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**Dated this the 9<sup>th</sup> day of April, 2015**

**JUDGMENT**

The petitioner has approached this Court seeking the following reliefs:

a) Issue a writ of certiorari such other writ, order or direction setting aside Ext.P3 Stop Memo and Ext.P8 order.

b) Declare that Kerala Conservation of Paddy Land and Wet Land Act is not applicable to the 113.55 ares of land in Sy.Nos.51, 52/1, 52/2, 53/2, 55/1-1, 55/1-2 and 55/2 of Perumbavoor village belonging to the petitioner and his co-owner M.A. Salim

c) Grant such other reliefs as this Hon'ble Court shall deem just.

2. Ext.P8 is the order passed by the District Collector forming an opinion that as per the Basic Tax Register entries property having an extent of 113.55 Ares in various survey numbers is shown as paddy land. Further it is observed that the land was converted 7 years prior to the preparation of the Data Bank Entries. It is also observed that as per the materials available on record, the property is the paddy land in terms of the Kerala Conservation of Paddy Land and Wet Land

Act, 2008. Further materials indicate that the property is suitable for paddy cultivation. If the property is reclaimed, there is possibility of depletion of drinking water resources during summer. Therefore a stop memo has been issued by the Village Officer on 02.04.2013. An application was filed for vacating the said order which stands rejected by Ext.P8 order. Further it is observed that without compliance with the statutory provisions no construction activities can be carried out in the property. The petitioner further seeks for a declaration that the 2008 Act has no application to the subject land.

3. It is pointed out that Ext.P4 is the Data Bank entries with reference to the aforesaid land and this property comes in survey No.57 as item Nos.567, 570, 571 and 573 wherein it is shown as converted land of 7 years and 8 years. Submission is that the property had been converted long back.

4. The District Collector had passed Ext.P8 order based on a direction issued by this Court in W.P.(C) No.12122/2013.

5. Having regard to the present legal position as available after the judgment of the Apex Court in **Revenue Divisional Officer v. Jalaja Dileep [2015(1) KLT 984]**, it is incumbent on the part of the petitioner to approach the District Collector in terms of Clause 6 of the Kerala Land Utilisation Order especially on account of the fact that the property is not described as paddy land in the Data Bank entries. The District Collector in exercise of powers under Clause 6

will have to consider whether the land can be converted and whether the revenue authorities can change the entries in the Basic Tax Register. As far as Ext.P8 is concerned, the Collector has formed an opinion based on the factual statements in the Basic Tax Register and without reference to the Data Bank entries. These facts are required to be considered before arriving at a conclusion. That apart it has to be verified whether the property can be utilised for paddy cultivation which shall be based on sufficient materials and whether conversion may cause any difficulty to the neighbouring paddy fields or land owners as the case may be.

6. In such circumstance, this writ petition is disposed of as under:

Ext.P8 is set aside. Petitioner is permitted to file necessary application under Clause 6 of the Kerala Land Utilisation Order, 1967 and the competent authority shall consider the same and pass appropriate orders within a period of 6 months from the date of receipt of a copy of the representation.

Sd/-  
**A.M. SHAFFIQUE,**  
**JUDGE**

smv