

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WP(C).No. 37344 of 2015 (P)

PETITIONER(S):

- 1. SOMARAJAN,
S/O PARAMU, ULLAS BHAVAN, CHEERANKAVU,
EZHUKONE, KOTTARAKKARA.**
- 2. REJITHA SOMARAJAN,
W/O.SOMARAJAN, ULLAS BHAVAN, CHEERANKAVU,
EZHUKONE, KOTTARAKKARA.**

**BY ADVS.SRI.N.D.PREMACHANDRAN
SRI.D.AJITHKUMAR**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR, KOLLAM,
CIVIL STATION, KOLLAM-691 001**
- 2. THE ADDITIONAL TAHSILDAR,
TALUK OFFICE, KOLLAM-691 001**
- 3. THE VILLAGE OFFICER,
VILLAGE OFFICE, KILIKOLLUR, KOLLAM-691 004**

BY SPL.GOVERNMENT PLEADER SRI.P.K.SOYUZ

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-12-2015,ALONG WITH WP(C).NO. 37959 OF 2015 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: A COPY OF THE PROPERTY TAX RECEIPT DT. 26/7/13 ISSUED BY THE VILLAGE OFFICER, KILIKOLLUR
- EXT.P1A(A): A COPY OF THE PROPERTY TAX RECEIPT DT. 24/7/13 ISSUED BY THE VILLAGE OFFICER, KILIKOLLUR
- EXT.P1(B): A COPY OF THE PROPERTY TAX RECEIPT DT. 25/7/13 ISSUED BY THE VILLAGE OFFICER, KILIKOLLUR
- EXT.P2: A COPY OF THE BASIC TAX REGISTER KILIKOLLUR VILLAGE OFFICER
- EXT.P3: A COPY OF THE THANDAPPER REGISTER KOLLAM TALUK OFFICE
- EXT.P4: A COPY OF THE APPLICATION DT. 6/10/13 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT
- EXT.P5: A COPY OF THE REPORT DT. 13/11/13 SUBMITTED BY THE ADDITIONAL TAHSILDAR, TO THE FIRST RESPONDENT
- EXT.P6: A COPY OF THE CERTIFICATE DT. 22/1/14 ISSUED BY THE AGRICULTURAL OFFICER, KRISHI BHAVAN, KILIKOLLUR TO THE FIRST RESPONDENT
- EXT.P7: A COPY OF THE COMMUNICATION DT. 18/12/13 ISSUED BY THE FIRST RESPONDENT
- EXT.P8: A COPY OF THE REPRESENTATION DT. 6/2/14 SUBMITTED BEFORE THE FIRST RESPONDENT
- EXT.P9: A COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC.NO. 7301/14 DT. 4/8/14
- EXT.P10: A COPY OF THE APPLICATION DT. 11/8/15 BEFORE THE 1ST RESPONDENT
- EXT.P11: A COPY OF THE NOTICE DT. 8/6/15
- EXT.P12: A COPY OF THE REGISTERD LAWYER NOTICE DT. 22/8/11

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

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P.S.TO JUDGE

“C.R.”

A.MUHAMED MUSTAQUE, J.

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W.P. (C) .Nos.

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| <b>37344/2015</b> | <b>38347/2015</b> |
| <b>37959/2015</b> | <b>38564/2015</b> |
| <b>38064/2015</b> | <b>38632/2015</b> |
| <b>38112/2015</b> | <b>38637/2015</b> |
| <b>38132/2015</b> | <b>38780/2015</b> |
| <b>38133/2015</b> | <b>38807/2015</b> |
| <b>38203/2015</b> | <b>38817/2015</b> |
| <b>38216/2015</b> | <b>38823/2015</b> |
| <b>38224/2015</b> | <b>38854/2015</b> |
| <b>38225/2015</b> | <b>38865/2015</b> |
| <b>38338/2015</b> |                   |

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Dated this the 21st Day of December, 2015

J U D G M E N T

These batch of writ petitions are filed seeking for a direction to consider the applications filed by the petitioners under clause 6 of the Kerala Land Utilisation Order for utilising land for other purposes. The petitioners' case is that their land has been converted prior to the Act 28 of 2008 and is no longer fit for paddy cultivation. The petitioners would submit that their paddy land is not included in the draft data bank either as a paddy land or wetland and therefore, the Collector has to give permission in terms of clause 6 of KLUO to utilise the land for other purposes.

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2. KLUO is issued under the Essential Commodities Act, 1955 in the wake of food scarcity to boost up production of food crops. It refers to certain food crops which includes Paddy also. The nature of the power vested with the Collector under the KLUO, is in the nature of the enabling powers to command the holders of the land to cultivate those food crops, which are referred in the KLUO. The right of land holder is therefore, fettered to the extent the enabling power that could be exercised by the Collector. Power is also given to the Collector to relax the enabling power by permitting the holder of the land to utilise the land for other purposes in terms of clause 6 of KLUO. This is essentially when it is satisfied that the land is no longer required for cultivation of food crops which were under cultivation.

3. When the Kerala Conservation of Paddy Land and Wet Land Act, 2008 was enacted in the year 2008, all the matters relating to the Paddy land have to be considered and treated in terms of the provisions of the Act 28 of 2008 {see judgement of the Division Bench of this Court in **Praveen Vs. Land Revenue Commissioner [2010 (2) KLT 617]**}. However, in respect of other food crops, which are not covered by the Act 28 of 2008, if

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it is otherwise covered under KLUO, the KLUO should be followed for the purposes of utilising the land.

4. The Hon'ble Supreme Court in the **Revenue Divisional Officer v. Jalaja Dileep 2015 (1) KLT 984 (SC)]** at para.17 held that in respect of food crops covered under KLUO, the holder of the land has to obtain permission from the Collector to utilise the land for other purposes. KLUO would be applicable, if the Collector has necessary power in terms of KLUO, in respect of the land covered therein which depends upon the food crops under cultivation.

5. The State by amending the Act 28 of 2008, after Section 3 inserted Section 3A , which reads as follows:

“3A. Power to regularise the conversion or reclamation of paddy land made before the commencement of the Act.- Notwithstanding anything contained in this Act or any other Act, rules or orders for the time being in force or in any judgment, decree or order of any court, tribunal or other authority, where before the commencement of this Act, any owner, occupier or the person in custody of any paddy land had undertaken conversion or reclamation of the said paddy land otherwise than in accordance with the provisions of any other Act existing at that time, the Collector may, regularise such conversion or

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reclamation in such manner as may be prescribed, by recovering a fee equal to 25 percent of the fair value of the said land notified under section 28A of the Kerala Stamp Act, 1959 (17 of 1959) or the fair value of adjacent land of similar nature, if the fair value of said land is not notified.”

6. Thereafter, Rules have been framed in the light of the amendment, namely, the Kerala Conservation of Paddy Land and Wet Land (Regularisation of Unauthorised Reclamation) Rules, 2015 and in said the Rules, under Rule 2(c) “unauthorised reclamation” is defined as follows:

“(c) “Unauthorised reclamation” means any act or a series or acts whereby a paddy land is converted irreversibly and in such a manner that it cannot be reverted back to the original condition by ordinary means, without obtaining permission under any law for the time being in force, before the 12th day of August 2008.”

The Rule 2(b) defines paddy land as follows:

“(b) “Paddy land” means any land recorded in Village records as “Nilam” but is not included as paddy land or wet land in the Draft/Data Bank prepared under the Act.”

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The definition of paddy land as above requires a clarification. The intention of rule makers is only to cover paddy land which was cultivated with paddy any time prior to reclamation before the Act 28 of 2008. This is clear from the definition of unauthorised reclamation as referred in Rule 2(c). Therefore, it cannot be stretched to include any converted wetland prior to the Act 28 of 2008, even though, the same is described as *nilam* in village records. The paddy land definition in Rules is certainly different from definition of paddy land in the Act and can be understood only in the context of amended Section 3A of the Act 28 of 2008 for the purpose of regularisation. Therefore, any paddy land or wetland included in the draft data bank or converted after the Act 28 of 2008 would not come within the ambit for regularisation.

7. These provisions clearly show that the power of the Collector has been taken away under KLUO, in respect of the land which has been converted irreversibly prior to the Act 28 of 2008. Therefore, the Collector has no power after the amendment of the Act and on proclamation of the Rules to deal with converted paddy land under clause 6 of KLUO. The power of the Collector is excluded by implication on amendment, as the entire matter has to be dealt under the Act 28 of 2008. Therefore, the

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manner of utilisation can be only by way of regularisation in terms of the amended provision of Section 3A read with Rule 2(c) of the Rules framed therein. Rules also provide the procedure for such application to be considered by the District Collector.

8. It is to be noted enabling power of the Collector has become defunct on account of irreversible reclamation of paddy land before the Act 28 of 2008. The Collector in terms of clause 7 of KLUO has the power only to command the holder of the land to cultivate the land with the food crops which were in cultivation. Thus, if paddy was in cultivation, the Collector can only command the holder of the land to cultivate the land with paddy.

9. Thus, on account of unauthorised reclamation prior to the Act 28 of 2008, the Collector's power has been clogged. The KLUO unlike the Act 28 of 2008 has not been issued with aim or objective to sustain bio-diversity. Its objective is with specific intention to enhance State's capability to have a self sustenance on food crops without any dependence. It was based more on economic and social interest of the State, KLUO was issued. Thus, on account of unauthorised reclamation, the State has to find out other source for its requirement. It appears that demand of 25% of fair value per Are has been fixed for regularisation in

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terms of Section 3A of Act 28 of 2008 is with an intention to offset the loss suffered by the State.

10. The “abuse of right of ownership” stems from a French doctrine known as “*Abus de Droit*”, literally means abuse of rights, also have an acceptance in common law traditions. In common law, an owner is responsible for an abuse of his ownership. The unauthorised reclamation irreversibly before the Act 28 of 2008 certainly deprived the State's right to command the holder of the land to cultivate with paddy. This fundamental social doctrine clearly emphasis use of the property is always subject to the requirement of the community or the State. Thus, when the owner of the land acted against the interest of the State, the State is entitled to take compensatory measures.

11. Therefore, this Court is of the view that the applications filed by the petitioners under clause 6 of the KLUO are not maintainable as utilisation of such land have to be dealt with in terms of the Act 28 of 2008 in the light of the amendment. However, it is made clear that the Collector has power in respect of other food crops other than converted paddy land in terms of KLUO for granting such permission. Therefore, the Collector, while considering the application under Section 3A will have to verify

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whether the land in question was originally paddy land and whether it was converted irreversibly before the Act 28 of 2008. The procedure for such consideration is also prescribed under the Kerala Conservation of Paddy Land and Wet Land (Regularisation of Unauthorised Reclamation) Rules, 2015. Therefore, these writ petitions are disposed of with the following directions:

i. If the petitioners apply to the Collector in form No.4 as appended in the Rules along with the fees, the same shall be considered within two months from the date of receipt of a copy of this judgment after calling for necessary report from the Local Level Monitoring Committee and after adverting to the nature of the land in the Draft Data Bank.

ii. If it is not included in the Draft Data Bank and the land was a converted paddy land, before enactment of the Act 28 of 2008, necessary permission shall be granted on remitting 25% of the notified fair value per Are.

iii. Once regularisation order is issued, necessarily, the petitioners are entitled to use the land as *purayidam* and dry land in accordance with law.

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iv. The petitioners are also free to approach the Tahsildar for reassessment of land after regularisation order is issued in terms of Section 6A of Kerala Land Tax Act, 1961.

v. If such applications are filed, the Tahsildar shall consider the application in the light of the directions of this Court in the judgment in **Kizhakkambalam Grama Panchayat v. Mariumma [2015 (2) KLT 516]**.

vi. It is made clear that after promulgation of the Rules, the Collector has no power to consider the applications under clause 6 of KLUO in respect of converted paddy land and all pending applications have to be rejected with liberty to the applicants to apply in terms of the amended provisions of Section 3A of the Act 28 of 2008 and the land holders are free to apply afresh in terms of Section 3A of the Act 28 of 2008 for regularisation of unauthorised reclamation of paddy land. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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