

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. 38045 of 2015 (E)

PETITIONER(S) :

IBRAHIM K.I. ,
AGED 53 YEARS, S/O. AIMUNNI, KIZHAKKEN HOUSE, VENGOLA VIOLLAGE
VENGOLA KARA, P.O.PONJASSERY, PERUMBAVOOR - 685 547.

BY ADVS.SRI.G.RAJAGOPAL
SMT.S.LEELALAKSHMI
SMT.N.RENJINEE DEVI

RESPONDENT(S) :

1. DISTRICT COLLECTOR,
COLLECTORATE KAKKANADU, ERNAKULAM - 682 030.
2. THE REVENUE DIVISIONAL OFFICER,
OFFICE OF TH R.D.O., MUVATTUPUZHA - 686 661.
3. THE SECRETARY,
VENGOLA GRAMA PANCHAYATH, VENGOLA,
PERUMBAVOOR - 683 556.
4. SUBAIDA AZEEZ,
AGED 58 YEARS, W/O. AZEEZ, ANEESH MANZIL, VADAKKAYIL HOUSE,
VENGOLA KARA, VENGOLA VILLAGE, KUNNATHUNADU TALUK
PERUMBAVOOR - 683 556.
5. AJEEZ AZEEZ,
AGED 32 YEARS, S/O. AZEEZ, ANEESH MANZIL, VADAKKAYIL HOUSE,
VENGOLA KARA, VENGOLA VILLAGE, KUNNATHUNADU TALUK,
PERUMBAVOOR - 683 556.
6. ANEESH AZEEZ,
AGED 32 YEARS, S/O.AZEEZ, ANEESH MANZIL, VADAKKAYIL HOUSE,
VENGOLA KARA, VENGOLA VILLAGE, KUNNATHUNADU TALUK,
PERUMBAVOOR - 683 556.

R4,R 5 BY ADV. SRI.DEVAN RAMACHANDRAN (SR.)
R4,R 5 BY ADV. SRI.R.PARAMESWARA IYER
BY GOVERNMENT PLEADER SMT.C.K.SHERIN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS:

- EXT. P1- TRUE PHOTOCOPY OF SALE DEED NO. 4695/2007 OF S.R.O PERUMBAVOOR.
- EXT. P2 - TRUE PHOTOCOPY OF THE COMPLAINT DT. 29.11.2015 SUBMITTED BY THE RESIDENTS OF THE LOCALITY TO THE FIRST RESPONDENT.
- EXT. P3 - TRUE PHOTOCOPY OF THE PROCEEDINGS NO. A9-190/2015/K DIS DT. 20.1.2015 ISSUED BY THE SECOND RESPONDENT IN FAVOUR OF RESPONDENTS 4 TO 6.
- EXT. P4 - TRUE PHOTOCOPY OF THE BUILDING PERMIT DT. 12.11.2015 ISSUED BY THE THIRD RESPONDENT IN FAVOUR OF THE FOURTH RESPONDENT.
- EXT. P5 - TRUE PHOTOCOPY OF THE APPROVED PLAN DT. 12.11.2015 ISSUED BY THE THIRD RESPONDENT IN FAVOUR OF THE FOURTH RESPONDENT.
- EXT. P6 - TRUE PHOTOCOPY OF THE APPLICATION DT. 05.12.2015 SUBMITTED BY THE PETITIONER BEFORE THE INFORMATION OFFICE IN THE OFFICE OF THE SECOND RESPONDENT.
- EXT. P7 - TRUE PHOTOCOPY OF THE DRAFT DATA BANK PRODUCED BY THE FOURTH RESPONDENT IN WPC NO. 36478/2015 ON THE FILES OF THE HONOURABLE HIGH COURT.
- EXT. P8 - PHOTOGRAPHS OF THE PROPERTIES BELONGING TO THE PETITIONER AND THAT OF THE RESPONDENTS 4 TO 6.

RESPONDENT(S) ' EXHIBITS :

- EXT. R4(A) - TRUE COPY OF THE PHOTOGRAPH OF THE PROPERTY OF THE RESPONDENTS 4 TO 6.
- EXT. R4(B) - TRUE COPY OF THE PHOTOGRAPHS OF THE NEIGHBORING PROPERTY OF THE RESPONDENTS 4 TO 6.

/TRUE COPY/

P.A.TO JUDGE

rvs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.38045 of 2015

Dated this the 21st day of December, 2015

JUDGMENT

The petitioner, challenging an order passed by the Revenue Divisional Officer, Muvattupuzha under Clause 6 of the Kerala Land Utilisation Order (for short, the 'Order'), has approached this Court.

2. Ext.P3 is the order. By Ext.P3 order, the Revenue Divisional Officer exercising the power of the Collector, allowed the party respondents to reclaim the land comprised in Re-survey Nos.65/5-1, 64/11-1 and 64/11-2 to utilize the land for any other purposes including non-agricultural activities. The case of the petitioner is that the land referred as above is included in the Draft Data Bank and therefore, the permission granted by the Revenue Divisional Officer is

illegal and unsustainable. The petitioner refers to the Draft Data Bank prepared under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (for short, the 'Act 28/2008').

3. On the other hand, learned senior counsel points out the land referred in Survey No.64/11-1 is a paddy land. However, the land situated in Survey No.65/5-1 is a converted land. Therefore, the order to that extent is perfectly justifiable.

4. The Revenue Divisional Officer while exercising the power of the Collector under Clause 6 of the Order has the power to permit the land owner to utilize the land for other purposes if the same is not included as a paddy or wetland. If the land is included as paddy, no power is traceable to the Collector to grant such permission. The entire matter relating to the paddy is covered by Act 28/2008. The power of the

Revenue Divisional Officer to grant permission under Clause 6 of the Order is only in respect of the land, which is being cultivated with food crops referred in the Order other than the paddy. [See the division bench judgment in **Praveen v. Land Revenue Commissioner**(2010 (2) KLT 617)].

5. In that view of the matter, the power that can be exercised by the Revenue Divisional Officer only if the land in question is a converted before the enactment of the Act 28/2008 and not included either as paddy or wet land in the Draft Data Bank prepared under the Act 28/2008. It is not discernible what is the extent of reclaimed land in Survey No.65/5-1 before the enactment of Act 28/2008. Necessarily, it appears that the entire land is lying contiguous and there is no demarcation of the land.

6. This Court is of the view that the Revenue Divisional Officer shall demarcate and separate the reclaimed land before the Act 28/2008 for the purpose of granting permission under Clause 6 of the Order after adverting to the Draft Data Bank. The reclaimed land shall be identified by conducting site inspection and permission shall be confined to reclaimed portion of the land alone.

Therefore, the Revenue Divisional Officer is directed to complete the exercise and demarcate the land reclaimed and confine Ext.P3 order to the extent applicable to the reclaimed portion alone. This exercise shall be completed after issuing notice to the petitioner. Needful shall be done within three weeks from the date of receipt of a copy of this judgment. It is made clear that any building permit is granted, that would

applicable only to the reclaimed area to be demarcated by the Revenue Divisional Officer by the direction of this Court and not beyond. The petitioner shall not reclaim any portion of the land which is included in the Draft Data Bank as paddy.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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