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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 28TH DAY OF JUNE 2022 / 7TH ASHADHA, 1944

WP(C) NO. 18619 OF 2020

PETITIONER:

VASU KALLAYI, AGED 64 YEARS, S/O. LATE GOVINDAN,
KALARIYLLATHIL HOUSE, KALLIKKANDY P.O., THALASSERY
TALUK, KANNUR DISTRICT, PIN-670 693.

BY ADVS.

R.SURENDRAN

KUM.S.MAYUKHA

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, AGRICULTURE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE REVENUE DIVISIONAL OFFICER AND SUB COLLECTOR, OFFICE OF THE SUB COLLECTOR, GUNDERT ROAD, THALASSERY, KANNUR DISTRICT, PIN-670 101.
- 3 THE TAHSILDAR, THALASSERY TALUK, TALUK OFFICE, THALASSERY-670 101, KANNUR DISTRICT.
- 4 THE VILLAGE OFFICER, KOLAVALLUR VILLAGE, VILLAGE OFFICE, KOLAVALLUR, THALASSERY TALUK, KANNUR DISTRICT, PIN-670 693.
- 5 THE AGRICULTURAL OFFICER, KRISHI BHAVAN, KUNNOTHUPARAMBA, CONVENOR OF LOCAL LEVEL MONITORING COMMITTEE, KUNNOTHUPARAMBA GRAMA PANCHAYAT, CHERUPARAMBA P.O., THALSSERY TALUK, KANNUR DISTRICT, PIN-670 693.

- 6 THE LOCAL LEVEL MONITORING COMMITTEE,
KUNNOTHUPARAMBA GRAMA PANCHAYAT, REPRESENTED BY ITS
CONVENOR, THE AGRICULTURAL OFFICER, KRISHI BHAVAN,
CHERUPARAMBA P.O., THALSSERY TALUK, KANNUR DISTRICT,
PIN-670 693.
- 7 BIJITH.K, AGED 41 YEARS, S/O.MUKUNDAN, RESIDING AT
KUNIYIL HOUSE, OTTANIYIL, KOLAVALLUR, THALASSERY
TALUK, KANNUR DISTRICT, PIN-670 693.
BY ADVS.

SRI.RAJAN VISHNURAJ

SRI.V.HARISH

OTHER PRESENT:

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28.06.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

CR**P.V.KUNHIKRISHNAN, J****-----
W.P.(C) No.18619 of 2020
-----****Dated this the 28th day of June, 2022****JUDGMENT**

Ignorance of law and ignorance of the development of law through the judgments of the constitutional Courts are the main reasons for the accumulation of cases before this Court in the jurisdiction relating to the Kerala Conservation of Paddy Land and Wetland Act, 2008 (for short "Act 2008"). The present case is a classic example of the same. A non-resident Indian who invested his hard earned money in Kerala is behind the red tape file of the respondents for the last two years to get clearance from the Act 2008. As per the Act 2008, the Revenue Divisional Officers are, in effect quasi judicial authorities. They should should be aware of the laws and the decisions of this Court which interpret those laws. The

ignorance of law and misinterpretation of the judgments of this Court leads to several illegal orders by the Revenue Divisional Officers, who are the competent authority as per the Act, 2008, this in turn leads to unnecessary litigations before this court. Therefore, the 1st respondent should take appropriate steps to see that the Revenue Divisional Officers invoking powers under the Act, 2008 are doing their quasi judicial duties in accordance with law. If necessary, sufficient training should also be given to them regularly in consultation with the Advocate General, so that such things will not happen in the future.

2. The short facts of the present case are as follows: The petitioner was a non-resident Indian, who worked hard for his livelihood abroad. He decided to invest his hard earned money in his hometown/village. The petitioner purchased 5.86 Ares of land situated in R.S.No. 293/8A1 of Kolavallur Village as per the sale deed dated 16.7.1993 registered as document No.599 of 1993 of SRO Kallikkandy. He also purchased the

adjoining land having an extent of 3.03 Ares of land situated in R.S.No. 293/8A1 of Kolavallur Village as per registered document No. 671 of 1993 of SRO Kallikkandy. Ext.P1 is the possession certificate dated 17.8.2020 issued by the 4th respondent-Village Officer. As per the village records and title deeds of the properties, the classification of the petitioner's properties is 'nanja'.

3. The properties described in Ext.P1 were cultivated with coconut trees and there were other trees also. The petitioner's properties was not included in the data bank as per Sec. 5(4)(i) of the Act, 2008 either as paddy land or as wetland, even after studies were conducted by the authorities concerned.

4. The petitioner decided to construct a commercial building in his property and he wanted to develop the properties by filling the land with earth. For that purpose, the petitioner applied to the 2nd respondent-Revenue Divisional

Officer on 24.01.2019 under Sec. 27A(1) of the Act, 2008 as amended by the Act 29 of 2018. Necessary application fee was also remitted. The 2nd respondent forwarded the petitioner's application to the 4th respondent-Village Officer and he filed a report and sketch dated 5.3.2019 as evident by Ext.P2. Thereafter, the 2nd respondent considered the petitioner's application and Ext.P2 report of the 4th respondent. Consequently, the 2nd respondent as per Ext.P3 notice directed the petitioner to remit a total sum of Rs.3,03,584/- under Rule 12(9) of the Kerala Conservation of Paddy Land and Wetland Rules 2008. Pursuant to Ext.P3 notice, the petitioner remitted a sum of Rs.3,03,584/- as evident by Ext.P4 chalan receipt dated 19.3.2019.

5. Subsequently, the 2nd respondent passed Exhibit P5 order dated 30.3.2019 under Sec.27A(2) and (3) of the Act, 2008, permitting the petitioner to develop the land and to undertake the construction of a commercial building not

exceeding 5082.39 Sq.feet. He also directed the 3rd and 4th respondents (Tahsildar and Village Officer) to effect necessary changes in the Basic Tax Register as evident by Ext.P5 order. When the petitioner cut and removed some of the trees from his property to commence the development in terms of Ext.P5 order, some people in the locality under the leadership of the 7th respondent, who, according to the petitioner, were in inimical terms with the petitioner filed a complaint before the 2nd respondent on 6.5.2019 alleging that if the development is effected, 6 houses in the locality will be affected by flood. The 2nd respondent forwarded the complaint to the 4th respondent for report and put up the demarcated satellite map to him as evident by Ext.P6. The 4th respondent filed a report stating that some of the trees referred to in Ext.P2 have been cut and removed after Ext.P5 order and he also produced oral version of the complainants in his report. Ext.P7 is the report. On receiving Ext. P7 report, the 2nd respondent issued an order dated 8.7.2019 directing that the proceedings regarding the

change of type of land in the Basic Tax Register should be kept in abeyance. Ext.P8 is the order. On the same day, the 2nd respondent issued a letter to the 5th respondent-Agricultural Officer, to consider the question of inclusion of the petitioner's land in the Data Bank, in the meeting of the Local Level Monitoring Committee (for short 'LLMC') and report the same to the office of the 2nd respondent. Ext.P9 is the order. Pursuant to Ext.P9, the 5th respondent convened a meeting of LLMC on 7.8.2019 took a decision that the petitioner's land is at a lower level and if it is developed by filling, the neighbouring properties are likely to be submerged and hence the petitioner's land is to be included in the Data Bank. Ext.P10 is the copy of the decision of LLMC dated 7.8.2019. On 27.2.2020, the KSREC, Thiruvananthapuram forwarded its report to the 5th respondent and it was placed before the 2nd respondent. As per the report, the petitioner's property was a fallow land with mixed vegetation during the year 2004. Ext.P11 is the report and there is nothing in the report to

suggest that the property is either a paddy land or wet land at the time of the commencement of the Act, 2008.

6. After considering Exts. P6, P10 and P11, the 2nd respondent passed an order on 14.7.2020 cancelling Ext.P5 order without assigning any reason and that also, even without hearing the petitioner. Ext.P12 is the order. In Ext.P12, it is stated that the petitioner's property abuts a 'thodu'. But according to the petitioner, this is factually incorrect and Ext.P13 Field Measurement Book is also produced to show the same. The contention of the petitioner is that the 2nd respondent has no case that the petitioner violated any of the conditions imposed in Ext.P5 order to invoke the power to cancel Ext.P5 order by exercising power under sub-sec (11) of Sec. 27A of the Act, 2008. Moreover, the statute does not confer any power of review on the 2nd respondent to review his earlier order and cancel the same. It is also contended that even the 2nd respondent has no case that the impediments of sub-sec.2 and 4 of Sec.27A of the Act, 2008 are involved in

the matter. Aggrieved by Exts.P10, decision of the LLMC and Ext.P12 order of the Revenue Divisional officer, this writ petition is filed.

7. Heard the learned counsel for the petitioner and the learned Government Pleader. I also heard the learned counsel appeared for the contesting respondent.

8. The short point raised by the petitioner is whether Exts.P10 and P12 are sustainable in the eyes of law. Ext.P12 is an order passed by the 2nd respondent on 14.7.2020. This Court in ***Sakeer Hussain and Others v. State of Kerala and Others*** [2020 (5) KLT 450] considered the point about the situations in which the powers under Sec.27A(11) of Act, 2008 can be exercised. All the sub-sections of Sec.27A was considered by this Court in detail and thereafter opined that in which situation an order under Sec. 27A (11) can be passed. It will be beneficial to extract paragraphs 8 and 9 of the above judgment.

8. *A reading of sub-sections (1), (2) and (4) of S.27A would*

make it clear that it is a bounden statutory duty of the 2nd respondent - RDO to consider and be satisfied that there would be no disruption to the free flow of water to the neighbouring lands, if any, through such water conservancy measures as is deemed necessary, while considering the issue of passing orders on the plea for conversion orders. Sub-section (4) S.27A would also mandate that the RDO has to ensure that the application under S.27A alone is allowed, then the reclamation of the unnotified land / subject property shall not adversely affect the cultivation of paddy or any other crops in the adjoining lands etc. Therefore, it is only after being satisfied about these crucial aspects and parameters that the 2nd respondent could have passed the order as per, Ext.P2. A reading of Ext.P2 would make it clear that the officer has followed the statutory procedure and also obtained a report from the Village Officer concerned as is the consistent procedural norms, who has made site inspection and clearly reported that there are no adjoining paddy lands in the locality and that the subject properties have been converted prior to the 2008 Act and that the subject properties have not been included in the Land Data bank, and further that if the conversion is permitted, it will not in any manner affect the free flow of water to the neighbouring paddy lands etc. It is based on these conclusive fact findings in the said inspection that the 2nd respondent - RDO has exercised statutory discretion and passed orders granting permission to each of these petitioners as per Ext.P2. Consequently, the petitioners have paid the requisite high amounts as demanded as per amended Rules of the 2008 Act. Sub-section (11) of S.27A would empower the RDO to

either suo motu or on an application of any aggrieved party, cancel the order of permission granted under sub-section (2) if the conditions specified in the said order issued therein are not complied with by the applicant concerned, either fully or partially. The said power under S.27A(11) is extremely limited in nature and the same can be exercised either suo moto or on an application of any aggrieved party by the RDO, only if the officer is satisfied that the conditions in the order passed under S.27A(2) have not been complied with by the party concerned either fully or partially. The power under S.27A(11) cannot be invoked on the ground that the discretion under that conversion order as per S.27A(2) was previously issued by exercising the discretion wrongly and that the subject property should have been included in the Land Data Bank as paddy land and that the conversion order would lead to impeding the free flow of water into the neighbouring paddy lands etc. Those are all matters on the merits of the matter and those matters cannot be relevant or germane while exercising the limited power under S.27A(11), after order has been passed under S.27A(2) by exercising discretion thereof. Therefore, the main ground in Ext.P7 that the subject property should not have been excluded from the land data bank and that it should have been actually included in the land data bank and that the conversion order if given, would lead to impeding the free flow of water etc, are not relevant or germane at the stage of S.27A(11). Once an order under S.27A(2) is passed, then any aggrieved person can file a statutory appeal to challenge such an order of conversion before the District Collector concerned in terms of S.27B of the Act and

that too, within a period of thirty days, etc. The appellate jurisdiction that is available under S.27B to the District Collector concerned cannot be invoked by the 2nd respondent - Revenue Divisional Officer, after having passed an order in the nature of Ext.P2 by purportedly taking resort to S.27A(11). Such an exercise of power under S.27A(11) is totally impermissible and is without jurisdiction and the legal position in that regard is accordingly ordered and declared. The only ground on the basis of which an order in the nature of S.27A(11) can be passed so as to cancel the conversion order granted under S.27A(2) is that the applicant concerned has not complied with the conditions attached to conversion order as per S.27A(2) either fully or partially. From a reading of S.27A, it can be seen that the conditions in relation to water conservancy measures etc., as conceived in S.27A(2) and its proviso could be pressed into service only if the total extent of the subject property, for which conversion order, is sought, is more than 20.2 Ares, in which case ten percent of such land shall be set apart for water conservancy measures. Therefore, the issues of water conservancy, as conceived in S.27A may not be germane in this case, for the simple reason that, what is involved is 3 separate properties of three separate petitioners and each of the said properties covered by Ext.P2 order is much less than the threshold limit of 20.2 Ares. Then what remains is as to whether the petitioners have violated the conditions of Ext.P2 order, passed under S.27A(2). The said conditions are given in page No.2 of Ext.P2. At the outset it has to be noted that the allegation is that 3rd petitioner has unloaded some ordinary

earth / soil in his property and therefore, it would impede the free flow of water and therefore, all the three petitioners have violated the conditions of Ext.P2 etc., cannot be pressed into service as against the first and second petitioners. This is for the simple reason that the allegation is mainly directed as against the 3rd petitioner. That apart, the main ground for justifying such an allegation is that the said act of the 3rd petitioner in having unloaded ordinary earth / soil in his property after the issuance of Ext.P2 has been done before getting the Basic Tax Register corrected and altered as envisaged under S.27C of 2008 Act r/w S.6A of the Kerala Land Tax Act, 1961. At the outset it has been held that immediately after the party concerned gets statutory order of permission under S.27A(2), then he is lawfully permitted to deal with the property for effecting the conversion. The mere act of unloading ordinary earth / soil in the property of the 3rd petitioner cannot be an unlawful act, merely because he has done it after Ext.P2 order but before getting BTR corrected. The action in getting the BTR corrected is only a clerical formality. Immediately after securing the statutory order of permission in terms of S.27A(2), the party is lawfully permitted to effectuate the conversion, provided that the conditions in the Act and the conditions in the grant are not otherwise violated. In a case where the subject property is exceeding 20.2 Ares and there are directions for water conservancy measures by setting apart of ten percent of the said property and if the act of filling up of the remaining property would lead to impeding the free flow of water to the ten percent of the property which is set apart for land

conservancy measures etc., as per S.27A(2) proviso etc., then those aspects could possibly be relevant grounds for consideration for action under S.27A(11). Such a scenario does not come into play in this case for the simple reason that the extent of each of the three separate properties is below the threshold limit of 20.2 Ares, as envisaged in proviso to S.27A(2). Therefore, the abovesaid allegation against the 3rd petitioner in having allegedly unloaded ordinary earth / soil in his property after the issuance of Ext.P2 order and before getting the BTR altered / corrected etc., by itself cannot be a relevant ground for action under S.27A(11). That apart, the reading of sub-section (2) of S.27C would indicate that where the paddy land or unnotified land is duly converted as per the provisions of the abovesaid Act, then it is the bounden duty of the Tahsildar to assess the land tax under S.6A of the Kerala Land Tax Act, 1961 and make necessary entries in the revenue records relating to such lands. Therefore, sub-section (2) would mandate that after due conversion of the property as per the provisions of the 2008 Act, it is the bounden duty of the Tahsildar to re - assess the land tax under S.6A of the Kerala Land Tax Act, 1961. Therefore, the mere omission of the petitioners in not having filed formal application before the Tahsildar for getting the BTR entries altered, cannot be used as against them. Once the substantive permission is obtained in terms of S.27A(2) for conversion of the property, then the incidental procedure of effectuating such conversion are also part and parcel of such rights and incidents flowing out from such conversion order in the nature of Ext.P2 passed under

S.27A(2).

9. A reading of the conditions given on page 2 of Ext.P2 would indicate that allegations raised in Ext.P6 / P7 as the case may be, will not disclose any violation of any one of the abovesaid conditions. Further, it can be seen that from a reading of Ext.P6 / P7 that the said impugned proceedings has been initiated and finalised not by the 2nd respondent / Revenue Divisional Officer, but by the Chairman of the District Level Authorised Committee. The powers under S.27A(2) as well as 27A(11) can be exercised only by the Revenue Divisional Officer concerned. The District Level Authorized Committee is conceived in S.9 of the Act 2008. A reading of S.9 would indicate that the said Committee will consist of Revenue Divisional Officer and Principal Agricultural Officer and three paddy cultivators to be nominated by the District Collector and the RDO shall be its Chairman and the Principal Agricultural Officer shall be its Convenor and where there are more than one Revenue Divisional Officer in a District, then the Collector shall nominate one among them to the District Level Authorised Committee. May be so that the officer holding the post of 2nd respondent - Revenue Divisional Officer may also be nominated by the District Collector as the Chairman of the District Level Authorized Committee., but the powers and functions of the District Level Authorised Committee are different and distinct compared to the powers and duties associated with S.27A more particularly, sub-section (2) and (11) thereof. No power is conferred anywhere in the Act to the Chairman of the District Level Authorized Committee to unilaterally take any action.

Moreover, the duties and functions of the District Level Authorized Committee are mainly in the matter of granting permission for reclamation of paddy land for construction of residential building to the owner of the paddy land etc. and that presupposes that the subject property should fulfill the definition of 'paddy land' as per S.2(xii) of the Act as on 12/08/2008 (date of coming into force of the Kerala Conservation of Paddy Land and Wet Land Act, 2008), whereas, S.27A would deal with the unnotified land in cases where subject properties which were earlier paddy land had been duly converted prior to 12/08/2008 or not included in the Land Data Bank etc. Therefore, it is not known as to for what reasons the impugned Ext.P6 / P7 has been rendered by the Chairman of the District Level Authorised Committee. Such a procedure is totally impermissible as per the provisions of the abovesaid Act. Very strangely, there is yet another direction in Ext.P6 / P7 that the Local Level Monitoring Committee should immediately take action to include the subject property covered by Ext.P2 in the Land Data Bank. Such a procedure is absolutely unheard of and is totally beyond the scope and ambit of the provisions of the Act. Once discretion is exercised under S.27A(2) and order Ext.P2 is passed, then an order under S.27A(11) cannot be passed by citing the grounds mentioned in the impugned proceedings. Any such aspects on the merits of the matter regarding the exercise of discretion under which it led to the passing of Ext.P2 order, cannot be considered under S.27A(11) and all such matters may fall within the provisions of appellate jurisdiction before the District Collector under S.27B of the Act. For that purpose the aggrieved

party concerned will have to file statutory appeal under S.27B before the District Collector within the time limit. It appears that there is no power conferred for condoning delay in filing the appeal. As against any decision taken by the District Collector, the same would be challenged by taking resort to the revisional remedy under S.29 of the Act before the Government, who may exercise the power either suo moto or an application by an aggrieved party concerned. But, the said power of revision can be directed only as against the considered decision of the District Collector concerned.” (underline supplied)

9. In the light of the above judgment, it is very clear that Exts.P10 and Ext.P12 are unsustainable. Sec.27A(11) of the Act, 2008 can be invoked by the Revenue Divisional Officer only in a situation where the conditions specified in the order issued under sub-sec. (2) are not complied by the applicant either fully or partially. Here, Ext.P5 is the original order passed by the 2nd respondent. Nobody has got any case that the conditions in Ext.P5 are not complied. Similarly, there is no case to the 2nd respondent that the impediments of Secs.2 and 4 of Sec.27A of the Act, 2008 are invoked in this matter. Ext.P12 order is passed because of the ignorance of the law. A

bare reading of Sec.27A(11) of the Act, 2008 itself will show that an order passed under Sec.27A can be cancelled only in certain conditions mentioned in Sec.27A(11). Admittedly, there is no such violation of the conditions. If that is the case, Ext.P12 order is unsustainable in law. The 2nd respondent being a statutory authority should know the law and the dictum laid down by this Court. It is a settled legal dictum that ignorance of law is not an excuse. The first respondent should take appropriate steps to see that sufficient refreshment/training courses are convened to enlighten the officers about the legal position in consultation with the Advocate General, so that the mistakes are not committed in future by the Revenue Divisional Officer while invoking the powers of Act, 2008. A copy of this judgment should be forwarded to the 1st respondent and to the learned Advocate General for taking necessary follow up action so that the accumulation of cases before this Court under the Act, 2008 can be considerably reduced. Anyway, this writ petition is only to be allowed.

Therefore, this writ petition is allowed.

- 1) Exts.P10 and P12 orders are set aside.
- 2) There will be a direction to respondent Nos. 3 and 4 to effect necessary changes in the Basic Tax Register in respect of re-survey numbers of the properties of the petitioner situated in R.S. No. 293/8A1 of Kolavallur Village under the thandapper No. 7719, as required under Sub.Sec. 2 of Sec.27C of the Act, 2008.
- 3) The above exercise should be completed as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.
- 4) The registry will forward a copy of this judgment to the 1st respondent and to the learned Advocate General for appropriate action.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

SKS

APPENDIX OF WP(C) 18619/2020

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 17.08.2020 ISSUED BY THE 4TH RESPONDENT VILLAGE OFFICER, KOLAVALLUR VILLAGE TO THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE REPORT AND SKETCH DATED 05.03.2019 SUBMITTED BY THE THIRD RESPONDENT TO THE SECOND RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE NOTICE DATED 19.03.2019 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXHIBIT P4 TRUE COPY OF THE CHALAN RECEIPT DATED 19.03.2019 ISSUED BY THE TREASURER, SUB TREASURY, THALASSERY.
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 30.03.2019 ISSUED BY THE SECOND RESPONDENT UNDER SECTION 27A(2) AND (3) OF THE KERALA CONSERVATION OF PADDY LAND AND WETLAND ACT, 2008 (WITH TYPED COPY).
- EXHIBIT P6 TRUE COPY OF THE COMPLAINT DATED 06.05.2019 TOGETHER WITH THE FORWARDING NOTE ISSUED BY THE SECOND RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE REPORT DATED NIL SUBMITTED BY THE 4TH RESPONDENT BEFORE THE SECOND RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 08.07.2019 ISSUED BY THE SECOND RESPONDENT (WITH TYPED COPY).
- EXHIBIT P9 TRUE COPY OF THE LETTER DATED 08.07.2019 ISSUED BY THE SECOND RESPONDENT TO THE 5TH RESPONDENT (WITH TYPED COPY).
- EXHIBIT P10 TRUE COPY OF THE DECISION OF THE LLMC DATED 07.08.2019 RECORDED BY THE FIFTH RESPONDENT AND COMMUNICATED TO SECOND RESPONDENT.

EXHIBIT P11 TRUE COPY OF THE LETTER DATED 27.02.2020
WITH REPORT ISSUED BY THE KSREC,
THIRUVANANTHAPURAM.

EXHIBIT P12 TRUE COPY OF THE ORDER DATED 14.07.2020
ISSUED BY THE SECOND RESPONDENT.

EXHIBIT P13 TRUE COPY OF FIELD MEASUREMENT BOOK.