

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

WEDNESDAY, THE 22ND DAY OF FEBRUARY 2023 / 3RD PHALGUNA, 1944

WP(C) NO. 36700 OF 2022

PETITIONER:

NIYAS, AGED 41 YEARS, S/O. ABDUL RAHMAN,
PALLIKKAD HOUSE, PARUVASSERI P.O
VADAKKENCHERY I VILLAGE, ALATHUR TALUK,
PALAKKAD DISTRICT, PIN - 678686

BY ADVS.
PRABHU K.N.AND MANUMON A.

ESPONDENTS:

- 1 THE DISTRICT COLLECTOR PALAKKAD, PIN - 678001
- 2 THE REVENUE DIVISIONAL OFFICER
PALAKKAD, PIN - 678001
- 3 THE TAHSILDAR ALATHUR TALUK
PALAKKAD DISTRICT, PIN - 678541
- 4 THE VILLAGE OFFICER VADAKKENCHERRY I VILLAGE
ALATHUR TALUK, PALAKKAD, PIN - 678683
- 5 THE AGRICULTURAL OFFICER VADAKKENCHERRY
ALATHUR TALUK, PALAKKAD, PIN - 678683
- 6 THE LOCAL LEVEL MONITORING COMMITTEE (CONSTITUTED
UNDER THE KERALA CONSERVATION OF PADDY LAND AND
WETLAND ACT 2008) REPRESENTED BY ITS CONVENOR THE
AGRICULTURAL OFFICER VADAKKENCHERRY, ALATHUR TALUK,
PALAKKAD, DISTRICT, PIN - 678683

BY G.P.SRI.SYAMANTHAK B.S.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON
22.02.2023, ALONG WITH WP(C).36705/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

WEDNESDAY, THE 22ND DAY OF FEBRUARY 2023 / 3RD PHALGUNA, 1944

WP(C) NO. 36705 OF 2022

PETITIONER:

SAJINA, AGED 36 YEARS, W/O.NIYAS, PALLIKKAD HOUSE,
PARUVASSERI P.O VADAKKENCHERY I VILLAGE,
ALATHUR TALUK, PALAKKAD DISTRICT, PIN - 678686

BY ADVS.
PRABHU K.N. AND MANUMON A.

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR PALAKKAD, PIN - 678001
- 2 THE REVENUE DIVISIONAL OFFICER PALAKKAD, PIN - 678001
- 3 THE TAHSILDAR ALATHUR TALUK
PALAKKAD DISTRICT, PIN - 678541
- 4 THE VILLAGE OFFICER, VADAKKENCHERRY- I VILLAGE
ALATHUR TALUK, PALAKKAD, PIN - 678683
- 5 THE AGRICULTURAL OFFICER VADAKKENCHERRY
ALATHUR TALUK, PALAKKAD, PIN - 678683
- 6 THE LOCAL LEVEL MONITORING COMMITTEE (CONSTITUTED
UNDER THE KERALA CONSERVATION OF PADDY LAND AND
WETLAND ACT 2008) REPRESENTED BY ITS CONVENOR THE
AGRICULTURAL OFFICER VADAKKENCHERRY, ALATHUR TALUK,
PALAKKAD, DISTRICT, PIN - 678683

BY G.P.SRI.SYAMANTHAK B.S.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON
22.02.2023, ALONG WITH WP(C).36700/2022, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

“C.R.”

VIJU ABRAHAM, J.

.....
W.P.(C) Nos.36700 & 36705 of 2022
.....

Dated this the 22nd day of February, 2023

JUDGMENT

In W.P.(C) No.36700 of 2022, the petitioner is in title and possession of 0.1011 hectares of land obtained as per Ext P1 settlement deed. Even though the property was lying as dry land, the same was erroneously included in Ext.P2 data bank. Aggrieved by the same, the petitioner preferred Ext P4 application under Form 5 before the 6th respondent.

2. In W.P.(C) No.36705 of 2022, the petitioner is in title and possession of 0.0670 hectares of land obtained as per Ext P1 settlement deed. Even though the property was lying as dry land, the same was erroneously included in Ext.P2 data bank. Aggrieved by the same, the petitioner preferred Ext P4 application under Form 5 before the 6th respondent.

3. Aggrieved by non-consideration of Ext P4 applications, petitioners have approached this Court filing W.P.(C) Nos.12518 and 12707 of 2022, which were disposed of as per Ext.P6 common

judgment dated 20.06.2022 directing the 2nd respondent to take a decision on the applications. The said applications submitted by the petitioners have been rejected as per Ext.P11 order produced in both the writ petitions. Petitioners in both the cases have a specific contention that a perusal of Ext.P7 minutes of the 6th respondent will reveal that adjacent land, similarly situated to that of the petitioners' land in resurvey Nos. 258/38, 258/39, 258/41 and 258/42 of Block 44 of Vadakanchery 1 Village of Alathur Taluk were removed from the data bank as per the decision in the meeting of the 6th respondent held on 17.09.2021. Petitioners relying on Ext.P9 further submit that even building permits have been issued for the construction of residential building in similarly situated lands. Petitioners also submit that none of the parameters to be considered while taking a decision on a Form 5 application has not been considered by the 2nd respondent while issuing Ext.P11 order. Petitioners have also taken a contention that a perusal of Ext.P2, relevant pages of the data bank, would show that there is a building in existence in the property owned by the petitioners and therefore the land is to be treated as an unnotified land as provided in Section 2 (xviiA) of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (in short, "Act, 2008") and therefore not even an application under Form 5 is required. To substantiate the contentions, petitioners rely on the judgments in **Lalu P.S. v. State of**

Kerala and others, 2020 (5) KHC 490, Anand Louis v. Haaris Rasheed, 2022 (1) KHC 554, Habeeb Rahman v. Revenue Divisional Officer, Tirur and another and the decision in ***Matha Nagar Resident Association and another v. District Collector, Ernakulam and others, 2020 (2) KHC 1994***. Yet another contention raised by the petitioners is that while issuing Ext P11 order whereby Form 5 applications submitted by the petitioners were rejected, no opportunity of hearing was afforded to the petitioners and therefore the said orders have been issued in violation of the principles of natural justice and therefore, the impugned orders are liable to be interfered with.

4. Learned Government Pleader has filed separate counter affidavits in both the writ petitions. It is averred that petitioners cannot claim any benefit based on the entry in the remark column that there existed a building in the said property in as much as such an entry in the remark column is not conclusive of the nature of the property as on 12.08.2008. It is further averred that the entry in the remark column that there exist a building is admittedly a mistake as there is no building in the property in question and therefore the remark in the data bank cannot be determinative of the status of the petitioners' lands. The contention of the petitioners that they were not afforded an opportunity of being heard prior to issuance of Ext.P11 order is without

any statutory support and that it cannot be said that any prejudice has been caused to the petitioners in the absence of any notice at the time of inspection or at the time of hearing in as much as the enquiry is entirely factual in nature, based on criteria that can be objectively assessed.

5. Heard the rival contentions of both sides.

6. Let me first examine the contention of the petitioners that in view of the entry in the remark column that there exist a building in the property, it can only be treated as an unnotified land and therefore even an application under Form 5 is not required. It is true that in **Habeeb Rahman's** case supra and in **Anand Louis's** case supra it is held that if the property is shown as converted in the data bank, without submitting any application under Form 5 for correction in data bank, application in Form 6 under Section 27A of the Act, 2008 could be considered. But in the present case, the contention of the learned Government Pleader is that the entry in the remark column is not conclusive for determining the nature of the property as on 12.08.2008 and the entry in the remark column that there exist a building is factually a wrong entry and that there is no building in the property in question. Learned Government Pleader relies on the judgment in **Salim C.K and another v. State of Kerala and others, 2017 (1) KHC**

394 and contended that the data bank that was contemplated under the provisions of the Act was to contain details only of cultivable paddy land and wet land within the area of jurisdiction of LLMC concerned and it was not intended to contain details of any other category of land. Learned Government Pleader also relied on a Government Order, G.O. (M.S.) No.4592/2017/Revenue dated 31.10.2017 which mandates that in the data bank only land which come under the definition of paddy land and wet land need be included and there is no requirement for any entry in the remark column and if there is any such remark, the same is to be deleted from the data bank. In the case in hand, it is the specific case of the 2nd respondent that admittedly there is no building in the property of the petitioners and the entry in the remark column is only erroneous and any entry in the remark column is not conclusive of the nature of the property as on 12.08.2008. Even though petitioners have taken a contention that the property is an unnotified land in terms of the Act, 2008, they themselves have filed Ext.P4 applications under Form 5 and have approached this Court seeking a direction for consideration of the said applications and this court has issued direction in this regard as per Ext.P6 common judgment in respect of both the petitioners. In view of the above factual situation, I am not inclined to accept the contention of the petitioners that the land is an unnotified land and therefore an application under

Form 5 is not required to be filed.

7. Another contention raised by the petitioners is that the 6th respondent while conducting the enquiry including local inspection and while giving its recommendations did not provide an opportunity of being heard to the petitioners. This Court has considered similar issue in **Sulekha Khader v. Kuzhimanna Grama Panchayat and others, 2022 (6) KHC 116** and held in paragraph 17 as follows:

“17. Therefore, the power of Local Level Monitoring Committee is mainly recommendatory in nature. Its actions do not determine the rights and liabilities of the parties. Sections 13, 20, 23 and 27A of the Act, 2008 require that affected parties should be afforded opportunity of hearing. But, Section 5(4) of the Act, 2008 and Rule 4 of the Rules, 2008 exclude any opportunity of hearing by the Local Level Monitoring Committee before a recommendation is made or decision is taken. Therefore, no interference can be made in Ext.P10 proceedings for the reason that the petitioner has not been extended with an opportunity of hearing.”

In view of the same, I am not inclined to accept the said contention of the petitioners.

8. Next question to be considered is as to whether Ext.P11 order which is impugned in both the writ petitions is issued by the 2nd respondent in compliance with the provisions of the Act. A perusal of Ext.P11 would reveal that the 6th respondent LLMC has examined the application seeking to remove the property from the data bank and reported that though as of now the property is having plantain

cultivation, there is every chance for waterlogging during rainy season and the area shows the features of a paddy land and the property of the petitioners and the nearby properties are fit for paddy cultivation. Solely based on the said report, the applications submitted by both the petitioners under Form 5 are rejected. The petitioners contended relying on Ext.P7 minutes of the 6th respondent that the adjacent lands in resurvey Nos. 258/38, 258/39, 258/41 and 258/42 were removed from the data bank and there are various residential buildings in the locality and the land is not in anyway fit for paddy cultivation. To substantiate the contention, the petitioners rely on Ext.P9 building permit issued in respect of the neighbouring properties. The contention of the petitioners is that Exts.P10 and P11 have been issued in a casual manner without adverting to any of the factual situation regarding the property in question. Rule 4 of the Kerala Conservation of Paddy Land and Wetland Rules, 2008 (in short, "the Rules") deals with preparation of data bank. Rule 4(4d) mandates that if any person is aggrieved by inclusion of property in the data bank, can submit an application under Form 5 before the Revenue Divisional Officer. A perusal of Rule 4(6) of the Rules also provides for a remedy for a person aggrieved by the inclusion of his land in the data bank, to approach the Local Level monitoring committee to make necessary changes in the data bank. By the amendment carried out to the rules,

two authorities are provided for redressal of grievance for any person aggrieved by the entry of the property in the data bank, i.e., the Revenue Divisional Officer and the Local Level Monitoring Committee. The said issue was considered by this Court in **Lalu's** case supra and held that any person who is aggrieved by an entry in a notified data bank can either approach the Revenue Divisional Officer or the Local level monitoring committee for appropriate correction therein or for removal of his land from the data bank. In paragraph 6 of the said judgment it is held as follows:

“6. Sub-rule (6) of Rule 4 which was in existence even at the time when sub-rule (4) of Rule 4 was amended in terms of SRO 902 of 2018, provides that if anybody is aggrieved by any entry in the notified data bank, he can prefer an application before the LLMC, and sub-rules (7) and (8) of Rule 4 provide that if an application is received under sub-rule (6), the LLMC shall consider the same and make appropriate corrections therein, after causing an inspection to be made and after perusing the satellite picture of the land. It is seen that when sub-rule (4d) of Rule 4 of the Rules was introduced, sub-rule (6) of Rule 4 was not omitted from the Rules. In other words, the position now is that a person who is aggrieved by an entry in a notified data bank can either approach the Revenue Divisional Officer or the LLMC for appropriate correction therein or for removal of his land from the data bank.”

It is quite strange to note that even though two authorities have been empowered for the redressal of the grievance, two different procedures have been laid down for consideration of an application under Form 5

by the two authorities. If the aggrieved person makes an application before the LLMC, it has to conduct a local inspection to find out the lie and nature of the land and shall also take steps to obtain the satellite images of the property as on 12.08.2008 and also after that date, and based on the same a decision has to be taken. On the contrary, if an application is filed before the Revenue Divisional Officer as provided under Rule 4(4d), he only has to call for a report from the Agricultural Officer and after receipt of the said report, if he deems fit, he may conduct a local inspection and call for a satellite imagery in respect of the property and take appropriate decision on the application. This appears to be a lacuna in the Rules and I am of the opinion that the procedure that has to be followed by the LLMC for deciding an application under Form 5 should be followed by the Revenue Divisional Officer also while considering a similar application. The Revenue Divisional Officer has no specialized mechanism to examine as to whether the property is a paddy land or not as on 12.08.2008, the date of which the Act, 2008 came into force. As per the Act, to determine a land as paddy land or not is based on the facts that existed at the time when Act 28 of 2008 came into force ie., on 12.08.2008. This Court in ***Joy v. Revenue Divisional Officer/Sub Collector, 2021 (1) KLT 433*** considered the parameters to treat a land as paddy land and held in para 10 and 13 as follows:

10. *What are the parameters to treat a land as a paddy land as per the enactment is the sole question to be considered in the writ petition. On going through the definition of the paddy land, it is to be assumed that the power of LLMC is to include and exclude the land on being satisfied that the land is suitable or cultivable with paddy. In the modern era, paddy can be cultivated even on the top of concrete structure. Whether it is cultivable or non-cultivable in the context has to be understood with the natural features of the land. If natural features of the land is not fit for such cultivation, certainly such land has to be excluded from the data bank. In the judgment of this Court in Adani Infrastructure & Developers Pvt. Ltd. Mumbai and others v. State of Kerala and others (2014 (1) KHC 685) it was held as follows:*

“An authority, which has been conferred with the functions of preparing a Data Bank with the details of the cultivable paddy land and wetland, within its area of jurisdiction, with the aid of modern technology and institutions of Science and Technology, under sub-cl.(i) of sub-s.(4) of S.5, could, at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands. The inclusion is made on the basis of satellite pictures and Revenue records as also maps prepared by the various institutions of the State. After such inclusion, looking at the ground realities emphasised by the binding precedents of this Court, if the preservation of lands as such, is found to be impracticable, the authority could delete such lands from the Data Bank.”

xxxx xxxx xxxx

13. *No doubt, the LLMC has necessary power. The power that has been conferred upon them as pointed out above to determine a land as paddy land or not is based on the facts that exists at the time of Act 28/2008 came into force on 12.08.2008. If the land is a substantially reclaimed land prior to 12.08.2008 with the coconut cultivation, that cannot be treated as a paddy land or a wetland. The expert opinion given by the LLMC that after the removal of coconut trees, paddy can be cultivated is something that is not envisaged under the Act.”*

This Court had occasion to consider a similar issue in ***Arthasastra Ventures (India) LLP v. State of Kerala, 2022 (4) KLT OnLine 1222***

and held in paragraph 8 as follows:

“8. This Court is of the view that the Revenue Divisional Officer is not justified in taking a decision on merits on the application submitted by the petitioner in Form-5. The most relevant aspect while considering Form-5 application is whether the land in question was a paddy land or a wetland when the Act, 2008 came into force and whether the land is fit for paddy cultivation. The Revenue Divisional Officer, if he was not satisfied with the available materials, ought to have resorted to scientific data including satellite photographs obtained from KSREC. Ext.P8 proceedings to the extent it does not take a final decision on Form-5 application cannot stand the scrutiny of law.”

In Ext P11 order, there is a clear finding that the property is cultivated with plantains and the land is covered with green vegetation. There is not even a finding in Ext.P11 order that as on 12.08.2008, the date of coming into force of the Act, the property was lying as a paddy land. Petitioners have a specific contention that as per Ext P7 minutes of the LLMC, many of the properties similarly situated to that of the petitioners have been removed from the data bank. Petitioners also have a contention based on Ext.P9 that building permits have also been issued in respect of similarly situated property. Before issuing Ext.P11 order none of these aspects were looked into by the 2nd respondent. Not even a local inspection was conducted by the 2nd

respondent or any report was called for from the KSRSEC. In view of the above, I am of the opinion that Ext.P10 decision taken by the 6th respondent as well as Ext.P11 order issued by the 2nd respondent, produced in both the writ petitions, are liable to be set aside and they are accordingly quashed. Ext.P4 application under Form 5 produced in both the writ petitions are directed to be reconsidered by the 2nd respondent, after obtaining a fresh report from respondent Nos.5 and 6 and after conducting a local inspection and also after calling for a report from KSRSEC, at the expense of the petitioners, and take a decision afresh within a period of three months from the date of receipt of a copy of this judgment.

With the abovesaid observations and directions both the writ petitions are disposed of.

Sd/-

**VIJU ABRAHAM
JUDGE**

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APPENDIX OF WP (C) 36700/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE SETTLEMENT DEED
NO.1221/2016 OF SRO VADAKKENCHERRY DATED
26.04.2016
- Exhibit P2 TRUE COPY OF THE RELEVANT PAGE OF THE DATA
BANK
- Exhibit P3 TRUE COPY OF THE REPLY OF THE 4TH
RESPONDENT TO APPLICATION UNDER RTI ACT
DATED 26.03.2022
- Exhibit P4 TRUE COPY OF THE FORM 5 APPLICATION
PREFERRED BY THE PETITIONER BEFORE THE 6TH
RESPONDENT DATED 20/01/2022
- Exhibit P5 TRUE COPY OF THE COVERING LETTER BY THE 6TH
RESPONDENT FORWARDING THE FORM 5
APPLICATION PREFERRED BY THE PETITIONER TO
THE 2ND RESPONDENT
- Exhibit P6 TRUE COPY OF THE COMMON ORDER IN W.P. (C)
NO.12518 OF 2022 AND W.P. (C) NO.12707 OF
2022 DATED 20.06.2022
- Exhibit P7 TRUE COPY OF THE MINUTES OF THE MEETING OF
THE 6TH RESPONDENT DATED 17.09.2021
- Exhibit P8 TRUE COPY OF THE AREA REGISTER OF RE.
SURVEY NOS.258 OF BLOCK 44 OF
VADAKKENCHERRY I VILLAGE, ALATHUR THALUL,
PALAKKAD DISTRICT
- Exhibit P9 TRUE COPY OF THE BUILDING PERMITS PERTAIN
TO BUILDING NUMBERS 1050 AND 1034 OF WARD
NO15 OF VADAKKENCHERRY GRANMA PANCHAYAT
- Exhibit P10 TRUE COPY OF THE REPORT OF THE 6TH

RESPONDENT DATED 23.07.2022

Exhibit P11

TRUE COPY OF THE ORDER PASSED BY THE 2ND
RESPONDENT REJECTING EXHIBIT P4 APPLICATION
DATED 22-08-2022 RECEIVED ON 19-10-2022

APPENDIX OF WP(C) 36705/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE SETTLEMENT DEED
NO.2935/2016 OF SRO VADAKKENCHERRY DATED
08.12.2016
- Exhibit P2 TRUE COPY OF THE RELEVANT PAGE OF THE
DATA BANK 24.03.2012
- Exhibit P3 TRUE COPY OF THE REPLY OF THE 4TH
RESPONDENT TO APPLICATION UNDER RTI ACT
DATED 26.03.2022
- Exhibit P4 TRUE COPY OF THE FORM 5 APPLICATION
PREFERRED BY THE PETITIONER BEFORE THE
6TH RESPONDENT DATED 20/01/2022
- Exhibit P5 TRUE COPY OF THE COVERING LETTER BY THE
6TH RESPONDENT FORWARDING THE FORM 5
APPLICATION PREFERRED BY THE PETITIONER
TO THE 2ND RESPONDENT DATED NIL
- Exhibit P6 TRUE COPY OF THE COMMON ORDER IN W.P. (C)
NO.12518 OF 2022 AND W.P. (C) NO.12707 OF
2022 DATED 20.06.2022
- Exhibit P7 TRUE COPY OF THE MINUTES OF THE MEETING
OF THE 6TH RESPONDENT DATED 17.09.2021
- Exhibit P8 TRUE COPY OF THE AREA REGISTER OF RE.
SURVEY NOS.258 OF BLOCK 44 OF
VADAKKENCHERRY I VILLAGE, ALATHUR THALUL,
PALAKKAD DISTRICT DATED NIL
- Exhibit P9 TRUE COPY OF THE BUILDING PERMITS PERTAIN
TO BUILDING NUMBERS 1050 AND 1034 OF WARD
NO15 OF VADAKKENCHERRY GRANMA PANCHAYAT
24.12.2011 AND 21.12.2015

Exhibit P10

TRUE COPY OF THE REPORT OF THE 6TH
RESPONDENT DATED 22.07.2022

Exhibit P11

TRUE COPY OF THE ORDER PASSED BY THE 2ND
RESPONDENT REJECTING EXHIBIT P4
APPLICATION DATED 22-08-2022 RECEIVED ON
19-10-2022