



2023:KER:53656

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

FRIDAY, THE 11TH DAY OF AUGUST 2023 / 20TH SRAVANA, 1945

WP(C) NO. 7513 OF 2023

PETITIONER:

APARNA SASI MENON,
AGED 61 YEARS,
W/O SASI MENON,
"ASHIRWAD", CHUNKAM,
CIVIL LANE ROAD,
AYYANTHOLE P.O.,
THRISSUR, PIN - 680003

BY ADVS.
V.M.KRISHNAKUMAR
P.S.SIDHARTHAN

RESPONDENTS:

- 1 THE REVENUE DIVISIONAL OFFICER,
OFFICE OF THE REVENUE DIVISIONAL OFFICER,
MINI CIVIL STATION,
IRINJALAKUDA,
THRISSUR, PIN - 680125
- 2 LOCAL LEVEL MONITORING COMMITTEE,
KODUNGALLUR MUNICIPALITY,
REPRESENTED ITS CONVENER,
AGRICULTURAL OFFICER,
KRISHI BHAVAN, KODUNGALLUR,
THRISSUR, PIN - 680664

BY ADVS.
SRI.NOUSHAD K A, SC
SMT.AMRIN FATHIMA(K/224/2016)
SMT.DEEPA NARAYANAN, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 11.08.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



CR

J U D G M E N T

Dated this the 11th day of August, 2023

The petitioner, who is owner of 68.78 Ares of property in Pullut Village, is challenging Ext.P7 order of the Revenue Divisional Officer, Irinjalakuda, whereby the petitioner's request to remove the petitioner's land from Data Bank stands rejected.

2. The petitioner is owner of 68.78 Ares of property comprised in Survey Nos.115/PT-7, 116/2-1 and 116/3 of Block No.12 of Pullut Village, Kodungallur Taluk of Thrissur District. According to the petitioner, the land stood converted prior to the year 2008 when the Kerala Conservation of Paddy Land and Wetland Act, 2008 was enacted. The land is presently in the nature of 'purayidom'.

3. However, when a Data Bank of Paddy Land and Wetland was constituted under Section 5(4)(i) of the Kerala



Conservation of Paddy Land and Wetland Act, 2008, the petitioner's land was included in the Data Bank. The petitioner wanted to use the land for other purposes. Therefore, the petitioner submitted Form-5 application, invoking Rule 4(4D) of the Kerala Conservation of Paddy Land and Wetland Rules, 2008.

4. The petitioner's Ext.P6 Form-5 application has been rejected by the Revenue Divisional Officer as per Ext.P7 order. The petitioner challenges Ext.P7 order. According to the petitioner, the Revenue Divisional Officer has rejected the petitioner's application solely based on a report dated 03.01.2023 of the Agricultural Officer. The petitioner submits that it is evident from the order that the Revenue Divisional Officer has neither made a Site inspection nor he has applied his mind while passing the impugned order.

5. The property of the petitioner lies in the nature of 'purayidom'. Had the Revenue Divisional Officer harboured any doubt in this regard, he should have ordered to obtain



scientific data as provided under Rule 4(4F) of the Rules, 2008 to ascertain the nature of the land as it stood in the year 2008, contended the petitioner. If the order of the Revenue Divisional Officer is allowed to stand, it will interfere with the constitutional right of the petitioner to freely enjoy the land, which in turn will be violative of Article 300A of the Constitution of India, urged the petitioner.

6. Senior Government Pleader entered appearance and resisted the writ petition. The Senior Government Pleader denied all the averments made by the petitioner in the writ petition. When the petitioner submitted Form-5 application to remove land from Data Bank, the Revenue Divisional Officer sought a report from the Agricultural Officer, who is the Convenor of the Local Level Monitoring Committee.

7. Based on the findings of the Local Level Monitoring Committee, the Agricultural Officer submitted a Report dated 03.01.2023. The said Report was made on the basis of a Site inspection. The report specifically



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recommended that the land is not to be removed from the Data Bank as it would defeat the very purpose of the Act, 2008. The petitioner has not advanced any legal reason to unsettle the decision taken by the Revenue Divisional Officer, the Government Pleader insisted.

8. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents.

9. The petitioner is owner of 68.78 Ares of property comprised in Survey Nos.115/PT-7, 116/2-1 and 116/3 of Block No.12 of Pullut Village, Kodungallur Taluk of Thrissur District. The petitioner's land was included in the Data Bank. The petitioner wanted to use the land for other purposes. Therefore, the petitioner submitted Form-5 application.

10. I have perused Ext.P7 order dated 05.01.2023 passed by the Revenue Divisional Officer, Irinjalakuda. The Revenue Divisional Officer has passed Ext.P7 order based on a report dated 03.01.2023 of the Agricultural Officer. In his report, the Agricultural Officer has stated that the Local



Level Monitoring Committee has inspected the Site and has opined that if the land of the petitioner is permitted to be converted , it will adversely affect the paddy cultivation in the nearby area and therefore the land of the petitioner is liable to be retained in the Data Bank. It is based on the said opinion of the Local Level Monitoring Committee as reported by the Agricultural Officer, that the Revenue Divisional Officer has rejected the application of the petitioner.

11. Ext.P2 is the minutes of the Local Level Monitoring Committee relating to the petitioner's property. In Ext.P2, the Local Level Monitoring Committee has categorically found that there are 60 number of coconut trees of the age of 20 years and above. There is a further finding that the land has been converted prior to the year 2008. The Local Level Monitoring Committee noted certain water chals and opined that the change of nature of the petitioner's land may adversely affect the nearby paddy land.

12. In the judgment in ***Salim C.K. and another v. State of Kerala and others*** [2017 (1) KLT 392], this Court



has held that the Data Bank that was contemplated under the provisions of the Act, was to contain details only of cultivable paddy land and wetland within the area of jurisdiction of the Local Level Monitoring Committee concerned, and not intended to contain details of any other category of land.

13. In ***Lalu P.S. v. State of Kerala and others*** [2020 (5) KLT 712] considered the statutory procedure for preparation of Data Bank contained in the Kerala Conservation of Paddy Land and Wetland Rules and held that the Data Bank to be prepared under the Act, 2008 is Data Bank of cultivable paddy lands existing as on the coming into force of the Rules. The Village Officer has to provide the Agricultural Officer particulars of the cultivable paddy lands in the Village in terms of the Revenue records and the Agricultural Officer has to inspect those lands thereupon to ascertain whether they are cultivable.

14. In ***Lalu P.S.*** (supra), this Court further held that when the LLMC has the power to prepare the Data Bank including the cultivable paddy lands, definitely it would have



the power to look at whether the same is suitable for cultivation and whether prospective cultivation is feasible and whether such proposition is financially viable.

15. This Court in **Joy K.K. v. Revenue Divisional Officer / Sub Collector, Ernakulam and others** [2021 (1) KLT 433] held that it is not the capability of using the land that matters to treat one land as a paddy land or not. It is only the character and fitness of the land as available on 12.08.2008, that matters, to include or exclude a land for the Data Bank.

16. Again, in the judgment in **Arthasasthra Ventures (India) LLP v. State of Kerala and others** [2022 (4) KLT Online 1222], this Court held that 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.

17. The question arising in this writ petition is whether existence of water chals in the property should be the prime



consideration in deciding whether the land is to be retained in the Data Bank. To answer this, one has to advert to the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 and the Rules made thereunder relating to the preparation of Data Bank.

18. Section 5 of the Act, 2008 reads as follows:-

5. Constitution of Local level Monitoring Committee – (1) There shall be a Local Level Monitoring Committee in each Panchayat or Municipality, consisting of the members specified in sub-section (2), for the purpose of monitoring the implementation of the provisions of this Act.

(2) The composition of the Committee shall be as follows:-

(i) The President or Chairperson/Mayor of the Grama Panchayat or the Municipality or the Corporation, as the case may be; Chairman

(ii) The Agricultural Officer/Officers having jurisdiction in the Grama Panchayat or Municipality/Corporation; Member/Members

(iii) Village Officer/Officers having jurisdiction in the said area; Member/Members

(iv) Three representatives of farmers in the Panchayat / Municipality / Corporation to be nominated in such manner, as may be prescribed.

The Agricultural Officer shall be the Convenor of the Committee.

(3) The Committee shall have the following powers, namely:-

(i) subject to the provisions of this Act, to recommend to the District Level Authorised Committee for the reclamation of paddy land, for construction of residential building for the owner of the paddy land:

Provided that the Committee shall not recommend for filling of paddy land of more than an



extent of 4.04 Ares in a Panchayat or an extent of 2.02 Ares in Municipality/Corporation area, as the case may be, for the construction of residential building for the owner of the paddy land;

(iA) subject to the provisions of this Act, to report to the State Level Committee for the reclamation of paddy lands for public purpose, within one month from the date of receipt of the application:

Provided that the report shall contain the effect of such reclamation on the cultivation in adjoining paddy lands, the measures to be adopted to ensure free flow of water to the adjoining paddy lands, if any, and suitable water conservancy measures to be adopted, wherever necessary, and the area where such measures are to be adopted by the applicant;

(iB) the Committee shall not recommend or report under item (I) and (iA) of sub-section (3) unless the application is accompanied by a sketch of the land proposed to be reclaimed, duly prepared by a qualified surveyor or Village Officer, indicating the extent of land in each survey number for which sanction for filling up the paddy land has been sought;]

(ii) to inspect the paddy land situated within the jurisdiction of the Committee to monitor whether the provisions of this Act are being complied with and to report to the Revenue Divisional Officer regarding violations, if any, of the provisions of this Act;

(iii) to examine the complaints received from the public regarding the attempts to violate the provisions of this Act and to intervene in the issue to prevent such violation;

(iv) to examine the reason for keeping the paddy land fallow and to suggest remedial measures so as to persuade the holder of paddy land to cultivate it with paddy or any intermediary crops;

(4) The Committee shall perform the following functions, namely:-

(i) to prepare the data-bank with the details of the cultivable paddy land and wetland, within the area of jurisdiction of the Committee, with the help of the map prepared or to be prepared by the State Land



Use Board or Centre-State Science and Technology Institutions on the basis of satellite pictures by incorporating the survey numbers and extent in the data-bank and get it notified by the concerned Panchayat/Municipality/Corporation, in such manner as may be prescribed, and exhibit the same for the information of the public, in the respective Panchayat/Municipality/Corporation Office and in the Village Office/Offices;

[Provided that any person aggrieved by the entries in the data bank so exhibited, may prefer an application to the Revenue Divisional Officer concerned and the Revenue Divisional Officer shall dispose of such application within a period of three months after following such procedure, as may be prescribed, and in case the Revenue Divisional Officer finds that the land included as paddy land or wetland in the said data bank is not paddy land or wetland, it shall be deemed to have been removed from the data bank.]

(ii) to make alternate arrangements under section 16 where a paddy land is left fallow without taking steps in spite of the instructions given by the Committee under item (iv) of subsection (3);

(iii) to prepare detailed guidelines for the protection of the paddy lands/wetlands in the areas under the jurisdiction of the Committee;

[x x x x]

(v) to perform such other functions, as may be prescribed from time to time.

(5) The quorum for a meeting of the Committee shall be three and it shall meet as and when required and the venue for the meeting shall be the respective Panchayat Office and the time of meeting shall be fixed by the Chairman.

(6) The Committee may decide the procedure for its meetings and the concerned Agricultural Officer shall keep the proper minutes of the meeting signed by every person attended.



From sub-section (4) of Section 5, it is clear that the Data Bank shall be the Data Bank of cultivable paddy land and wetland.

19. The Kerala Conservation of Paddy Land and Wetland Act, 2008, in its preamble states that indiscriminate and uncontrolled reclamation and massive conversion of paddy land and wetland are taking place in the State and that there is no existing law to restrict effectively the conversion or reclamation of paddy land. Therefore, the Act has been enacted in public interest to provide for the conservation of paddy land and wetland and to restrict the conversion or reclamation thereof in order to promote agricultural growth, to ensure food security and to sustain the ecological system in the State of Kerala.

20. It is to be noted that the Act, 2008 is not intended for environmental protection as a whole. Sustaining the ecological system contemplated by the Act, 2008 is for the purpose of sustaining paddy land and wetland. The preamble itself permits restrictive conversion of paddy land



and wetland.

21. In the afore context, when the competent authority considers a Form-5 application submitted under Rule 4(4D) of the Kerala Conservation of Paddy Land and Wetland Act, 2008, the predominant factor for consideration should be whether the land which is sought to be excluded from Data Bank is one where paddy cultivation is possible and feasible.

22. In very small plots of land which are surrounded by commercial or residential buildings, though such land is described as paddy land in the revenue records and though it may be technically possible to cultivate the land with paddy, still such cultivation will not be ordinarily possible and financially feasible.

23. In the case of lands having any extent, the factor whether there are proper irrigation facilities making the land suitable for paddy cultivation would be important. Even if the land is of a comparatively larger extent, if there are no irrigation and other requisite facilities, it cannot be said that the land is suitable for paddy cultivation, merely because it



was once cultivated with paddy and it is described as paddy land in revenue records.

24. In the case of the petitioner herein, the extent of land held by the petitioner is 68.78 Ares. The Local Level Monitoring Committee in Ext.P2 minutes has found that there are nearly 60 coconut trees in the land planted more than 20 years ago. The Local Level Monitoring Committee had no doubt that the land was converted prior to the year 2008. Yet, the Local Level Monitoring Committee held that any more activity in the land is likely to adversely affect paddy cultivation in the nearby areas.

25. Ext.P5 KSREC report would also indicate that the land was found under plantation/vegetation in the data of the year 2007. The Revenue Divisional Officer rejected the Form-5 application of the petitioner stating that if the land is converted, it would affect paddy cultivation in the nearby area. The Revenue Divisional Officer has accepted the said contention of the Agricultural Field Officer in spite of the fact that there is ample evidence to establish that the land was



converted prior to the year 2008.

26. From the minutes of the LLMC, it is seen that the Committee has noted that there are water chals where water was found. Neither the LLMC nor the Agricultural Officer has stated that these water chals are connected to the nearby paddy fields or that the water chals in the petitioner's property is indispensable for irrigation of paddy fields in the nearby area.

27. In short, a decision has been taken by the RDO to reject the Form-5 application of the petitioner without a finding that it is feasible and viable to cultivate the land of the petitioner with paddy. The RDO has passed the order without any cogent evidence to conclude that the water chals found in the petitioner's land are indispensable for paddy cultivation in the nearby areas. For all the afore reasons, I find that Ext.P7 order of the Revenue Divisional Officer is illegal and unsustainable.

28. Ext.P7 is therefore set aside. The 1st respondent- Revenue Divisional Officer is directed to reconsider the



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Form-5 application of the petitioner and pass orders thereon afresh taking note of the observations and findings made hereinabove. Orders shall be passed within a period of two months.

Writ petition is disposed of as above.

**Sd/-
N. NAGARESH
JUDGE**

sss/aks



APPENDIX OF WP(C) 7513/2023

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE BASIC TAX RECEIPT DATED 14.06.2022 ISSUED TO THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF MINUTES OF THE LOCAL LEVEL MONITORING COMMITTEE DATED 10.12.2018.
- EXHIBIT P3 TRUE COPY OF THE DECISION REPORTED IN 2017(1) KHC 394 (SALIM.C.K. AND ANOTHER V. STATE OF KERALA AND OTHERS) .
- EXHIBIT P4 TRUE COPY OF THE DECISION REPORTED IN 2021 (1) KHC 540, JOY.K.K. V. REVENUE DIVISIONAL OFFICER/SUB COLLECTOR.
- EXHIBIT P5 TRUE COPY OF REPORT OF THE KERALA STATE REMOTE SENSING AND ENVIRONMENT CENTRE DATED 20.02.2018.
- EXHIBIT P6 TRUE COPY OF THE FORM 5 APPLICATION DATED 01.10.2022 SUBMITTED BY THE PETITIONER.
- EXHIBIT P7 TRUE COPY OF THE ORDER DATED 05.01.2023 OF THE REVENUE DIVISIONAL OFFICER.