

Joy Vs. State of Kerala

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Court : Kerala

Decided On : Jul-03-2013

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Joy

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQU WEDNESDAY, THE 3RD DAY OF JULY 2013 12TH ASHADHA, 1935 WP(C).No. 11345 of 2013 (P)

----- PETITIONERS: ----- 1. JOY, S/O.MANJIYIL OUSEPH, AGED 5 YEARS, NETTISSERY VILLAGE, THRISSUR TALUK, THRISSUR.

2. SEVY, S/O.MANJIYIL OUSEPH, -DO- 3. THOMAS, S/O.MANJIYIL OUSEPH, -DO- 4. POOVANTHINGAL RAPHEL, MUKKATTUKARA DESOM, NEDDISSERY VILLAGE, THRISSUR TALUK THRISSUR.

5. ALICE GEORGE, W/O.THEKKEKARA GEORGE, NELLANKARA DESOM, NETTISSERY VILLAGE, THRISSUR TALUK, THRISSUR.

6. SREELAKSHMI CLAY WORKS, CHITTISSERY, THRISSUR, REP. BY ITS MANAGING PARTNER M.A.CHANDRAN.

7. PRATHIBHA CLAY PRODUCTS, ERAVATHUR, THRISSUR, REP. BY ITS MANAGING PARTNER SMT.M.A.LALITHA BY ADV. SRI.K.PRAVEEN KUMAR WP(C).No. 11345 of 2013 (P) :

2. : RESPONDENTS: ----- 1. STATE OF KERALA, REP. BY ITS SECRETARY REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, THRISSUR

001.

3. THE REVENUE DIVISIONAL OFFICER, THRISSUR

001.

4. THE ASSISTANT DIRECTOR OF AGRICULTURE, OLLUKKARA, THRISSUR

001.

5. THE AGRICULTURAL OFFICER, KRISHBHAVAN, OLLUKKARA, MANNUTHY P.O. THRISSUR

021.

6. THE VILLAGE OFFICER, NETTISSERY, THRISSUR

021.

7. THE GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, THRISSUR

001. R5 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 11345 of 2013 (P) ----- APPENDIX PETITIONERS' EXHIBITS ----- EXHIBIT P1: A COPY OF THE MINING PERMIT ISSUED TO THE 6TH PETITIONER ON 3-5-10 BY THE 7TH RESPONDENT EXHIBIT P2: A COPY OF THE NOC ISSUED BY THE 4TH RESPONDENT DATED 16 5-11

EXHIBIT P3: COPIES OF THE APPLICATION MADE BY 1ST PETITIONER IN JANUARY, 2013 BEFORE THE 3RD RESPONDENT FOR PERMISSION/NOC FOR QUARRYING BRICK CLAY EXHIBIT P3(A): COPIES OF THE APPLICATION MADE BY 2ND PETITIONER IN JANUARY ,2013 BEFORE THE 3RD RESPONDENT EXHIBIT P3(B): COPIES OF THE APPLICATION MADE BY 3ND PETITIONER IN JANUARY ,2013 BEFORE THE 3RD RESPONDENT EXHIBIT P3(C): COPIES OF THE APPLICATION MADE BY 4TH PETITIONER IN JANUARY ,2013 BEFORE THE 3RD RESPONDENT EXHIBIT P3(D): COPIES OF THE APPLICATION MADE BY 5TH PETITIONER IN JANUARY, 2013 BEFORE THE 3RD RESPONDENT EXHIBIT P4: COPIES OF THE REPORT SUBMITTED BY THE 6TH RESPONDENT TO THE 3RD RESPONDENT IN RESPECT OF THE EXT.P3 SERIES APPLIATION. EXHIBIT P4(A): COPIES OF THE REPORT SUBMITTED BY THE 6TH RESPONDENT TO THE 3RD RESPONDENT EXHIBIT P4(B): COPIES OF THE REPORT SUBMITTED BY THE 6TH RESPONDENT TO THE 3RD RESPONDENT EXHIBIT P4(C): COPIES OF THE REPORT SUBMITTED BY THE 6TH RESPONDENT TO THE 3RD RESPONDENT EXHIBIT P4(D): COPIES OF THE REPORT SUBMITTED BY THE 6TH RESPONDENT TO THE 3RD RESPONDENT EXHIBIT P5: COPIES OF THE REPORT SUBMITTED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT IN RESPECT OF EXT.P3 SERIES APPLICATION OF THE 1ST PETITIONER WP(C).No. 11345 of 2013 (P) EXHIBIT P5(A): COPIES OF THE REPORT SUBMITTED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT IN RESPECT OF EXT.P3 SERIES APPLICATION OF THE 2ND PETITIONER. EXHIBIT P5(B): COPIES OF THE REPORT SUBMITTED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT IN RESPECT OF EXT.P3 SERIES APPLICATION OF THE 3RD PETITIONER. EXHIBIT P5(C): COPIES OF THE REPORT SUBMITTED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT IN RESPECT OF EXT.P3 SERIES APPLICATION OF THE 4TH PETITIONER EXHIBIT P5(D): COPIES OF THE REPORT SUBMITTED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT IN RESPECT OF EXT.P3 SERIES APPLICATION OF THE 5TH PETITIONER EXHIBIT P6: COPY OF THE STATEMENT OF THE MUKKATTUKARA PADASEKHARA SAMITHI EXHIBIT P7: COPIES OF THE PHOTOGRAPHS OF THE LANDS IN QUESTION EXHIBIT P8:

COPY OF THE JUDGMENT IN WP(C)8993/12 OF THIS HON'BLE COURT
EXHIBIT P9: COPY OF THE PETITION FILED BY THE 6TH AND 7TH
PETITIONER BEFORE THE 2ND RESPONDENT RESPONDENTS' EXHIBITS :

----- ANNEXURE R5(A) : COPY OF THE DATA BANK SHOWING
THE LANDS BELONGING TO THE PETITIONERS WITH THEIR SURVEY
NUMBERS. ANNEXURE R5(B) : THE REPORT SUBMITTED BY THE
ASSISTANT DIRECTOR OF AGRICULTURE. ANNEXURE R5(C) : COPY OF
THE REPORT SUBMITTED BY THE PRINCIPAL AGRICULTURAL OFFICER,
THRISSUR. //True Copy// P.A to Judge ab A.M. SHAFFIQUE, J

----- W.P.(C). NO. 11345 OF
201.----- Dated this the 03rd day of July, 2013

JUDGMENT The petitioners are challenging Ext. P5 series documents issued by
the Agricultural Officer reporting that the properties in which the petitioners intend
to remove clay are notified as paddy land in the data bank prepared by the Local
Level Monitoring Committee formed under the Conservation of Paddy Land and
Wet Land Act, 2008 (hereinafter referred to as the Act). According to the
petitioners, if at all the properties are included and described as paddy land or wet
land the competent officer is entitled to permit removal of clay on such conditions
as may be prescribed. The learned counsel for the petitioner also relied upon the
judgment of this Court in Kairali Swayam Sahaya Sangam v. State of Kerala [2009
(2) KLT 181]. Reference is also made to Ext. P2 an order issued by the Assistant
Director of Agriculture indicating that the lands are suitable for removal of clay.
W.P.(C). NO. 11345 OF 201.2 2. A statement is filed by the 5th respondent
producing the data bank particulars in respect of the properties which are the
subject matter of the case and inter alia supporting the stand taken by the
Agricultural Officer in terms of Ext. P5 series. It is not in dispute that the properties
in which the petitioners intend to remove clay are included as paddy land or land
suitable for paddy cultivation in the data bank particulars of the concerned
Panchayath.

3. That being the situation no authority is entitled to permit conversion of the said
land. Even the District Collector exercising power to issue appropriate orders for
removal of clay cannot issue such orders overlooking the provisions of the Act.
The judgment relied upon by the learned counsel for the petitioners did not

consider a question relating to removal of earth from a property included in the data bank of the concerned Panchayath.

4. That being the situation, I am of the view that there is justification on the part of the respondent authorities in not permitting the petitioners to remove the W.P.(C). NO. 11345 OF 201.3 clay from the properties included in the Data Bank of Local Level Monitoring Committee. In the result, this writ petition is dismissed. However dismissal of the writ petition shall not preclude the petitioners to approach the competent authority for changing the data bank particulars in the event they are able to justify that the said properties cannot be used for cultivation of paddy. sd/-
A.M. SHAFFIQUE JUDGE DCS

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