

Vishnu Vs. State of Kerala

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Court : Kerala

Decided On : Oct-05-2013

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Vishnu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN SATURDAY, THE 5TH DAY OF OCTOBER 2013 13TH ASWINA, 1935 WP(C).No. 29801 of 2012 (A) ----- PETITIONER : ----- ALI AKBAR, S/O.KUNJIMARAKKAR, ELAYEDATH HOUSE, MARANCHERY (P.O), PONNANI TALUK, MALAPPURAM DISTRICT. BY ADV. SRI.JAMSHEED HAFIZ RESPONDENT(S): ----- 1. THE MARANCHERY GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, MARANCHERY (P.O) PIN - 679 581, MALAPPURAM DISTRICT.

2. THE LOCAL LEVEL MONITORING COMMITTEE UNDER KERALA CONSERVATION OF PADDY LAND AND WET LAND ACT, 2008 REPRESENTED BY ITS CONVENER CUM AGRICULTURAL OFFICER, MARANCHERY (P.O), PIN - 679,581, MALAPPURAM DISTRICT.

3. THE VILLAGE OFFICER MARANCHERY, MARANCHERY (P.O), PIN - 679 581, MALAPPURAM DISTRICT.

4. THE AGRICULTURAL OFFICER, MARANCHERY (P.O) PIN -679 581, MALAPPURAM DISTRICT.

5. THE REVENUE DIVISIONAL OFFICER TIRUR, TIRUR (P.O) PIN - 676 101, TIRUR TALUK, MALAPPURAM DISTRICT. R1 BY SRI.T.KRISHNAN UNNI, SENIOR ADVOCATE ADV. SRI.C.V.MANUVILSAN SRI.P.K.KHALEEMUDHEEN R2 TO R5 BY SPL. GOVERNMENT PLEADER (REVENUE) SRI.P.K.SOYUZ THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/10/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(C)NO.29801/2012 APPENDIX PETITIONER(S) EXHIBITS EXT.P-1 A TRUE COPY OF THE SALE DEED NO.4011/2004 OF 03/11/2004 OF S.R.O. PONNANI. EXT.P-2 A TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONERS PROPERTY AND THE PROPERTY OF SAINUDHEEN. EXT.P-3 A TRUE COPY OF THE REPORT OF THE 5TH RESPONDENT DATED 28/5/2005. EXT.P-4 A TRUE COPY OF THE ENQUIRY REPORT OF THE 3RD RESPONDENT DATED 05/12/2007 EXT.P-5 A TRUE COPY OF THE REPORT OF THE 5TH RESPONDENT DATED 18/02/2009. EXT.P-6 A TRUE COPY OF THE REPORT OF THE AGRICULTURAL OFFICER DATED 01/04/2009 EXT.P-7 A TRUE COPY OF THE REPORT OF THE 1ST RESPONDENT DATED 06/03/2009. EXT.P-8 A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 23/7/2010. EXT.P-9 A TRUE COPY OF THE RELEVANT EXTRACT OF THE DATA BANK PERTAINING TO R.S991 OF MARANCHERY AMSOM IN MARANCHERY VILLAGE. EXT.P-10 A TRUE COPY OF THE REPORT OF THE 4TH RESPONDENT 08/11/2011 EXT.P-11 A TRUE COPY OF THE REPORT OF THE 4TH RESPONDENT 13/9/2012 EXT.P-12 A TRUE COPY OF THE JUDGEMENT IN WPC. 24182/2012 BEFORE THIS HONOURABLE COURT DATED 15/10/2012 EXT.P-13 A TRUE COPY OF THE

ORDER

BY THE 2ND RESPONDENT DATED 05/12/2012. EXT.P-14 A TRUE COPY OF THE DATA BANK ISSUED BY THE AGRICULTURAL OFFICER DATED NIL EXT.P-15

A TRUE COPY OF THE DATA BANK ISSUED BY THE VILLAGE OFFICER
DATED NIL RESPONDENTS' EXHIBITS : NIL /TRUE COPY/ sts P.A.TO.JUDGE
K.VINOD CHANDRAN, J ----- W.P(C) No.29801 of
2012 ----- Dated this the 5th day of October, 2013

JUDGMENT

Petitioner is the owner of 46 cents of land in R.S.No.99/1 of Maranchery Village, Malappuram District; purchased as per sale deed dated 3.11.2004, produced as Ext.P1. The dispute is with respect to the categorisation of 30 cents of land, of the said property, as paddy land in the Data-Bank prepared under the Kerala Conservation of Paddy Land and Wet Land Act 2008 (hereinafter referred to as 'the KCPLW Act'). The petitioner has been before the authorities even before the present enactment, seeking category change in the revenue records from 'Nilam' to garden land. The petitioner is at present aggrieved by Ext.P13 passed by the Local Level Monitoring Committee constituted under Section 5 of the Act.

2. I have heard the learned Senior Counsel Sri.T.Krishnan Unni and the learned Special Government W.P(C) No.29801 of 2012 2 Pleader Sri.P.K.Soyuz and the learned Standing Counsel Sri.C.V.Manuvilasan for the Panchayat.

3. Learned Senior Counsel appearing for the petitioner takes me through the documents produced before this Court to establish that the entire land owned and possessed by the petitioner was always garden land, at least from the date of his purchase and that the revenue authorities at various levels had certified the said fact. Ext.P1 is the sale deed, the schedule of which indicates that the purchase made was of 43 cents of garden land situated on the eastern end of a 'Nilam'. It is the contention advanced on the basis of Ext.P1 that, in fact even at the time of purchase of the property, though the revenue records categorised the same as 'Nilam'; in fact it was garden land. Ext.P2 series are the photographs showing the lie of the land and also the nature. Ext.P3 is the report of the Additional Tahsildar, Ponnani on an application made by the petitioner for category change long before the Act came into force. Ext.P3 is dated 28.5.2005 and as to the use of the land, for the past three years, as indicated in W.P(C) No.29801 of 2012 3 Column 8, the report is that no cultivation of paddy was carried thereon. It is also indicated that

there is in existence trees in the said land having age of 2 to 40 years. In column No.17 where the recommendation is to be made, the Additional Tahsildar has also recorded that the category can be changed to one of garden land with only the rider of ensuring the free flow of water during monsoon season. The mahazar prepared by the Village Officer, Marancherry is also produced along with Ext.P3. Despite that, obviously nothing was done to change the category of land in the revenue records.

4. Ext.P4 dated 2007 was a report submitted by the Village Officer, Marancherry to the Revenue Divisional Officer as to the nature and lie of the property which again supports the earlier report of the Additional Tahsildar. Admittedly before coming into the force of KCPLW Act, the Land Utilisation Order was applicable and the petitioner along with his brother had filed an appeal under the said Order before the Land Revenue Commissioner, pending which a report was called for and filed by the Revenue W.P(C) No.29801 of 2012 4 Divisional Officer, Tirur as per Ext.P5. In fact in Ext.P5 it was categorically reported that there is no paddy cultivation carried on in the neighbourhood and that the land of the petitioner does not at all cause any obstruction to the free flow of the water. The same is also supported by the subsequent report of the Agricultural Officer dated 28.5.2009. Ext.P7 was again a report of the Secretary, Special Grade of the Marancherry Grama Panchayath in tune with the report of the revenue authorities.

5. It is not clear as to what transpired in the proceedings under the Land Utilisation Order, pending which the KCPLW Act came into force. However, on the said Act coming into force as has been held in Praveen V. Land Revenue Commissioner (2010 (2) KLT617, the proceedings under the Kerala Land Utilisation Order is of no avail and permission is to be sought under the Act. Despite the various reports referred to above, the petitioner's land was included in the Data-Bank after the promulgation of the Act of 2008. The petitioner, hence sought rectification of entries in the Data Bank as per the W.P(C) No.29801 of 2012 5 application made and was before this Court seeking consideration of the same. The petitioner has produced all the documents referred to; in the earlier writ petition also and after referring to the same, the learned Single Judge directed that the documents produced before the 1st respondent therein ie. the Local Level Monitoring

Committee be considered to decide as to whether the rectification sought for by the petitioner can be granted. This Court also directed that appropriate orders shall be passed within a period of six weeks. The proceedings culminated in Ext.P13 wherein the Local Level Monitoring Committee is said to have inspected the property and has come to a finding that there is no reason why the petitioner's property ie. 30 cents out of 46 cents should be removed from the Data Bank.

6. In fact, despite, the direction of this Court to consider the earlier reports of the revenue authorities nothing is seen in Ext.P13 as to whether these were considered. On a reading of Ext.P13, the Committee seems to have proceeded on the basis that there is a road recently W.P(C) No.29801 of 2012 6 laid in the petitioner's property and that this would indicate that reclamation had been conducted. Prima facie this Court is of the opinion that looking at the earlier orders of the revenue authorities the land was reclaimed, if at all it was a 'Nilam', long before the KCPLW Act came into force.

7. The State has filed counter affidavit in support of Ext.P13; styling the same as a final order, which does not brook interference at the hands of this Court under Article 226. On a reading of the provisions of the Act, the Local Level Monitoring Committee is constituted under Section 5 (1) and the powers conferred on the said committee is as per Sub Section 3 of Section 5. Section 5(1) confers the authority on the Local Level Monitoring Committee to only recommend to the State Level Monitoring Committee or the District Level Authorised Committee for the reclamation of paddy land for public purpose or for construction of a residential building for the owner of the paddy land. Clause (ii) of Sub Section 3 also confers power on the Committee to report any violation of the provisions of the Act after inspection; to the Revenue Divisional Officer. Clause (iii) W.P(C) No.29801 of 2012 7 and (iv) also do not confer any specific powers to pass orders, in a matter to be decided under the Act.

8. The provisions as noticed above would indicate that the Local Level Monitoring Committee has only recommendatory powers and it is for the District Level Authorised Committee under Section 9 to make final orders on the basis of the recommendation of the Local Level Monitoring Committee. In coming to the above

finding, this Court also is persuaded by the fact that there is no appeal or remedy provided under the Act against the decision of the Local Level Monitoring Committee. The Government stand on Ext.P13, hence, cannot be accepted. However, Section 9 by Sub Section 6 provides an appeal to the Collector from the order of the District Level Authorised Committee.

9. Ext.P13, on the strength of the findings above, can only be deemed as a recommendation to the District Level Authorised Committee. The District Level Authorised Committee would have to look into the provisions of the Act W.P(C) No.29801 of 2012 8 and also the revenue records and after taking due notice of the recommendation of the Local Level Monitoring Committee, will have to pass a final order. In this context the definition of paddy land as provided in Section 2(12) of the Act is relevant in so far as it speaks of lands which are interalia suitable for paddy cultivation. Learned Senior Counsel would also indicate that going by Section 3 the prohibition of conversion or reclamation of paddy land is only from the date of commencement of the Act. The powers for restoration given to the District Collector under Section 13, to restore the land to its original position, is also with respect to any paddy land or wet land reclaimed, in violation of the provisions of the Act. It is very pertinent that the Division Bench while considering the provisions of the KCPLW Act in Praveen, affirmed Shahanaz Shukkoor V. Chelannur Grama Panchayat (2009(3) KLT899 which held that 'the definition of the term 'paddy field' and 'wet land' in the Act is sufficient material to hold that the said statute operates on the basis of the facts as they exist on ground realities and not on any quality or type of land W.P(C) No.29801 of 2012 9 depending on its description in the title document'. Needless to say that the description as 'Nilam' in the revenue records also ought to be tested against the ground realities.

10. Since Ext.P13 is only a recommendation and the matter has to be considered finally by the District Level Authorised Committee, this Court does not intend to enter into any findings on the above aspects. Necessarily, the District Level Authorised Committee would have to consider and pass final orders on the same. The Local Level Monitoring Committee, the 2nd respondent, shall within two weeks from the date of receipt of a copy of this judgment forward Ext.P13 to the District Level Authorised Committee. Since the District Level Authorised

Committee is not a party in the proceedings and the learned Government Pleader is competent to represent the District Level Authorised Committee, the Committee is suo motu impleaded as additional 6th respondent (the Registry shall carry out impleadment of the additional 6th respondent before the judgment is issued). The additional 6th respondent, District W.P(C) No.29801 of 2012 10 Level Authorised Committee is directed to consider the entire records received from the Local Level Monitoring Committee and any documents produced by the petitioner and decide the matter in accordance with law and in accordance with the provisions of the Act within a period of one month from that date. The Writ Petition is disposed of. No costs. K.VINOD CHANDRAN JUDGE ab

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