

Baburaj, vs Revenue Divisional Officer (Sub Collector),

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Court : Kerala

Decided On : Mar-05-2025

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : WP(C)/39961/2023

Appellant : Baburaj,

Respondent : Revenue Divisional Officer (Sub Collector),

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
WEDNESDAY, THE 5TH DAY OF MARCH 2025 / 14TH PHALGUNA,
1946 WP(C) NO. 39961 OF 2023 PETITIONER/S: BABURAJ, AGED 56
YEARS S/O. RAMACHANDRAN NAIR, OTTOORKALAM,
PUTHENVEED, THARUVAKONAM P.O., PALAKKAD DISTRICT, PIN -
679501 BY ADVS. P.R.VENKATESH LAKSHMI MEENAKSHI P.R.
RESPONDENT/S:

1 REVENUE DIVISIONAL OFFICER (SUB COLLECTOR),
OTTAPALAM, PALAKKAD, PIN - 676101 2 TAHSILDAR, OTTAPALAM
TALUK OFFICE, OTTAPALAM, PALAKKAD DISTRICT, PIN - 679101 3

VILLAGE OFFICER, THRIKKADEERI-II VILLAGE, OTTAPALAM, PALAKKAD DISTRICT, PIN - 679502 4 LOCAL LEVEL MONITORING COMMITTEE, REPRESENTED BY ITS CONVENER, AGRICULTURAL OFFICER, KRISHIBHAVAN, THRIKKADEERI-II VILLAGE, OTTAPALAM, PALAKKAD DISTRICT, PIN - 679502 5 AGRICULTURAL OFFICER, KRISHIBHAVAN, THRIKKADEERI-II VILLAGE, OTTAPALAM, PALAKKAD DISTRICT, PIN - 679502

OTHER PRESENT: Smt.Preetha.K.K, Sr.G.P THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is the owner in possession of property having an extent of 0.0407 hectares of land comprised in Sy.No.227/19 and 0.1248 hectares of land comprised in Sy.No.227/5-1 in Block No.057 of Thrikkadeeri-II Village in Ottapalam Taluk in Palakkad District. The petitioner submitted an application in Form-5 for deleting the property of the petitioner from the Data Bank, prepared under the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008,(hereinafter referred to as Paddy Land Act), as according to him, the property was reclaimed much prior to the enactment of the Paddy Land Act and therefore, it was erroneously included therein. Ext.P4 was the said application. The same is disposed of as per Ext.P5 by the 1st respondent, wherein out of the total extent of property, 0.0407 hectares of land was ordered to be retained in the Data Bank and the remaining properties were excluded from the Data Bank. This writ petition is filed by the petitioner challenging Ext.P5, to the extent a decision was taken to retain 0.0407 hectares comprised in Sy.No.227/19 of the property of the petitioner in the Data Bank.

2. A statement has been filed by the 1st respondent wherein they have incorporated averments to support the findings in Ext.P5 order.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader.

4. The challenge raised by the petitioner as against Ext.P5

is mainly on the ground that, the crucial aspect as to whether the portion of the property of the petitioner, which was ordered to be retained in the Data Bank was fit for paddy cultivation, was not considered. The Exts.P6 series photographs were relied on to substantiate that there are trees in the property and under no circumstances the property could be utilized for paddy cultivation. Besides, it was contended that, in Ext.P5, the 1st respondent did not conduct an independent assessment of the status of land and instead, the report of the Agriculture Officer in this regard was simply accepted.

5. After carefully going through the records, I find some

merit in the said contention. As far as an application in Form-5 is concerned, the crucial aspect to be considered is whether the property, which is the subject matter, was being utilised for paddy cultivation for at least once a year, or the property was fit for paddy cultivation. These are some of the crucial requirements for treating a property as a paddy land, as per the definition of paddy land contained in Sec.2(xii) of the Paddy Land Act. In this case, there is no case for the respondents that the property was being cultivated with paddy for at least once in a year and therefore, it was obligatory on the part of the respondents to enter into a specific finding as to whether the property was fit for paddy cultivation as on the date enactment of the Paddy Land Act.

6. In this case, on going through the KSRSEC report which

is referred to in the order, a copy of which is made available by the learned Government Pleader, it is seen that, there is indication of the existence of a building in the said property and presumably taking note of

the same, the property where the building situated, was excluded from the Data Bank. However, with regard to the remaining property, which was decided to be retained in the Data Bank, no finding has been entered into as to whether the property was fit for paddy cultivation or not. This is very crucial, in view of the fact that, a substantial part of the property was already directed to be removed from the Data Bank, taking note of the improvements therein.

7. A perusal of Ext.P6 photographs, prima facie indicates

that, there is not much difference in terms of the features, between the properties where the residence is situated and the other properties. Even though the photographs cannot be taken as conclusive proof, it indicates the necessity to have a careful examination of the nature of the properties and the difference in the nature of the properties already directed to be removed, and the property decided to be retained. Since Ext.P5 does not

contain any such exercise, it cannot be treated as a proper order

in tune with the statutory requirements contemplated under the Act. Hence, it requires reconsideration. Accordingly, this writ petition is disposed of quashing Ext.P5, with a direction to the 1st respondent or the authorized officer under Section 2(xvA) of the Kerala Conservation of Paddy Land and Wetland Act, 2008, to reconsider Ext.P4 application submitted by the petitioner in Form 5 and pass fresh orders in the light of the observations made by this Court. Appropriate orders shall be passed within a period of two months from the date of receipt of copy of this judgment. Sd/- ZIYAD RAHMAN A.A. JUDGE SM/14.03

APPENDIX OF WP(C) 39961/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE REGISTERED ASSIGNMENT DEED DOCUMENT NO. 5990/2010 OF SRO, CHERPLASSERI DATED 22.12.2010 Exhibit P2 TRUE COPY OF BASIC TAX RECEIPT DATED 20.4.2023 Exhibit P3 TRUE COPY OF

TANDAPER DATED 7.5.2023 Exhibit P4 . TRUE COPY OF APPLICATION
DATED 05.04.2022 IN FORM-5 SUBMITTED BY THE PETITIONER BEFORE
THE RDO Exhibit P5 TRUE COPY OF THE ORDER DATED 18.4.2023 OF THE
RDO Exhibit P6 FEW PHOTOGRAPHS RELATING TO THE PROPERTY
RESPONDENTS' EXHIBITS:NIL TRUE COPY P.A.TO JUDGE

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