

Kunjithomman E.T., vs State of Kerala

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : WP(C)/25178/2023

Appellant : Kunjithomman E.T.,

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH
AGRAHAYANA, 1945 WP(C) NO. 25178 OF 2023 PETITIONER:
KUNJITHOMMAN E.T., AGED 69 YEARS S/O. THARIAN, ELENGICAL
HOUSE, KOZHIPPILLY P.O., VARAPPATTY VILLAGE,
KOTHAMANGALAM, ERNAKULAM, PIN - 686691 BY ADVS. GEORGE
SEBASTIAN PHILIA KOSHY RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE PRINCIPAL
SECRETARY TO THE DEPARTMENT OF AGRICULTURE,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 2 THE

DISTRICT COLLECTOR, COLLECTORATE, KAKKANADU P.O, ERNAKULAM, PIN - 682030 3 THE REVENUE DIVISIONAL OFFICER, MINI CIVIL STATION, GROUND FLOOR, MUVATTUPUZHA, KERALA, PIN - 686669 4 THE TAHSILDAR (LAND RECORDS), TALUK OFFICE, KOTHAMANGALAM, PIN - 686691 5 THE AGRICULTURAL OFFICER, KRISHI BHAVAN, VARAPPETTY P.O., 6 THE LOCAL LEVEL MONITORING COMMITTEE (CONSTITUTED UNDER ACT 28 OF 2008) OF VARAPPETTY GRAMA PANCHAYTH, REP. BY ITS CONVENER, THE AGRICULTURAL OFFICER, KRISHI BHAVAN, VARAPPETTY P.O.,

WP(C)NO.25178/2023 2 7 THE VILLAGE OFFICER, VILLAGE OFFICE, VARAPPETTY P.O., BY ADV.SRI.SYAMANTHAK B.S., GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C)NO.25178/2023 3

JUDGMENT

Dated this the 30th day of November, 2023 Petitioner has approached this Court aggrieved by Exts.P4 and P7 orders, whereby Ext.P1, Form 9 application submitted by the petitioner, has been rejected.

2. The specific contention of the petitioner is that the

property has been reclaimed prior to 1967 and that he is entitled to removal of the property from the data bank. Ext.P1 application submitted by the petitioner was originally rejected by the Revenue Divisional Officer as per Ext.P4 order dated 28.02.2022 against which an appeal was preferred, which was

also dismissed as per Ext.P7 order dated 05.05.2023. The stand taken in the impugned orders is that the petitioner was unable to prove that the property has been reclaimed prior to 04.07.1967. Petitioner relying on Exts.P2, P3 and P6 documents which reflect that there are trees standing in the property prior to 60-65 years. These aspects were not properly considered by the authorities while

rejecting the application submitted in Form 9.

3. Heard the learned Government Pleader also. He, upon instructions, submitted that the petitioner has not WP(C)NO.25178/2023 4 produced any document regarding the title deeds of the property prior to 1967 to substantiate the contentions.

4. Petitioner would submit that Rule 12 (13) of the

Kerala Conservation of Paddy Land and Wet Land Rules, 2008, does not mandate that only title deeds regarding the property prior to 1967 would be taken into consideration and that it is only one of the supporting documents in support of the application under Form 9. Petitioner relies on Rules 12(13)

(iv) and (v), wherein an applicant could produce the documents issued from a Government official or an agency to prove that the property has been converted prior to 04.07.1967. Petitioner

submits that Ext.P2 affidavit and Ext.P3 letter issued by the KSEB officials and Ext.P6 report of the Agricultural Officer will come under the definition of the other documents provided under Rule 12(13)(iv) and (v) of the Kerala Conservation of Paddy Land and Wet Land Rules, 2008. Petitioner also submits that he may be given a chance to produce other documents to substantiate his contentions.

5. After hearing both sides, I am inclined to set aside Exts.P4 and P7 orders with a consequential direction to the third respondent to reconsider the application submitted in WP(C)NO.25178/2023 5

Form No.9, taking into consideration Exts.P2, P3 and P6 or any other documents produced by the petitioner to substantiate his contentions. It is made clear that the third respondent is free to call for a KSRSEC report to ascertain the nature of the property to prove that the property has been converted prior to 04.07.1967. The matter shall be reconsidered within an outer limit of three months after affording an opportunity of being

heard to the petitioner. If the third respondent call for a KSRSEC report, order shall be passed within a period of two months after receipt of the KSRSEC report. Petitioner shall also submit an argument note with all supporting documents which shall also be duly considered while taking a decision as directed above.

Writ Petition stands disposed of with the above directions. Sd/- VIJU ABRAHAM
JUDGE csl WP(C)NO.25178/2023 6 APPENDIX OF WP(C) 25178/2023
PETITIONER'S EXHIBITS Exhibit P1 A TRUE COPY OF THE APPLICATION
DATED 17.09.2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD
RESPONDENT Exhibit P2 A TRUE COPY OF THE AFFIDAVIT DATED
17.09.2021 OF MR. C. JOSEPH Exhibit P3 A TRUE COPY OF THE LETTER
ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER, ELECTRICAL MAJOR
SECTION, KOTHAMANGALAM Exhibit P4 A TRUE COPY OF THE ORDER
DATED 28.02.2022 BEARING NO. A16-7711/2021 PASSED BY THE 3RD
RESPONDENT Exhibit P5 A TRUE COPY OF THE MEMORANDUM OF APPEAL
DATED 25.03.2022 FILED BY THE PETITIONER BEFORE 2ND RESPONDENT
Exhibit P6 A TRUE COPY OF THE REPORT DATED 01.03.2023 GIVEN BY THE
5TH RESPONDENT TO THE DEPUTY COLLECTOR LR Exhibit P7 A TRUE
COPY OF THE ORDER BEARING NO. L5-

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