

**Joseph, vs State of Kerala,**

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**SooperKanoon Citation :** [sooperkanoon.com/1442385](http://sooperkanoon.com/1442385)

**Court :** Kerala

**Decided On :** Aug-01-2022

**Judge :** Honourable Mr.Justice N.Nagaresh

**Appeal No. :** WP(C)/1153/2022

**Appellant :** Joseph,

**Respondent :** State of Kerala,

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH MONDAY,  
THE 1ST DAY OF AUGUST 2022 / 10TH SRAVANA, 1944 WP(C) NO.  
1153 OF 2022 PETITIONER: JOSEPH, AGED 65 YEARS S/O.  
ANTONY, VAMPLIYATH HOUSE, POTTA DESOM, POTTA VILLAGE,  
CHALAKUDY TALUK, THRISSUR DISTRICT-680722. BY ADV  
N.L.BITTO RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE  
GOVERNMENT, REVENUE DEPARTMENT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 THE DISTRICT  
COLLECTOR, COLLECTORATE, CIVIL STATION, AYYANTHOLE P.O.,

THRISSUR DISTRICT-680001. 3 DISTRICT LEVEL MONITORING COMMITTEE, THRISSUR, REPRESENTED BY DISTRICT COLLECTOR, THRISSUR, THRISSUR DISTRICT, KERALA-680001. 4 THE LOCAL LEVEL MONITORING COMMITTEE, KODASSERY PANCHAYATH, CHETTIKULAM P.O., REPRESENTED BY CONVENER (AGRICULTURAL OFFICER, KRISHI BHAVAN, KODASSERY, CHETTIKULAM P.O.) THRISSUR DISTRICT- 680683. SRI.SYAMANTHAK B S, G P

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.08.2022, ALONG WITH WP(C).23172/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH MONDAY, THE 1ST DAY OF AUGUST 2022 / 10TH SRAVANA, 1944 WP(C) NO. 23172 OF 2022 PETITIONER: JOSEPH AGED 65 YEARS S/O. ANTONY, VEMPLIYATH HOUSE, POTTA DESOM, POTTA VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT-680722. BY ADV N.L.BITTO RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001. 2 DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION, AYYANTHOLE. P.O., THRISSUR DISTRICT, 680 003. 3 THE LOCAL LEVEL MONITORING COMMITTEE, KODASSERY PANCHAYATH, CHETTIKULAM. P.O. REPRESENTED BY CONVENER (AGRICULTURAL OFFICER, KRISHI BHAVAN, KODASSERY, CHETTIKULAM P.O.) THRISSUR DISTRICT. PIN: 680683. SRI.SYAMANTHAK B S, G P THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON 01.08.2022, ALONG WITH WP(C).1153/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

Dated this the 1st day of August, 2022 [WP(C) Nos.1153 & 23172 of 2022 ] The petitioner is a handicapped person on wheelchair. The petitioner owned 10 Cents of land in Survey No.592/1 of Kodassery Village in Nellore. W.P.(C) No.1153 of 2022 was filed by the petitioner seeking to quash Ext.P6 decision, by which the 3rd respondent-Local Level Monitoring Committee (LLMC) has forwarded the application submitted by the petitioner seeking permission to construct a building in the land, to the District Level Authorised Committee (DLAC). The petitioner sought to direct the 3rd respondent-LLMC to consider Ext.P4 application and to remove the land from Data Bank.

2. During the pendency of W.P.(C) No.1153 of 2022,

the LLMC rejected the application submitted by the petitioner for removal of land from Data Bank. Therefore, the petitioner filed W.P.(C) No.23172 of 2022 challenging the rejection. According to the petitioner, Ext.P6 proceedings have been issued by the LLMC without giving an opportunity of hearing to the petitioner and without considering the mandatory directions of this Court contained in the judgment in W.P.(C) No.26328 of 2019, produced as Ext.P5.

3. The petitioner states that aggrieved by the inclusion

of the petitioners land in Data Bank, the petitioner approached the LLMC. When the LLMC did not take any decision thereon, the petitioner filed W.P.(C) No.26328 of 2019. By Ext.P5

**judgment dated 03.10.2019 in W.P.(C) No.26328 of 2019, this**

Court directed the LLMC to take up Ext.P4 application of the petitioner and dispose of the same after affording an opportunity of being heard to the petitioner and following all necessary procedure, including the obtention of satellite imagery and reports from other concerned authorities.

4. The petitioner states that during the pendency of

W.P.(C) No.1153 of 2022, the DLAC has remitted the application to the LLMC. Consequently, W.P.(C) No.1153 of 2022 has become infructuous. The counsel for the petitioner would, however, urged that Ext.P6 proceedings in W.P.(C) No.23172 of 2022 cannot stand the scrutiny of law, since it has been passed in gross violation of the directions given by this Court in Ext.P5 judgment.

5. Government Pleader entered appearance and

resisted the writ petition. The Government Pleader pointed out that even when the property is included in the Data Bank and even when Ext.P4 application was pending, the petitioner had constructed foundation of a building in the property. The petitioner therefore has scant regard to the binding provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (hereinafter referred to as the Act, 2008). In view of the prohibition on conversion or reclamation of paddy land contained under Section 5 of the Act, 2008, the petitioner has committed an offence liable to be prosecuted under the provisions of the Act, 2008.

6. Government Pleader submitted that the LLMC

mistakenly treated the petitioners application as one for permission to construct a residential house and it was forwarded to the DLAC. However, subsequently the DLAC has remitted the application back to the LLMC. The Government Pleader submitted that the property of the petitioner is liable to be restored to its original condition as paddy land.

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

8. The petitioners earlier application for construction

of residential building in his property was rejected as per Ext.P3, finding that the petitioners land was included in Data Bank. Thereafter, the petitioner submitted Ext.P4 application seeking to remove the land from Data Bank. As no decision was taken thereon, the petitioner approached this Court filing W.P.(C) No.26328 of 2019. In W.P.(C) No.26328 of 2019, this Court delivered Ext.P5 judgment as follows:-

Resultantly, I order this Writ Petition and direct the 3rd respondent-LLMC to take up Ext.P4 application of the petitioner, if it is still pending and dispose of the same after affording an opportunity of being heard to him and after following all necessary procedure, including the obtention of the satellite imagery and reports from other concerned authorities; and issue a final order thereon as expeditiously as is possible, but not later than three months from the date of receipt of a copy of this judgment.

9. It is pursuant to the said Ext.P1 judgment, Ext.P6

(in W.P.(C) No.23172 of 2022) proceedings/order was passed. Going through Ext.P6, this Court finds that the petitioner was not given an opportunity of hearing by the LLMC while passing Ext.P6 order. This is in violation of the directions given by this Court in Ext.P5 judgment. Ext.P6 would also indicate that inspite of the directions given by this Court on obtention of reports from KSREC, no such reports were obtained by the LLMC. The petitioner states that the petitioner was never served with any letter requiring to make any payment to obtain KSREC report.

10. This Court finds that Ext.P6 order in W.P.(C)

No.23172 of 2022 has been passed without hearing the petitioner and without obtaining the KSREC reports. Ext.P6 therefore goes against Ext.P5 judgment of this Court.

11. In the circumstances, the 3rd respondent-LLMC in

W.P.(C) No.23172 of 2022 is directed to re-consider Ext.P4 application submitted by the petitioner and take a decision thereon after giving an opportunity of hearing to the petitioner and after obtaining report from the KSREC. The petitioner shall make an application for obtaining KSREC report paying the prescribed fee, within a period of two weeks. The 3rd respondent shall consider the application and pass appropriate orders within a period of six weeks from the date of receipt of KSREC report. Ext.P6 proceedings in W.P.(C) No.23172 of 2022 is set aside to the extent it applies to the petitioners application. W.P.(C) No.1153 of 2022 is dismissed as infructuous and W.P.(C) No.23172 of 2022 is disposed of with the

aforementioned directions. sd/- N.NAGARESH JUDGE hmh APPENDIX OF WP(C) 1153/2022 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE DOCUMENT BEARING NO.4783/2012 OF NELLAYI SRO DATED 18/09/2012. Exhibit P2 A TRUE COPY OF THE BASIC TAX RECEIPT NO.6856614 DATED 19/04/2017 ISSUED FROM THE KODASSERY VILLAGE OFFICE. Exhibit P3 A TRUE COPY OF THE ORDER PASSED BY THE RDO, IRINJALAKUDA DATED 11/04/2019. Exhibit P4 A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED Exhibit P5 A TRUE COPY OF ORDER IN WPC NO.26328/2019 OF THE HONOURABLE HIGH COURT DATED 03/10/2019. Exhibit P6 A TRUE COPY OF THE DECISION TAKEN BY THE LLMC DATED 28/05/2019. Exhibit P7 A TRUE COPY OF THE ORDER IN CONTEMPT CASE NO.629 OF 2021 OF HON'BLE HIGH COURT OF KERALA DATED 18/02/2021. Exhibit P8 A TRUE COPY OF THE REPLY GIVEN UNDER RIGHT OF INFORMATION AT DATED 30/03/2021. RESPONDENT EXHIBITS EXHIBIT R3(a) TRUE COPY OF THE DETAILS OF APPLICATIONS

RECEIVED ALONG WITH THE LLMC DECISIONS AND FORWARDED TO DISTRICT LEVEL AUTHORIZES COMMITTEE FOR APPROVAL INCLUDING THAT OF THE PETITIONER AND ENDORSEMENT DATED 30.7.2019

EXHIBIT R3(b) TRUE COPY OF THE LETTER ISSUED BY THE PRINCIPAL AGRICULTURAL OFFICER TO ALL AGRICULTURAL OFFICERS EXHIBIT R3(c) TRUE COPY OF THE GAZETTE VOLUME 10 NO.1200 DATED 17.3.2021 EXHIBIT R3(d) TRUE COPY OF THE SATELLITE IMAGERY PERTAINING TO PETITIONERS PROPERTY EXHIBIT R3(e) TRUE COPY OF THE DECISION OF LLMC DATED 3.6.2022 APPENDIX OF WP(C) 23172/2022 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE DOCUMENT BEARING NO.4783 OF 2012 OF NELLAYI SRO DATED Exhibit P2 A TRUE COPY OF THE BASIC TAXI RECEIPT NO. 6856614 DATED 19/4/2017 ISSUED FROM THE KODASSERY VILLAGE OFFICE. Exhibit P3 A TRUE COPY OF THE ORDER PASSED BY THE RDO, IRINJALAKUDA 11/4/2019. Exhibit P4 A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 27/11/2017 . Exhibit P5 A TRUE OF THE JUDGMENT IN WP

(C) .26328 OF 2019 OF THE HONOURABLE HIGH COURT DATED 3/10/2019.  
Exhibit P6 A TRUE COPY OF THE DECISION TAKEN BY THE 3RD  
RESPONDENT TO REJECT THE APPLICATION 3/6/2022.

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