

Poly, vs State of Kerala

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Court : Kerala

Decided On : Aug-26-2020

Judge : Honourable Mr. Justice Alexander Thomas

Appeal No. : WP(C)/16959/2020

Appellant : POLY,

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
WEDNESDAY, THE 26TH DAY OF AUGUST 2020 / 4TH BHADRA,
1942 WP(C).No.16959 OF 2020(T) PETITIONER: POLY, AGED 55
YEARS, S/O.MATHEW, VETTIYADAN HOUSE, EDAYATTOOR
DESOM, ALATHUR VILLAGE, ANNAMANADA P.O., THRISSUR -680
741. BY ADVS. SRI.SAIJO HASSAN SRI.RAFEEL. V.K. SRI.BENOJ C
AUGUSTIN SMT.SURYA P SHAJI SHRI.MANAS P HAMEED
RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, DEPARTMENT OF AGRICULTURE, SECRETARIAT,
THIRUVANANTHAPURAM - 695001. 2 THE DISTRICT COLLECTOR,
THRISSUR COLLECTORATE, AYYANTHOLE, THRISSUR - 680 003. 3
THE REVENUE DIVISIONAL OFFICER, IRINGALAKUDA CIVIL

STATION ANNEXE, IRINGALAKUDA, THRISSUR- 680 125. 4 LOCAL
LEVEL MONITORING COMMITTEE, REPRESENTED BY ITS
CONVENOR, AGRICULTURAL OFFICER, KRISHI BHAVAN,
PARIYARAM, THRISSUR - 680 721.

OTHER PRESENT: SR GP SRI SAIGI JACOB PALATTY THIS WRIT PETITION
(CIVIL) HAVING COME UP FOR ADMISSION ON 26.08.2020, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No.16959 OF 2020(T) 2

ALEXANDER THOMAS, J.

----- W.P.(C)No. 16959 of 2020
----- Dated this the 26th day of August, 2020.

JUDGMENT

The prayers in the above Writ Petition (Civil) are as follows:-

"i) Issue a writ of mandamus or any other appropriate writ, direction or order, directing 3rd respondent to attain finality on the application filed under Section 27A of the Paddy Land Act and to issue an order for changing the nature of 17.76 Ares of property comprised in Re.Sy.No.854/2, 01.42 Ares of property comprised in Re.Sy. No.845/2 and 01.06 Ares of property comprised in Re. Sy. No.845/1 of Pariyaram Village of Mukundapuram Taluk;

ii) Issue a writ of mandamus or any other appropriate writ, direction or order, directing 3rd respondent to remove the 17.76 Ares of property comprised in Re.Sy. No.854/2, 01.42 Ares of property comprised in Re.Sy. No.845/2 and 01.06 Ares of property comprised in Re. Sy. No.845/1 of Pariyaram Village of Mukundapuram Taluk from the Exhibit P2 data bank as within a time frame as fixed by this Hon'ble Court;

iii) Issue a writ of mandamus directing the Revenue Authorities to effect consequential changes in the revenue records either by correction, addition or by endorsing that the land is 'purayidom'; And iv) To issue such other reliefs, as this Honourable Court may deem fit and proper in the circumstances of this case.

2. Heard Sri.Saijo Hassan, learned counsel appearing for the petitioner and Sri.K.J. Manu Raj, learned Government Pleader appearing for the respondents.
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3. The case of the petitioner is that the subject

property though continues to be described as 'nilam/paddy land' in the Basic Tax Register (BTR) has been converted as 'garden land/purayidam', long prior to 12.8.2008 (the date of coming into force of the Kerala Conservation of Paddy Land and Wetland Act, 2008). Further that, the subject property has been included in the draft data bank prepared as per the provisions of the 2008 Act as 'nilam/paddy land' and that the said inclusion is wrong inasmuch as the property has been converted long prior to the coming into force of the 2008 Act.

4. The case of the petitioner is that the 2nd respondent-

District Collector issued Ext.P-5 order dated 31.03.2012 under Section 13 of the Kerala Conservation of Paddy Land and Wetland Act, 2008, (for short 'the Act') directing the petitioner to restore the land to its original condition as paddy land upon which the petitioner filed a revision petition before the 1st respondent, which was dismissed vide order dated 26.06.2013. Further, the petitioner approached this Court by filing W.P.(C) No.20445/2013 challenging Ext.P-5 and pending the same, the petitioner filed an application dated 22.03.2018 before the 2nd respondent-District Collector under Section 6(2) of the Kerala WP(C).No.16959 OF 2020(T) 4 Land Utilisation Order (for short 'the KLU Order'), which is referred to as Ext.P-9 in Ext.P-6 judgment dated 11.06.2018 in W.P.(C) No.20445/2013. In the meanwhile, the petitioner also filed an application before the 4th respondent-Local Level Monitoring Committee (for short 'LLMC'), Pariyaram under Rule 4(6) of the Act. This Court by judgment dated 11.07.2018 in W.P.(C) No.20445/2013 deferred all action pursuant to Ext.P-5 and its subsequent order in revision had

directed the 2 nd respondent-District Collector and the LLMC, Pariyaram to consider the applications of the petitioner after affording an opportunity of being heard. It is submitted by the petitioner that the applications which are directed to be considered in W.P.(C) No.20445/2015, are still pending.

5. Though the petitioner's property was converted

much before the commencement of the Act, the application as per the KLU Order, for utilising the property for other than agricultural activities was submitted only after 30.12.2017. Since the position now has been changed, the petitioner submitted a fresh application dated 17.03.2020 before the 3 rd respondent-Revenue Divisional Officer (RDO) under Section 27A of the Act after making payment of the prescribed fee, WP(C).No.16959 OF 2020(T) 5 which is evident from Exts.P-7 and P-8. Further, since the 3 rd respondent-RDO is the competent authority, as per the amended Act, the petitioner again submitted an application dated 03.08.2020 before the 3 rd respondent for exclusion of the subject land from Ext.P-2 data bank, which is evident from Ext.P-9 and the same is also pending.

6. It is also submitted by the petitioner that from

Ext.P-3 report of the Village Officer, it is clear that the adjacent properties are also reclaimed much earlier and also that the Pariyaram Grama Panchayat had conducted an enquiry and passed resolution No.1 dated 06.03.2012 and requested the 2 nd respondent-District Collector for taking steps to delete the land from the data bank, as per Ext.P-4 letter dated 06.03.2012.

7. Taking note of the facts and circumstances of the case, the following orders and directions are issued:-

(i) The 4th respondent-Local Level Monitoring

Committee will take up the request made by the petitioner in the application dated 22.03.2018 for consideration without much delay and should ensure that an inspection should be conducted, if necessary, with due prior notice to the petitioner to ascertain as to the nature and lie of

the property and also as to whether the property has been converted

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prior to 12.8.2008 etc. and copy of such inspection report should be given to the petitioner in advance. Thereafter, the 4th respondent-Local Level Monitoring Committee may follow the requisite procedure and should also afford reasonable opportunity of being heard to the petitioner and then should take a considered decision on the matters raised in the application dated 22.03.2018 submitted by the petitioner on the plea for exclusion of the subject property from the draft data bank, without much delay, preferably within a period of two months from the date of production of a certified copy of this judgment. The proceedings of the said decision taken by the 4th respondent shall be duly intimated by the Convenor of the 4 th respondent-Local Level Monitoring Committee to both the petitioner as well as the 3rd respondent- Revenue Divisional Officer.

(ii) In case, the petitioner gets orders from the 4 th

respondent for excluding the subject property from the data bank, then thereafter the 3rd respondent- Revenue Divisional Officer, will take up the matters on Ext.P-9 application for consideration, without much delay and after following the requisite procedure and after affording reasonable opportunity of being heard to the petitioner and also after taking into account the decision of the 4 th respondent-LLMC as aforesaid, shall take a

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considered decision on the plea of the petitioner in the application for grant of permission for change of user of the land, in accordance with the provisions contained in Sec.27A(1) of the 2008 Act and the Rules framed thereunder, without much delay, preferably within a period of 2 months

from the date on which the proceedings of the 4 th respondent-LLMC are communicated.

8. The petitioner will produce certified copies of this

judgment along with copies of the memorandum of this writ

petition (civil) with all the exhibits before both the 3 rd respondent-Revenue Divisional Officer, and the 4th respondent- Local Level Monitoring Committee, through its Convenor for necessary information and further action. With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of. Sd/- ALEXANDER THOMAS, JUDGE Skk//17032020 WP(C).No.16959 OF 2020(T) 8 APPENDIX PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE LAND TAX RECEIPT DATED 08/08/2019 ISSUED BY THE VILLAGE OFFICER PARIYARAM. EXHIBIT P2 TRUE COPY OF DATA BANK ISSUED BY THE 4TH RESPONDENT. EXHIBIT P3 TRUE COPY OF THE REPORT NO.25/11 DATED 20/12/2011 FILED BY VILLAGE OFFICER, PARIYARAM BEFORE THE 2ND RESPONDENT. EXHIBIT P4 TRUE COPY OF LETTER DATED 06/03/2012 ALONG WITH COPY OF RESOLUTION NO.1 DATED 06/03/2012 PASSED BY PARIYARAM GRAMA PANCHAYATH.

EXHIBIT P5 TRUE COPY OF ORDER DATED 31/03/2012 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P6 TRUE COPY OF JUDGMENT DATED PASSED BY THIS HON'BLE COURT. EXHIBIT P7 TRUE COPY OF THE APPLICATION RECEIPT DATED 17/03/2020 SUBMITTED BEFORE THE 3RD RESPONDENT UNDER SECTION 27- A OF 2008 ACT. EXHIBIT P8 TRUE COPY OF THE CHALLAN DATED EXHIBIT P9 TRUE COPY OF APPLICATION DATED RESPONDENT UNDER SECTION 5(4)(I) OF 2008 ACT. RESPONDENTS' EXHIBITS: NIL

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