

Manu S vs State of Kerala

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Court : Kerala

Decided On : May-28-2020

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : WP(C)/14040/2018

Appellant : MANU S

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
THURSDAY, THE 28TH DAY OF MAY 2020 / 7TH JYAISHTA, 1942
WP(C).No.14040 OF 2018(D) PETITIONER/S: MANU S., S/O.LATE
SOMANATHAN, AGED 31 YEARS, KANDATHIL VEEDU, THOTTUVA,
PADINJARE KALLADA, KOLLAM. BY ADV. SRI.B.MOHANLAL
ADV.PREETHA P.S. ADV.MANSOOR ALI RESPONDENT/S:

1 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL
SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695 001. 2 THE DISTRICT
COLLECTOR, COLLECTORATE, CIVIL LINES P.O, KOLLAM 691 013. 3

THE SUB COLLECTOR, (REVENUE DIVISIONAL OFFICER) COLLECTORATE, CIVIL LINES P.O, KOLLAM 691 013. 4 THE TAHSILDAR, LAND RECORDS, TALUK OFFICE, KUNNATHOOR P.O,KOLLAM 690 540. 5 THE VILLAGE OFFICER, PADINJAREKALLADA VILLAGE,PADINJAREKALLADA P.O, KUNNATHOOR, KOLLAM 690 540. 6 SMT. SHEEJA, W/O. VIJAYAKUMAR, VIJAYA BHAVAN,ITHOTTUVA MURI, PADINJAREKKALLADA P.O, KOLLAM 690 540. 7 SRI. RAJU, S/O. KRISHNAN, PULLUMKODI THARAYIL, ITHOTTUVA MURI,PADINJAREKKALLADA P.O, KOLLAM 690 540. 8 ADDL.R8.THE PRINCIPAL SECRETARY AND AGRICULTURAL PRODUCTION COMMISSIONER, DEPARTMENT OF AGRICULTURE DEVELOPMENT AND FARMERS' WELFARE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001 ADDITIONAL R8 IS IMPEADED AS PER THE ORDER DATED 28.05.2020 IN WPC NO.14040/2018 BY ADV.SMT.K.AMMINIKUTTY SR.GP SRI JESTIN MATHEW- GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28.05.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C)No.14040 of 2018 2 CR

JUDGMENT

The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P7 order dated 06.02.2018 issued by the 2 nd respondent District Collector and Ext.P9 order dated 15.03.2018 of the 3 rd respondent Sub Collector (Revenue Divisional Officer), to the extent it affects the petitioner. The petitioner has also sought for a writ of mandamus commanding respondents 1 to 4 to desist from initiating proceedings against him under the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008, based on Exts.P7 and P9 orders; a declaration that the proceedings initiated against the petitioner, by respondents 2 and 3,

based on Exts.P7 and P9 orders issued under the provisions of the Kerala Conservation of Paddy Land and Wetland Act will be subject to the orders to be passed by the Munsiff's Court, Sasthamcotta in O.S. Nos.22 of 2017 and 73 of 2017; and a declaration that the proceedings initiated against the petitioner, by respondents 2 and 3, based on Exts.P7 and P9 orders issued under the provisions of the Kerala Conservation of Paddy Land and Wetland Act is not sustainable

W.P.(C)No.14040 of 2018 3 in law.

2. Going by the averments in the writ petition, the

petitioner's father late Somanathan was holding absolute title, possession and enjoyment of 5.30 Ares of property in Block No.11, Re.Sy.No.548/7 of West Kallada Village. The document marked as Ext.P1 is the tax receipt dated 16.04.2018 issued by the 5th respondent Village Officer. The petitioner's father died on 16.02.2002, who is survived by his wife and children, who are enjoying that property and the residential building situated therein. Since there was no motorable way to that property, the petitioner along with the 6th respondent jointly purchased 2.43 Ares of property comprised in Block No.11, Re.Sy.No.548/8-3 of West Kallada Village, vide sale deed No.3887 of 2012 of the Sub Registrar Office, Sasthamcotta. The document marked as Ext.P2 is the tax receipt dated 16.04.2018 in respect of 5.53 Ares of property comprised in Block No.11, Re.Sy.No.548/8-2 of West Kallada Village, in the name of the petitioner. Ext.P3 is the tax receipt dated 16.04.2018 in respect of 2.43 Ares of property comprised in Block No.11, Re.Sy.No.548/8-3 of West Kallada Village, in the name of the petitioner and the 6 th respondent.

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3. It is alleged in the writ petition that the 6 th

respondent, contrary to the conditions in sale deed No.388 of 2012 of the Sub Registrar Office, Sasthamcotta and without the consent of the petitioner, sold her one-half right on the motorable way to the 7th respondent, by executing sale deed

No.3014/2016 dated 08.12.2016 of the Sub Registrar Office, Sasthamcotta. When respondents 6 and 7 attempted to obstruct the petitioner's way, he filed O.S.No.22 of 2017 before the Munsiff's Court, Sasthamcotta against them, seeking cancellation of that sale deed. The document marked as Ext.A4 is the plaint in O.S.No.22 of 2017. In the said suit, the Munsiff's Court appointed an Advocate Commissioner to ascertain the nature and lie of the property and to prepare a sketch. The document marked as Ext.P5 is the mahazar, report and sketch submitted by the Advocate Commissioner in O.S.No.22 of

2017. The husband of the 6th respondent, who is having

property on the western side of the petitioner's property, filed O.S.No.73 of 2017 before the Munsiff's Court, Sasthamcotta, against the petitioner, seeking prescriptive right of easement in respect of the motorable way, injunction and other consequential reliefs. The document marked as Ext.P6 is the W.P.(C)No.14040 of 2018 5 plaint in O.S.No.73 of 2017.

4. During the pendency of O.S.Nos.22 of 2017 and 73 of 2017, the 2nd respondent District Collector issued Ext.P7

order dated 06.02.2018, in exercise of his powers under

Section 13 of the Kerala Conservation of Paddy Land and Wetland Act, whereby the petitioner and the 6th respondent are directed to restore the original position of 2.43 Ares of 'nilam' (paddy land) in Block No.11, Re-survey No.548/8-3 of West Kallada Village, which is classified 'dhannukal' in the data bank, within a period of one week, by removing the ordinary earth. In case the petitioner and the 6th respondent fail to restore the original position of the paddy land, the 3rd respondent Revenue Divisional Officer is directed to supervise restoration of the land and recover the expenses from the petitioner, under the provision of the Revenue Recovery Act, 1968. As discernible from Ext.P7 order, alleging reclamation of the land with ordinary earth, the 5th respondent Village Officer issued a stop memo to the petitioner and the 6th respondent, and it was reported to the 4th respondent Tahsildar, vide report dated 08.04.2017. The 4th respondent reported the said fact to the 3rd respondent Revenue Divisional Officer, who in

turn reported the

W.P.(C)No.14040 of 2018 6 matter to the 2nd respondent District Collector, vide communication dated 12.07.2017.

5. On receipt of Ext.P7 order, the petitioner submitted

Ext.P8 representation before the 1st respondent to keep in abeyance the proceedings pursuant to that order till final disposal of O.S.Nos.22 of 2017 and 73 of 2017 pending before the Munsiff's Court, Sasthamcotta. Going by the averments in

Ext.P8 representation, the petitioner along with the 6 th respondent purchased 2.43 Ares of property in Block No.11, Re-survey No.548/8-3 of West Kallada Village in order to have a motorable way to their properties. Even before purchase, the said property was lying as a private way with an average width of 3 meter. After purchase, they never reclaimed that land using earth or made any constructions whatsoever. They have not done anything in violation of the provisions of the Kerala Conservation of Paddy Land and Wetland Act. Since civil suits are pending before the Munsiff's Court, Sasthamcotta any change in the nature and lie of the property can only be made based on the orders of that court; otherwise, it would result in the initiation of contempt of court proceedings. Thereafter, the petitioner was issued with Ext.P9 order dated 15.03.2018 of

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the 3rd respondent Revenue Divisional Officer, whereby respondents 4 and 5 are directed to ensure compliance of Ext.P7 order and initiate prosecution against them under sub- section (1) of Section 12 of the Act. Feeling aggrieved by Exts.P7 and P9, the petitioner is before this Court in this writ petition, seeking the reliefs stated hereinbefore.

6. On 20.04.2018, when this writ petition came up for

admission, the learned Government Pleader took notice for respondents 1 to 5. This Court issued urgent notice by speed post to respondents 6 and 7, returnable

within three weeks, and granted an interim order suspending the prosecution as contemplated by Ext.P9, for a period of two months. The said interim order, which was extended from time to time, was extended until further orders on 18.11.2019.

7. The 4th respondent Tahsildar has filed a counter

affidavit opposing the reliefs sought for in this writ petition. The 4th respondent would point out that, the petitioner and the 6 th respondent jointly purchased 2.43 Ares of property in Block No.11, Re-survey No.548/8-3 of West Kallada Village from one

Vijayakumar, who is the husband of the 6 th respondent, in order

to use it as a pathway. On coming to know about the illegal W.P.(C)No.14040 of 2018 8

conversion of the land by dumping earth, the 5 th respondent Village Officer inspected the property and issued a stop memo. The 6th respondent sold her one-half right over the property to the 7th respondent, who is residing on the southern side of that property, by executing sale deed No.3014 of 2016 of the Sub Registrar Office, Sasthamcotta. After the execution of sale deed, the petitioner dumped earth on that property, in order to obstruct the way of the 7th respondent. The 7th respondent complained before the 3rd respondent, in order to remove the obstruction. The 5th respondent directed the petitioner to remove the ordinary earth; however, the petitioner was not prepared to do so. The matter was reported to the 2 nd respondent District Collector, for taking action for illegal conversion of paddy land. The 2nd respondent heard both sides and passed Ext.P7 order invoking his powers under Section 13

of the Act and directed the 4 th respondent to initiate prosecution against the petitioner under sub-section (1) of Section 12 of the Act.

8. Heard the learned counsel for the petitioner and also the learned Senior Government Pleader for respondents 1 to 5. Despite service of notice none appears for respondents 6 and 7. W.P.(C)No.14040 of 2018 9

9. The learned counsel for the petitioner would contend

that 2.43 Ares of property in Block No.11, Re-survey No.548/8- 3 of West Kallada Village is classified 'dhannukal' in the data bank, as admitted in Ext.P7 order, which is not a 'paddy land'

as defined in clause (xii) of Section 2 of the Kerala Conservation of Paddy Land and Wetland Act, 2008. Therefore, the 2nd respondent District Collector cannot invoke his powers under Section 13 of the said Act, by directing the petitioner and the 6th respondent to restore the said land to its original position or initiate prosecution against them under sub-section

(1) of Section 12. The property was reclaimed much prior to

the commencement of the said Act, i.e., prior to 2008. It is a portion of a bund road and the petitioner had not made any conversion or reclamation of that property, in violation of the

provisions under Section 3 of the said Act, attracting penal provisions under Section 23. The learned counsel would contend further that the 2nd respondent District Collector and the 3rd respondent Revenue Divisional Officer have to keep in abeyance further proceedings pursuant to Exts.P7 and P9 till the final disposal of O.S.Nos.22 of 2017 and 73 of 2017 pending before the Munsiff's Court, Sasthamcotta.

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10. Per contra, the learned Senior Government Pleader would contend that the petitioner and the 6 th respondent

reclaimed the property in question, in violation of the provisions under Section 3 of the Kerala Conservation of Paddy Land and Wetland Act, attracting penal provisions under Section 23 of the said Act. Therefore, Exts.P7 and P9 orders are perfectly legal, which warrants no interference in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India. The learned Senior Government Pleader would contend further that, if the petitioner is feeling

aggrieved by the Ext.P7 order of the 2nd respondent District Collector, he has to avail the statutory remedy of revision under Section 28 of the said Act, instead of invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

11. The Kerala Conservation of Paddy Land and Wetland Act, 2008 was enacted to conserve the paddy land and wetland

and to restrict the conversion or reclamation thereof, in order

to promote growth in the agricultural sector and to sustain the ecological system, in the State of Kerala. Clause (iii) of Section 2 of the Act defines the term 'conversion' to mean the situation W.P.(C)No.14040 of 2018 11

whereby, land that has been under paddy farming and its allied constructions like drainage channels, ponds, canals, bunds and ridges are put to use for any other purpose. Clause (xii) of Section 2 defines the term 'paddy land' to mean all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals. Clause (xv) of Section 2 defines the term 'reclamation' to mean such act or series of acts whereby a paddy land or a wetland as defined in this Act is converted irreversibly and in such a manner that it cannot be reverted back to the original condition by ordinary means.

12. Section 3 of the Act deals with prohibition of

conversion or reclamation of paddy land. As per sub-section (1), on and from the date of commencement of the Act, the owner, occupier or the person in custody of any paddy land shall not undertake any activity for the conversion or reclamation of such paddy land, except in accordance with the provisions of this Act. As per sub-section (2), nothing contained in sub-section (1) shall apply to the cultivation of any intermediary crops that are cultivated without changing the W.P.(C)No.14040 of 2018 12 ecological nature of that paddy land or the strengthening of the outer bunds for protecting the cultivation.

13. Section 12 of the Act deals with appointment of

authorised officers and their powers. As per sub-section (1) of Section 12, the Government may by notification in the Official Gazette, appoint such officers of the Revenue Department (not below the rank of Village Officer) as authorised officers and may determine the area of jurisdiction within which they shall exercise their powers under the Act. As per sub-section (2) of Section 12, the Authorised Officer may, for the purpose of inspecting whether any of the provisions of the Act have been violated, or to prevent the commission of any of the offenses under the Act, shall have the powers enumerated in clauses (a) to (e). As per sub-section (5) of Section 12, if an officer authorised under sub-section (1) fails to take action on the report received by him regarding the violation of the Act, he shall be deemed to have committed an offence punishable under Section 23.

14. Section 13 of the Act deals with power of District Collector. Sub-section (1) of Section 13 opens with a non- obstante clause. As per sub-section (1), notwithstanding W.P.(C)No.14040 of 2018 13

anything contained in the Act, the District Collector may take such action, as he deems fit, without prejudice to the prosecution proceedings taken under the Act, to restore the original position of any paddy land or wetland reclaimed violating the provisions of the Act, and realise the cost incurred in this regard from the holder or occupier of the said paddy land or wetland, as the case may be, so reclaimed after giving him a reasonable opportunity of being heard. As per sub- section (2) of Section 13, where the decision is to restore the original position of paddy land or wetland, the District Collector may take any action in such manner, as may be prescribed, to dispose clay, sand, earth, etc. removed from the paddy land or wetland or any brick or tile made of all or any of them, in the process of such restoration and cause to remit the sums collected to the Fund, i.e., the Agricultural Promotion Fund constituted under Section 27D of the Act.

15. Going by the averments in the writ petition, the

petitioner and the 6th respondent purchased 2.43 Ares of property comprised in Block No.11, Re.Sy.No.548/8-3 of West Kallada Village, vide sale deed No.3887

of 2012 of the Sub Registrar Office, Sasthamcotta. In the writ petition, it is W.P.(C)No.14040 of 2018 14 contended that the said property, which is classified 'dhannukal'

in the data bank, was reclaimed much prior to the commencement of the Kerala Conservation of Paddy Land and Wetland Act, and therefore, the 2 nd respondent District Collector cannot invoke his powers under Section 13 of the said Act or initiate prosecution under sub-section (1) of Section 12. It is a portion of a bund road and the petitioner had not made any conversion or reclamation of that property, in violation of the

provisions under Section 3 of the said Act, attracting penal provisions under Section 23.

16. The document marked as Ext.A4 is the plaint in

O.S.No.22 of 2017 filed by the petitioner against respondents 6 and 7. Going by the plaint averments, the petitioner and the 6th respondent jointly purchased the plaint schedule property, i.e., 2.43 Ares of 'nilam' vide sale deed No.3887 of 2012 of the Sub Registrar Office, Sasthamcotta, in order to have a motorable way to their properties. As per the terms of that agreement, the parties have agreed to construct a road suitable for lorry and other vehicles, by filling up the plaint schedule property with earth. The parties have agreed to bear the expenses jointly and to maintain that road as such, without any

W.P.(C)No.14040 of 2018 15 obstruction to the movement of vehicles. In the plaint schedule, 2.43 Ares of property covered by sale deed No.3887 of 2012 is described as 'nilam'. In O.S.No.22 of 2017, the Munsiff's Court, Sasthamcotta appointed an Advocate Commissioner in order to ascertain the nature and lie of the

plaint schedule property and to prepare a sketch. The document marked as Ext.P5 is the mahazar, report and sketch submitted by the Advocate Commissioner, after inspecting the property on 18.03.2017. As per the report of the Advocate Commissioner, which is yet to be marked in evidence, the motorable way was

constructed by filling ordinary earth, approximately four years ago. The document marked as Ext.P6 is the plaint in O.S.No.73 of 2017 filed before the Munsiff's Court, Sasthamcotta by the husband of the 6th respondent, who is having property on the western side of the petitioner's property, seeking prescriptive right of easement over the motorable way (which is Plaint C Schedule property in that suit), injunction and other consequential reliefs. In the plaint, it is alleged that, on 17.03.2017, the defendant (petitioner herein) blocked Plaint C Schedule property, in front of the plaintiff's property, by dumping earth.

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17. It is pertinent to note that the plaint averments in

O.S.No.22 of 2017 filed by the petitioner cut at the root of his case in this writ petition that 2.43 Ares of property in Block No.11, Re-survey No.548/8-3 of West Kallada Village is not a 'paddy land' as defined in clause (xii) of Section 2 of the Kerala Conservation of Paddy Land and Wetland Act, and that property was reclaimed much prior to the commencement of the said Act, i.e., prior to 2008.

18. Section 26 of the Kerala Conservation of Paddy Land

and Wetland Act deals with grant of injunction, etc., by civil courts. As per Section 26, no civil court shall grant an injunction or make any order for any other relief against the Government or any officer authorised under the Act, in respect of any act done or purporting to be done by the Government or such officer under the Act or the rules or notifications made thereunder, unless notice of such injunction or other relief has been given to the Government or such officer, as the case may be.

19. Section 28 of the Kerala Conservation of Paddy Land and Wetland Act deals with revision. As per Section 28, the Government may either suo motu or on application from any W.P.(C)No.14040 of 2018 17 aggrieved party call for the records of any act or proceedings of the Collector in any case under the Act, and pass such orders thereon, as it may deem fit.

20. Ext.P7 order dated 06.02.2018 of the 2nd respondent

District Collector, which is under challenge in this writ petition, is an order issued in exercise of the powers under Section 13 of the Kerala Conservation of Paddy Land and Wetland Act, whereby the petitioner and the 6th respondent are directed to restore the original position of 2.43 Ares of 'nilam' (paddy land) in Block No.11, Re-survey No.548/8-3 of West Kallada Village, by removing the ordinary earth. In case the petitioner and the 6th respondent fail to restore the original position of the paddy land, the 3rd respondent Revenue Divisional Officer is directed to supervise restoration of the land and recover the expenses from the petitioner, under the provision of the Revenue Recovery Act, 1968. Since the petitioner and the 6th respondent failed to comply with the direction contained in Ext.P7 order, the 3rd respondent Revenue Divisional Officer issued Ext.P9

order dated 15.03.2018, whereby the 4th respondent Tahsildar

and the 5th respondent Village Officer are directed to ensure compliance of Ext.P7 order and initiate prosecution against the W.P.(C)No.14040 of 2018 18 petitioner and the 6th respondent, under sub-section (1) of Section 12 of the Act. Ext.P9 order of the 3rd respondent is only a consequential order.

21. If the petitioner is aggrieved by Ext.P7 order of the

2nd respondent ordering restoration of the property to the original position, he can challenge that order by filing revision under Section 28 of the Kerala Conservation of Paddy Land and Wetland Act, before the Principal Secretary and Agricultural

Production Commissioner, Department of Agriculture Development and Farmers' Welfare, Government Secretariat, Thiruvananthapuram - 695 001. The pendency of civil suits between the petitioner and respondents 6 and 7 or the husband of the 6th respondent is not a bar for the 2nd respondent to exercise his powers under Section 13 of the Act for ordering restoration of the property to the original position and initiating prosecution against respondents 6 and 7 under sub-section (1) of Section 12 of the Act.

22. In Commissioner of Income Tax v. Chhabil Das

Agarwal [(2014) 1 SCC 603], the Apex Court held that non-entertainment of a writ petition under Article 226 of the Constitution of India when an efficacious alternative remedy is W.P.(C)No.14040 of 2018 19

available is a rule and self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution of India, despite the existence of alternative remedy. However, High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same, unless he has made out an exceptional case warranting such interference or there exists sufficient ground to invoke the extraordinary jurisdiction under Article 226.

23. In *Authorised Officer, State Bank of Travancore*

v. Mathew K.C. [(2018) 3 SCC 85], the Apex Court reiterated that the discretionary jurisdiction under Article 226 of the Constitution of India is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution of India ought not to be entertained if alternative statutory remedies are available, except in cases falling within the well-defined exceptions as observed in *Chaabil Das Agarwal*, i.e., where the statutory

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authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice. After referring to the law laid down in *Thansingh Nathmal v.*

Superintendent of Taxes [AIR 1964 SC 1419] and *Titaghur Paper Mills Company Ltd. v. State of Orissa* [(1983) 2 SCC 433] the Apex Court held that High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which

the action complained of contains a mechanism for redressal of grievance. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

24. In *Thansingh Nathmal* a Constitution Bench of the

Apex Court held that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the W.P.(C)No.14040 of 2018 21

Article. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce for which the writ is claimed. The High Court does not, therefore, act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under

W.P.(C)No.14040 of 2018 22 Article 226 of the Constitution the machinery created under the statute to be bypassed and will leave the party applying to it to seek resort to the machinery so set up.

25. In *Titaghur Paper Mill* a Three-Judge Bench of the

Apex Court held that the Orissa Sales Tax Act, 1947 provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Water Works Co. v. Hawkesford* [(1859) 6 CBNS 336] at page 356 in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second

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class. The form given by the statute must be adopted and adhered to." The rule laid down in that passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.* [1919 AC 368] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co.* [1935 AC 532] and *Secretary of State v. Mask and Co.* [AIR 1940 PC 105]. It has also been held to be equally applicable to enforcement of rights and has been followed by the Apex Court throughout.

26. In *Balkrishna Ram v. Union of India* [(2020) 2

SCC 442] one of the issues raised before the Apex Court was whether an appeal against an order of a single judge of a High Court deciding a case related to an Armed Forces personnel pending before the High Court is required to be transferred to the Armed Forces Tribunal or should be heard by the High Court. The Apex Court held that sub-section (1) of Section 14 of the Armed Forces

Tribunal Act, 2007 clearly provides that the Armed Forces Tribunal will exercise powers of all courts except the Supreme Court or High Court exercising jurisdiction under Article 226 and Article 227 of the Constitution of India. Section

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34 is very carefully worded. It states that 'every suit', or 'other proceedings' pending before any court including a High Court immediately before the establishment of the Tribunal shall stand transferred on that day to the Tribunal. The Legislature has clearly not vested the Armed Forces Tribunal with the power and jurisdiction of the High Court to be exercised under Article 226 of the Constitution. There can be no manner of doubt that the High Court can exercise its writ jurisdiction even in respect of orders passed by the Armed Forces Tribunal. Since an appeal lies to the Supreme Court against an order of the Armed Forces Tribunal, the High Court may not exercise their extraordinary writ jurisdiction because there is an efficacious alternative remedy available but that does not mean that the jurisdiction of the High Court is taken away. In a given circumstance, the High Court may and can exercise its extraordinary writ jurisdiction even against the orders of the High Court [sic: Armed Forces Tribunal].

27. In Balkrishna Ram the Apex Court held that the

principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. W.P.(C)No.14040 of 2018 25 The writ courts normally refrain from exercising their

extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when there is an alternative remedy available [Union of India v. T.R. Varma, AIR 1957 SC 882]. The rule of alternative remedy is a rule of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction. There may be cases where the High Court would be justified in exercising its writ jurisdiction

because of some glaring illegality committed by the Armed Forces Tribunal. One must also remember that the alternative remedy must be efficacious and in case of a Non-Commissioned Officer (NCO), or a Junior Commissioned Officer (JCO); to expect such a person to approach the Supreme Court in every case may not be justified. It is extremely difficult and beyond the monetary reach of an ordinary litigant to approach the Supreme Court. Therefore, it will be for the High Court to decide in the peculiar

facts and circumstances of each case whether it should exercise

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28. In the instant case, as already noticed, the plaint

averments in O.S.No.22 of 2017 filed by the petitioner cut at the root of his case in this writ petition that, 2.43 Ares of property in Block No.11, Re-survey No.548/8-3 of West Kallada Village is not a 'paddy land' as defined in clause (xii) of Section 2 of the Kerala Conservation of Paddy Land and Wetland Act,

and that property was reclaimed much prior to the commencement of the said Act, i.e., prior to 2008. Therefore, it cannot be said that Ext.P7 order of the 2nd respondent, issued in exercise of his powers under Section 13 of the Kerala Conservation of Paddy Land and Wetland Act, suffers from any glaring illegality, warranting interference in exercise of the writ jurisdiction of this Court under Article 226 of the Constitution of India. If the petitioner is aggrieved by Ext.P7 order, he can approach the additional 8th respondent Principal Secretary and

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Agricultural Production Commissioner, Department of Agriculture Development and Farmers' Welfare, who is the Revisional Authority under Section 28 of the said

Act. It cannot be said that the statutory remedy provided under Section 28 of the Act is not efficacious or it is beyond the monetary reach of the petitioner to approach the Revisional Authority. In such circumstances, the challenge made in this writ petition against Ext.P7 order of the 2 nd respondent and Ext.P9 consequential

order of the 3rd respondent cannot be entertained under Article

226 of the Constitution of India.

29. The learned counsel for the petitioner would submit

that the petitioner shall file a revision petition before the additional 8th respondent, challenging Ext.P7 order of the 2 nd respondent, as provided under Section 28 of the Kerala Conservation of Paddy Land and Wetland Act.

In such circumstances, this writ petition is disposed of by relegating the petitioner to avail the statutory remedy against Ext.P7 order of the 2nd respondent, by filing a revision petition before the additional 8th respondent, under Section 28 of the Kerala Conservation of Paddy Land and Wetland Act, within three weeks from the date of receipt of a certified copy of this

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judgment. In case the revision petition is in order and the petitioner has remitted the requisite fee, the additional 8th respondent shall consider the same and pass appropriate orders thereon, strictly in accordance with law, with notice to the petitioner and also to respondents 6 and 7, and after affording them an opportunity of being heard, as expeditiously as possible, at any rate, within a further period of three months. The interim order granted on 20.04.2018, suspending the prosecution as contemplated by Ext.P9, for a period of two months, which was later extended until further orders on 18.11.2019, shall continue to be in force till final disposal of that revision petition.

APPENDIX PETITIONER'S/S EXHIBITS: EXT.P1: THE TRUE COPY OF THE TAX RECEIPT ISSUED BY THE 5TH RESPONDENT IN RESPECT OF THE PROPERTY OF THE PETITIONER'S FATHER LATE SRI.SOMANATHAN. EXT.P2: THE TRUE COPY OF THE TAX RECEIPT ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER EXT.P3: THE TRUE COPY OF THE TAX RECEIPT ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER AND THE 6TH RESPONDENT. EXT.P4: THE TRUE COPY OF THE PLAINT O.S.NO.22/2017 FILED BY THE PETITIONER BEFORE THE MUNSIF COURT, SASTHAMCOTTAH AGAINST THE RESPONDENTS 6 AND 7 EXT.P5: THE TRUE COPY OF THE MAHAZAR, SKETCH AND REPORT SUBMITTED THE ADVOCATE COMMISSIONER IN O.S.NO.22/2017 BEFORE THE MUNSIF COURT, SASTHAMCOTTAH EXT.P6: THE TRUE COPY OF THE PLAINT IN O.S.NO.73/2017 BEFORE THE MUNSIF COURT, SASTHAMCOTTAH FILED BY THE HUSBAND OF THE 6TH RESPONDENT. EXT.P7: TRUE COPY OF THE NOTICE NO.L10- THE 2ND RESPONDENT TO THE PETITIONER. EXT.P8: THE TRUE COPY OF OBJECTION DATED AGAINST EXT.P7 NOTICE BEFORE THE 2ND RESPONDENT

EXT.P9: THE TRUE COPY OF THE ORDER

NO.K.DIS.17066/2017/A DATED 15/03/2018 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.