

Adani Infrastructure and Developers Pvt. Ltd. Vs. State of Kerala

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Court : Kerala

Decided On : Feb-02-2015

Judge : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

Appellant : Adani Infrastructure and Developers Pvt. Ltd.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE MONDAY,THE2D DAY OF FEBRUARY201513TH MAGHA, 1936 WA.No. 1416 of 2014 ()
----- (AGAINST THE

JUDGMENT

IN WP(C).NO. 12793/2013 DATED2102-2014) -----

APPELLANT(S)/PETITIONERS: ----- 1. ADANI INFRASTRUCTURE & DEVELOPERS PVT.LTD, 121, MAKER CHAMBERS III, NARIMAN POINT, MUMBAI-400 021, REP. BY ITS AUTHORISED SIGNATORY.

2. ADANI LANSCAPE PRIVATE LTD, ADANI HOUSE, SHRIMALI SOCIETY, MITHAKALI SIX ROAD, NAVARANGAPURA, AHAMEDABAD-380 009, REP. BY ITS AUTHORISED SIGNATORY.

3. AALOKA REAL ESTATE PRIVATE LTD, 402, YASHICA APARTMENT, 256, DIXIT ROAD, VILLEPARLE(EAST), MUMBAI-400 057, REP. BY ITS AUTHORISED SIGNATORY. BY SRI.P.RAVINDRAN,SENIOR ADVOCATE ADVS. SRI.K.PRAVEEN KUMAR SRI.CIBI THOMAS

RESPONDENT(S)/RESPONDENT: ----- 1.
STATE OF KERALA, REP. BY THE PRINCIPAL SECRETARY, GOVERNMENT OF KERALA, REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695 001.

2. THE COMMISSIONER OF LAND REVENUE, GOVERNMENT OF KERALA, PUBLIC OFFICE BUILDINGS, MUSEUM JUNCTION, THIRUVANANTHAPURAM-695 001.

3. THE REVENUE DIVISIONAL OFFICER, MUVATTUPUZHA, ERNAKULAM DISTRICT-686 661.

4. ADDITIONAL CHIEF SECRETARY TO GOVERNMENT CUM AGRICULTURAE PRODUCTION COMMISSIONER, GOVERNMENT OF KERALA, AGRICULTURE DEPARTMENT, GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695 001. sts 2/- -2- W.A.NO.1416/2014 5. KERALA KARSHAKA SANGHOM, KIZHAKKAMBALAM VILLAGE COMMITTEE, C.A.SMARAKA MANDIRAM, KIZHAKKAMBALAM.P.O., ERNAKULAM, REP. BY ITS SECRETARY-683 562.

6. KERALA STATE KARSHAKA THOZHILALI UNION, KIZHAKKAMBALAM VILLAGE COMMITTEE, C.A.SMARAKA MANDIRAM, KIZHAKKAMBALAM.P.O, ERNAKULAM,REP.BY ITS PRESIDENT-683 562.

7. THE DEPUTY SECRETARY, AGRICULTURE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

8. THE DISTRICT COLLECTOR, ERNAKULAM DISTRICT-682 030. R1 TO R4,R7 & R8 BY SPL.GOVERNMENT PLEADER SRI.P.K.SOYUZ R5 & R6 BY ADV. SRI.M.M.MONAYE SRI.M.PAUL VARGHESE THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON2101-2015, THE COURT ON0202-2015 DELIVERED THE FOLLOWING: sts ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J.

JUDGMENT

Shaffique,J The writ petitioners are the appellants who challenge the judgment dated 21/02/2014 in W.P.C.No.12793/2013 2. The writ petition was filed challenging Ext.P10 and P21 and for a declaration that petitioners' property will not come under the purview of Kerala Conservation of Paddy Land and Wet Land, Act 2008 (hereinafter referred to as 'the Act').

3. The facts involved in the writ petition would disclose that the petitioners together acquired certain item of land in Kizhakkambalam village. They obtained building permit and other permissions from various authorities for constructing a multi storied complex having an area of 423919.16 sq.meters. Since the land was described as W.A.No.1416/2014 2 'nilam' in the revenue records, petitioners' predecessor-in- interest had submitted an application before the Revenue Divisional Officer (RDO) for conversion of the land invoking Clause 6 of the Kerala Land Utilisation Order, 1967 (hereinafter referred to as 'KLU order'). When no orders were passed by the RDO, 2nd petitioner approached this Court by filing W.P.C.No.22821/2008 seeking for appropriate directions for disposal of their application. This Court directed the RDO to pass orders on the application in accordance with the provisions of the Act and if it is not applicable, under the KLU Order. It was observed that the enquiry would require verification as to whether the lands are paddy land or wet land. Similar order was passed in another writ petition filed by the 3rd petitioner as W.P.C.No.22925/2008.

4. The RDO, after conducting an enquiry, passed two separate orders dated 02/02/2009 [Ext.P7(a) and P7(b)] observing that the lands involved do not come under the W.A.No.1416/2014 3 provisions of the Act as it is not a paddy land and no paddy cultivation is possible. Accordingly, the matter was considered under Clause 6(2) of the KLU order and sanction was accorded for conversion of the land having an extent of 1186.964 cents and 380.332 cents in various survey numbers of Kizhakkambalam village. Certain groups claiming to be a Karshaka Sangham in the locality challenged the aforesaid order before the Land Revenue

Commissioner which resulted in Ext.P8 order dated 19/10/2009 by which the appeal was allowed and the order passed by the RDO was set aside. It is inter alia found that the Agricultural Officer, after site inspection, has reported that the land was suitable for paddy cultivation. Further, it was reported that a Padasekhara Samithi had existed in the area till 2006 June and production incentive was given to the farmers till 2003.

5. Ext.P8 order came to be challenged by the 2nd petitioner by filing W.P.C No.33164/2009 and by judgment W.A.No.1416/2014 4 dated 01/03/2010, the learned Single Judge of this Court directed the matter to be reconsidered by the Land Revenue Commissioner after notice to the aggrieved parties. The matter was again heard and by order dated 19/07/2010 the Land Revenue Commissioner allowed the appeal finding that the land comes under the definition of 'paddy land' as defined under the Act. Petitioners preferred a revision which ultimately resulted in Ext.P17 order dated 29/01/2011. Same came to be challenged by the petitioners by filing W.P.C.No.6121/2011 by which this Court set aside Ext.P17 and directed the revision to be considered afresh after hearing the affected parties. This direction resulted in the order dated 17/04/2013 produced as Ext.P21 wherein the Government concurred with the view expressed by the Land Revenue Commissioner that the land is paddy land and is included in the data bank prepared by the Local Level Monitoring Committee (LLMC) under the provisions of the Act. W.A.No.1416/2014 5 6. Counter affidavit and reply affidavit has been filed in these matters and after a detailed consideration of the entire facts and circumstances of the case, the learned Single Judge refused to interfere with the orders passed and directed the petitioners to approach the LLMC with an application to reconsider the inclusion of the property in the draft data bank prepared by LLMC.

7. Impugning the aforesaid judgment, Sri.P.Ravindran the learned senior counsel appearing for the appellants placed much reliance on Exts.P7(a) and P7(b) under which the Revenue Divisional Officer, after conducting an enquiry on the basis of the directions of this Court, formed an opinion that the property is not paddy land as defined under the Act. Hence, it is argued that there was no reason for the learned Single Judge to have relegated the petitioners to the LLMC, whereas the

lands had been converted long prior to the Act coming into force and therefore it requires only permission from the RDO who is the authority under the KLU W.A.No.1416/2014 6 order, to effect conversion as paddy cultivation was being done in the land several years back and prior to the Act coming into force. Further, it is argued that the entire area in the locality had been converted long back and therefore there is no reason to prevent the appellants from proceeding with their building project. The land in question is not connected with any other paddy field and no cultivation was being done for the last several years.

8. On the other hand, Sri.P.K.Soyuz, the learned Government Pleader appearing on behalf of the Government authorities and Sri.M.M.Monayi, learned counsel appearing on behalf of the private respondents, supported the view taken by the Government and also the judgment of the learned Single Judge. It is argued that the RDO had no jurisdiction under the Act to form an independent opinion that the land was not a paddy land as defined under the Act. His jurisdiction is limited as far as the provisions of the Act is concerned. Though there was a direction by the learned W.A.No.1416/2014 7 Single Judge while disposing of W.P.C.Nos.22821/2008 and 22925/2008 directing the RDO to consider whether the land is a paddy land under the provisions of the Act, the RDO ought to have obtained a report from the LLMC or should have waited till a report from LLMC was available. He has no jurisdiction to arrive at a conclusion whether the land involved is a paddy land or not after the Act had come into force. Only if the Act is not applicable, then the question of RDO exercising jurisdiction under the KLU Order arises. That apart, it is argued that when the LLMC had already included these lands in the draft data bank prepared by them, it apparently means that it is a land suitable for paddy cultivation and therefore no permission can be granted for constructing any building. Since the petitioners have a case that the land is not suitable for paddy cultivation, they have to take up the matter before the LLMC and only if necessary corrections are made in the data bank particulars that the appellants can proceed with the construction of the building. W.A.No.1416/2014 8

9. Having regard to these factual situation, it is now rather clear that these properties are included in the draft data bank prepared by LLMC invoking Section 5 of the Act, and it has to attain finality. Therefore, the matter is still at a draft stage and all persons interested has the option to object to the inclusion of their

properties in the data bank. Paddy land is defined u/s 2(xii) as under: "2(xii) "paddy land" means 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." 10. Section 3 prohibits conversion or reclamation of paddy land. Section 3 indicates that on and from the date of commencement of the Act, the owner or the occupier or any person in custody of any paddy land shall not undertake any activity for conversion or reclamation of the paddy land except in accordance with the provisions of the Act. Section 5(1) deals with constitution of LLMC. Their power is W.A.No.1416/2014 9 specifically dealt with under Sub Section (3) of Section 5 and one of the functions specified under Sub Section (4) of Section 5 is to prepare the data bank with the details of the cultivable paddy land and wet land within their jurisdiction and get it notified by the concerned Panchayath/ Municipality/Corporation in the manner prescribed and to exhibit the same for information of the public. Apparently, when this property is included in the draft data bank prepared by the LLMC, it has to be assumed that the property is paddy land which cannot be converted or reclaimed other than in accordance with the provisions of the Act. When the land has been included in the draft data bank, there is no relevance to the report prepared by the RDO. Of course, the RDO has powers under the Act which is clearly specified, which do not include the power to form an opinion as to whether the land in question is paddy land or not. Therefore, his opinion in Ext.P7(a) and P7(b) will have no relevance, as matters stand now, since the property W.A.No.1416/2014 10 have already been included in the draft data bank.

11. Of course, the LLMC has to finalise the draft data bank for which the procedure as contemplated under Section 5(4)(i) of the Act has to be followed. Rule 4 of the Kerala Conservation of Paddy Land and Wet Land Rules, 2008 (hereinafter referred to as the Rules) prescribes the procedure for preparation of data bank. It indicates that the particulars has to be first furnished by the Village Officer to the Agricultural Officer on the basis of revenue records. Based on such particulars, the Agricultural Officer has to inspect the said area and verify whether the land can be utilised for paddy cultivation. Similarly, in respect of wet land also, Village Officer, on the basis of revenue records, has to inspect the site and on the

basis of such materials available on inspection, the Agricultural Officer and the Village Officer have to prepare a draft data bank for consideration by the LLMC. The LLMC has to verify the draft data bank and, if necessary, to make appropriate changes W.A.No.1416/2014 11 based on the particulars that might be obtained from the National Remote Sensing Agency or such other authorities as prescribed. Rules also clearly provides that if any expert opinion is required for preparation of data bank, the same can be obtained by the competent authority. Therefore, it is clear that until the data bank is finalised in accordance with the provisions of the Act, the draft data bank has to be taken into consideration for all practical purposes. Until the data bank is finalised and published in terms of Section 5(4)(i), the same has to be relied upon by the authorities concerned. The preparation of draft data bank enables the land holders to approach the LLMC and seek for modification of the inclusion of their property by producing necessary materials to prove that the land is not a cultivable paddy land or that it is not a wet land. But, as far as the other statutory authorities are concerned, especially in regard to the grant of building permits, the local authority will have to rely upon such draft data bank until it is finalised or modified in W.A.No.1416/2014 12 accordance with the procedure prescribed.

12. In view of the aforesaid finding, we do not think that the learned Single Judge had committed any error in directing the petitioners to approach LLMC for suitable modification of the draft data bank entries. In the result, there being no grounds to interfere with the judgment of the learned Single Judge, the writ appeal is dismissed, however, granting the appellants further two weeks time to submit necessary application before the LLMC. (sd/-) (ASHOK BHUSHAN, ACTING CHIEF JUSTICE) (sd/-) (A.M.SHAFFIQUE, JUDGE) jsr W.A.No.1416/2014 13 W.A.No.1416/2014 14 W.A.No.1416/2014 15 W.A.Nos.1416 of 2014 The writ petitioners are the appellants who challenge the judgment dated... 1279/201... The writ petition was filed challenging Ext.P10 and P21 and for a declaration that petitioner's property will not come under the purview of Kerala Conservation of Paddy Land and Wet Land ,Act 2008 (hereinafter referred to as 'the Act'). The facts involved in the writ petition would disclose that the petitioners together acquired certain item of land in Kizhakkambalam village. They obtained building permit and other permissions from various authorities for constructing a multi

storied complex having an area 423991.16 sq.meters. Since the land was described as 'nilam' in the revenue records petitioners' predecessor-in-interest had submitted W.A.No.1416/2014 16 an application before the Revenue Divisional Officer (RDO) for conversion of the land invoking Clause 6 of the Kerala Land Utilisation Order, 1967 (hereinafter referred to as KLU order). When no orders were passed by the RDO, 2nd petitioner approached this Court by filing W.P.C.No.22821/2008 seeking for appropriate directions for disposal of their application. This Court directed the RDO to pass orders on the application in accordance with the provisions of the Act and if it is not applicable under the KLU Order. It was observed that the enquiry would require verification whether the lands are paddy land or wet land. Similar order was passed in another wp filed by 3rd petitioner as W.P.C.No.22925/2008. The RDO, after conducting an enquiry passed two separate orders dated 2/2/2009 (Ext.P7(a) and (b)) observing that the lands involved do not come under the provisions of the Act as it is not a paddy land and no paddy cultivation is possible. Accordingly, the matter was W.A.No.1416/2014 17 considered under Clause 6(2) of the KLU order and sanction was accorded for conversion of the land having an extent of 1186.964 cents and 380.332 cents in various survey numbers of Kizhakkambalam village. Certain groups claiming to be a karshaka sangham in the locality challenged the aforesaid order before the Land Revenue Commissioner which resulted in Ext.P8 order dated 19/10/2009 by which the appeal was allowed and the order passed by the RDO was set aside. It is inter alia found that the agricultural officer, after site inspection, has reported that the land was suitable for paddy cultivation. Further it was reported that a padasekhara Samithi had existed in the area till 2006 June and production incentive was given to the farmers till 2003. Ext.P8 order came to be challenged by the 2nd petitioner by filing WPC No.33164/2009 and by judgment dated 1/3/2010 , the Isj of this Court directed the matter to be reconsidered by the Land Revenue Commissioner after W.A.No.1416/2014 18 notice to the aggrieved parties. Matter was again heard and by order dated 19/7/2010 the LRC allowed the appeal finding that the land comes under the definition of 'paddy land' as defined under the Act. Petitioners preferred a revision which ultimately resulted in Ext.P17 order dated 29/1/2011. Same came to be challenged by the petitioners by filing W.P.C.No.6121/2011 by which this Court set

aside Ext.P17 and directed the revision to be considered afresh after hearing the affected parties. This direction resulted in the order dated 17/4/2013 produced as Ext.P20 wherein the Government concurred the view expressed by the LRC would found that the land is paddy land and is included in the data bank prepared by the Local Level Monitoring Committee (LLMC) under the provisions of the Act. Counter affidavit and reply affidavit has been filed in these matters and after a detailed consideration of the entire facts and circumstances of the case, the Isj refused to interfere with the orders passed and directed the petitioners W.A.No.1416/2014 19 to approach the LLMC with an application to reconsider the inclusion of the property in the draft data bank prepared by LLMC. Impugning the aforesaid judgment, the learned senior counsel Sri.P.Ravindarn appearing for the appellant placed much reliance on Exts.P7(a) and (b) under which the RDO after conducting an enquiry on the basis of the directions of this Court formed an opinion that the property is not paddy land as defined under the Act. Hence it is argued that there was no reason for the Isj to have relegated the petitioners to the LLMC, whereas the lands have been converted long prior to the Act coming into force and therefore it requires only permission from the RDO who is the authority under the KLU order to effect conversion as paddy cultivation was being done in the land several years back and prior to the Act coming into force. Further, it is argued that the entire area in the locality had been converted long back and therefore there is no reason to prevent the appellants from proceeding W.A.No.1416/2014 20 with their building project. The land in question is not connected with any other paddy field and no cultivation was being done for the last several years. On the other hand, Soyuz (GP) the lgp appearing on behalf of the Government authorities and the learned counsel Sri.M.M.Monayi appearing on behalf of the private respondents, supported the view taken by the Government and also the judgment of the Isj. It is argued that the RDO had no jurisdiction under the Act to form an independent opinion that the land was not a paddy land as defined under the Act. His jurisdiction is limited as far as provisions of the Act is concerned. Though there was a direction by the Isj while disposing of W.P.C.Nos 22821 /2008 and 22925/2008 directing the RDO to consider whether the land is a paddy land under the provisions of the Act, the RDO ought to have obtained a report from the LLMC or should have waited till a report from LLMC was available.

He has no jurisdiction to arrive at a conclusion whether the land involved is a paddy W.A.No.1416/2014 21 land or not after the Act had come into force. Only if the Act is not applicable then the question of RDO exercising jurisdiction under KLU order arises. That apart, it is argued that when the LLMC had already included these lands in the draft data bank prepared by them, it apparently means that it is a land suitable for paddy cultivation and therefore no permission can be granted for constructing any building. Since the petitioners have a case that the land is not suitable for paddy cultivation, they have to take up the matter before the LLMC and only if necessary corrections are made in the data bank particulars that the appellants can proceed with the construction of the building. Having regard to these factual situation, it is now rather clear that these properties are included in the draft data bank prepared by LLMC invoking Section 5 of the Act, and it has to attain finality. Therefore the matter is still at a draft stage and all persons interested has the option to object to such inclusion of their properties in the data bank. W.A.No.1416/2014 22 Paddy land is defined u/s 2(xii) as under: xxxx Section 3 prohibits conversion or reclamation of paddy land. Section 3 indicates that on and from the date of commencement of the Act, th owner or the occupier of any person in custody of any paddy land shall not undertake any activity for conversion or reclamation of the paddy land except in accordance with the provisions of the Act. By Section 5, a LLMC has been formed. Their power is specifically dealt with under Sub Section (3) of Section 5 and one of the functions specified under Sub Section (4) of Section 5 is to prepare the data bank with the details of the cultivable paddy land and wet land within their jurisdiction and get it notified by the concerned Panchayath/Municipality/Corporation in the manner prescribed and to exhibit the same for information of the public. Apparently, when this property is included in the draft data bank prepared by the LLMC, it has to be assumed W.A.No.1416/2014 23 that the property is paddy land which cannot be converted or reclaimed other than in accordance with the provisions of the Act. When the land has been included in the draft data bank, there is no relevance to the report prepared by the RDO. Of course, the RDO has powers under the Act which is clearly specified, which does not include the power to form an opinion as to whether the land in question is paddy land or not. Therefore, his opinion in Ext.P7(a) and P7(b) will have no relevance as matters stand now, since the

property have already been included in the draft data bank. In view of the aforesaid finding, we do not think that the Isj had committed any error in directing the petitioners to approach LLMC for suitable modifications of the draft data bank entries. In the result, there being no grounds to interfere with the judgment of the Isj, the writ appeal is dismissed, however, granting the appellants further two weeks time to submit necessary application before the LLMC.

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