
(2022) 03 KL CK 0133
In the High Court Of Kerala
Case No : Writ Petition (C). 29605 Of 2021

Abdul Salam

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 18-03-2022

Acts Referred:

Constitution of India, 1950 &mdash Article 226

Kerala Conservation of Paddy Land Wetland Act, 2008 — Section 27A(11)

Citation : (2022) 03 KL CK 0133

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : Rajit, B.S.Syamanthak, Babu S. Nair

Final Decision : Dismissed

Judgement

T.R. Ravi, J.

1. The 9th respondent owns 0.1640 hectares of land in Re.Sy.No.228/1 of Cheekode Village. According to the petitioner, the property is situated at a level 2 Metres below the Edavannappara-Areacode State Highway on the eastern side. The petitioner submits that the properties adjoining the 9th respondent's properties are paddy fields with cultivation. According to the petitioner, the 9th respondent reclaimed a major portion of his property by planting arecanut and banana plants. It is submitted that even though the area was initially included in the data bank, it was later removed, which according to the petitioner is owing to the influence of the 9th and 10th respondents over the concerned authorities. The 8th respondent issued a letter of intent to respondents 9 and 10 for starting a petroleum outlet in the above-mentioned property. An application was filed before the 2nd respondent for obtaining NOC under Rule 144 of the Petroleum Rules, 2002. The 2nd respondent forwarded the application to the 3rd respondent to conduct an enquiry and report. The 3rd respondent is stated to have directed the 6th respondent to conduct an enquiry and submit a report on the title, possession and ownership of the property and other details. The 6th

respondent was also required to enquire whether the land is wet land and whether permission to convert the said land had been obtained. Ext.P1 is the letter sent by the 3rd respondent to the 6th respondent on 31.5.2021. The petitioners submit that they came to know about the proposal to start a petroleum outlet only when the 6th respondent along with the 5th respondent came to the property to enquire about the feasibility of the land for the said purpose. By Ext.P2 communication dated 23.7.2021, the 6th respondent reported to the 3rd respondent that the property of the 9th respondent is situated at a depth of 1 to 2 Metres from the road and if the property is reclaimed by filling it up with mud, water sources for agricultural activities of the surrounding areas will be drastically affected. However, Ext.P2 refers to an order dated 6.6.2019 passed by the 4th respondent, whereby the 4th respondent had permitted change of nature of the land. The order referred to is dated 11.6.2019 and not 6.6.2019 and the same has been produced as Ext.P3 in the writ petition. By Ext.P3, the 9th respondent has been granted permission to fill up the land subject to certain conditions. The petitioner has produced as Exts.P4 and P5 complaints submitted on 6.12.2021 and 12.11.2021 stating that the 9th respondent is filling up the land and thereby affecting the agricultural activities in the nearby lands and several other aspects. The petitioners have also submitted complaints before the LLMC and the Agricultural Officer against the changing of nature of the land. The writ petition was filed on 20.12.2021 praying for a direction to the 4th respondent to consider Exts.P4 and P5 applications filed under Section 27A (11) of the Kerala Conservation of Paddy Land Wetland Act, 2008 (2008 Act for short) and to pass orders on the same after hearing the petitioners and respondents 8 to 10 and for a further direction to the 3rd respondent not to issue NOC in respect of the application submitted by respondents 8 to 10, till a decision is taken by the 4th respondent on Exts.P4 and P5. At the time of admission, this Court had issued an order directing the 3rd respondent not to grant NOC in respect of the applications submitted by the respondents 8 to 10, if not already issued, without putting the petitioners on notice or hearing them. It was also directed that if NOC has already been issued further proceedings on the NOC shall be kept in abeyance for a further period of four weeks.

2. The respondents 9 and 10 have filed detailed counter affidavits. It is pointed out that the entire area has been converted long ago and there are several coconut and arecanut palms in the property. Photographs of the properties have been produced to prove the nature of the land. Respondents 9 to 10 have pointed out that they have already been issued with (i) consent to establish by the Pollution Control Board on 22.8.2021, (ii) permission by the District Town Planner on 18.9.2021, (iii) building permit by the Cheekode Grama Panchayat on 20.10.2021, (iv) No Objection Certificate by the District Medical Officer on 27.7.2021, (v) No Objection Certificate by the District Supply Officer, Malappuram on 3.8.2021, and (vi) No Objection Certificate by the Regional Fire Officer, Palakkad on 17.6.2021. All the above consents have been produced along

with the counter affidavit. It is stated that as directed in Ext.P3, the sub division of the properties has been completed and the description also changed by the Tahsildar, Kondotty by order dated 1.1.2021. It is submitted that on the basis of the above documents, the 3rd respondent has already issued an NOC on 20.12.2021, on which date, this writ petition was admitted and the said order has been produced as Ext.R9(b).

3. Heard Sri Rajit on behalf of the petitioner, Sri Babu S Nair on behalf of the 9th and 10th respondents and the Government Pleader on behalf of respondents 1 to 7.

4. Ext.R9(b) is an order issued by the designated officer under Rule 144 of the Petroleum Rules, 2002. It can be seen from the order that it has been issued after consideration of the relevant aspects and after hearing the petitioners. The petitioners have approached this Court after taking part in the hearing, while awaiting orders from the 3rd respondent. The petitioners have not stated in the writ petition about the hearing but have only stated that the 3rd respondent is proceeding to pass orders granting NOC to respondents 8 to 10 and that the representations filed by the petitioners and other nearby residents are pending before the 3rd respondent. Further, Ext.R9(b) has not been challenged by the petitioners. On a reading of Ext.R9(b), I am convinced that the authority has considered all the relevant aspects for the purpose of granting of NOC.

5. Regarding the prayer in the writ petition for consideration of Exts.P4 and P5 applications by the 4th respondent under Section 27A(11) of the 2008 Act, it has to be noted that permission had been granted as early as on 6.6.2019 for filling up the land subject to certain conditions. Based on Ext.P3, Ext.P2 has been issued on 23.7.2021, which again confirms the fact about the permission granted and reiterates the conditions on which the permission was granted. As regards Exts.P4 and P5, the power available under Section 27A(11) is for the Revenue Divisional Officer to either suo motu or on an application of any aggrieved party, cancel any order issued under sub-section (2), if the conditions specified in the order issued therein are not complied by the applicant either fully or partially. As such, what is relevant is that the person who applied should be an aggrieved party and cancellation was warranted only if conditions specified in the order issued are not complied with by the applicant either fully or partially. It is the case of the 9th respondent that all the conditions which have been laid down in Ext.P3 have been complied with and hence the very prayer is misconceived. The petitioners have a further case that the writ petition has been filed at the instance of one Musthafa, who also was an aspirant for a petroleum retail outlet of the Indian Oil Corporation which had been allotted in the Scheduled Caste quota to one Dileep Kumar. It is stated that the allottee had offered the property belonging to the said Musthafa, but since it was a paddy land included in the data bank, the unit could not be started in the property. According to the petitioners, that is the reason why the allotment to the 9th respondent is brought to challenge. It is further submitted that the petitioners cannot be treated as

persons aggrieved by the filling up of the land belonging to the 9th respondent. Neither of the petitioners have land in the neighbourhood which is being cultivated nor are their agricultural activities in the neighbouring properties. Exts.P4 and P5 do not specifically speak of any violation regarding the conditions imposed in Ext.P3.

6. After hearing the counsel for the petitioners and the respondents and considering the entire materials on record, I am convinced that there is no necessity to interfere with the findings recorded in Ext.R9(b) order issued by the 3rd respondent. The petitioners have not made out a case warranting any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. I find that none of the rights, either civil or fundamental, are affected in any manner and the statutory authorities have issued orders in accordance with the provisions of the Statute. A reading of Exts.P4 and P5 shows that the grievance projected therein are not grounds available under Section 27A(11) of the 2008 Act and do not relate to any violation of the conditions prescribed while granting permission to change the nature of land. In the above circumstances, this Court will not be justified in directing the consideration of Exts.P4 and P5 as applications under Section 27A(11).

The writ petition fails and is dismissed.