
(2021) 10 KL CK 0065

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13815 Of 2019

Ambady Tourist Enterprises P Ltd

APPELLANT

Vs

Kadungalloor Grama Panchayath

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 11

Citation : (2021) 10 KL CK 0065

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Mathew B. Kurian, K.T.Thomas, Nikhil Berny, Dinesh Mathew J. Murikkan, Syamanthak B.S.

Judgement

N. Nagaresh, J

1. The petitioner, a Private Limited Company, has filed this writ petition seeking to declare that by virtue of Ext.P5 order passed by the Revenue Divisional Officer, Fort Kochi and Ext.P9 judgment, the 2nd respondent is bound to grant Development Permit sought by the petitioner as per Ext.P7 application. The petitioner-Company also seeks to set aside Ext.P10 order passed by the 2nd respondent and seeks consequential directions.

2. The petitioner owns 96.84 Ares of land in Survey Nos.421/3-3, 421/3-2 and 421/5 of Alangad Village in Paravur Taluk and another 9.44 Ares of land Survey Nos.421/1-1/2, 421/3-1/4 and 421/3-1/5 and 36.32 Ares in Survey No.421/5 in the same Village. These properties lie contiguously and have a total area of 142.60 Ares. The properties were converted lands when the petitioner purchased the same, but were described as 'Nilam' in revenue records. The Kadungallur Grama Panchayat granted NOC in 2006 to construct an eco-friendly township "Green Meadows" in a portion of the above property.

3. The petitioner obtained Building Permit to construct 53 Villas in the property. The completed buildings were granted Occupancy Certificate. While so, a Stop

Memo was issued restraining the petitioner from proceeding with further construction. The petitioner and other owners approached the Revenue Divisional Officer, who as per Ext.P5 order granted permission to use 14.77.381 Acres in Survey Nos.427/3, 4, 5, 450/1,2, 3, 4, 421/1, 3, 5, 6, 424/1 and 422/1 for construction and development. The petitioner completed the construction and this Court in WP(C) No.18092/2010 directed the Panchayat to assign building numbers to the completed buildings and to consider the application for Occupancy Certificate to the remaining 34 buildings. The Panchayat accordingly gave numbers and Occupancy Certificates to the buildings constructed.

4. The petitioner wanted to develop the land further and submitted Ext.P7 application for Development Permit. The 2nd respondent declined to entertain the application as per Ext.P8 on the ground that the land is paddy land in revenue records and necessary application has to be made to the District Collector. In Ext.P9 judgment in WP(C) No.579/2017, this Court held that the Secretary is bound to consider the application in the light of Ext.P5 order passed under the Kerala Land Utilisation Order. But, the 2nd respondent has passed Ext.P10 order rejecting the application for Development Permit on the ground that Ext.P5 order has prohibited further development of the land.

5. The learned counsel for the petitioner argued that permission under Clause 6 of the Kerala Land Utilisation Order, 1967 has been obtained for doing construction activities. The Panchayat is not granting Development Permit insisting that the petitioner should obtain permission under the Kerala Conservation of Paddy Land and Wetland Act, 2008.

The stand of the respondents that no permission can be granted as the land is still described as paddy land in the revenue records, is unsustainable in view of the orders obtained under KLU as per Ext.P5.

6. Respondents 1 and 2 contested the writ petition filing counter affidavit. Respondents 1 and 2 stated that the petitioner had submitted Ext.P7 application for development of land in Survey Nos.421/3-3, 421/3-2, 421/5, 421/1-1-2, 421/3-1-4 and 421/3-1-5 of Alangad Village, Paravur Taluk, Ernakulam District which is part of 16.30.250 Acres covered by Ext.P5 order. In the Ext.P5 order, the Revenue Divisional Officer had granted permission to do construction and development activities only in 14.77.381 Acres comprised in Survey Nos.427/3, 4, 5, 450/1, 2, 3, 4, 421/1, 3, 5, 6, 424/1 and 422/1 of Alangad Village and land which is lying as wetland had to be maintained as such. There was a total prohibition on reclamation of wetland under Section 11 of Kerala Conservation of Paddy Land and Wetland Act, 2008. From Ext.P5 order, it is evident that 3.52360 Acres of land in Survey No.421/1, 3, 5 of Alangad Village which forms part of 16.30.250 Acres comprised in Survey Nos.423/6, 1, 2, 3, 424/1, 2, 3, 4, Part 5, 450/2, 450/3, 4, 449/8, 425/2, 425/7 and 421/1, 3, 5 is not permitted to be developed and it is specifically directed to be kept as such and there is a total prohibition on reclamation. In such circumstances, Ext.P10 order passed by the 1st respondent-Panchayat is legally valid and sustainable in law, contended

respondents 1 and 2.

7. I have heard the learned counsel for the petitioner, learned Counsel for the respondents 1 and 2 and the learned Government Pleader for the additional 3rd respondent.

8. The petitioner owns 142.60 Ares of land in Survey Nos.421/3-3, 421/3-2, 421/5, 421/1-1/2, 421/3-1/4, 421/3-1/5 and 421/5 in the Alangad Village of Paravur Taluk. The 1st respondent-Panchayat granted NOC and Building Permit to the petitioner to construct 'Green Meadows Township' in a portion of the property. The completed buildings have been given Occupancy Certificates and Building Numbers also.

9. Ext.P5 order of the RDO would show that the RDO has already granted permission for developing a Housing Project in land to an extent of 14.77.381 Acres in Survey Nos.427/3, 4, 5, 450/1, 2, 3, 4, 421/1, 3, 5, 6, 424/1 and 422/1 on a finding that reclamation is effected in the land and residential buildings constructed before the commencement of the Kerala Conservation of Paddy Land and Wetland Act, 2008. Ext.P5 also stipulated that the land lying as wetland should be maintained as such.

10. The petitioner wanted to further develop the said land and submitted application for Development Permit. But, the said application has been dismissed as per Ext.P10. Ext.P10 is based on an allegation that as per RDO's order dated 01.03.2011 (Ext.P5), it is noted that there has been completed construction of Survey Nos.427/4, 3, 5, 450/1, 2, 3, 4, 421/1, 3, 5, 6, 424/1 and 422/1 and that further constructions should not be permitted. On that ground, the 2nd respondent ordered that in Survey Nos.5423/6, 1, 2, 3, 424/1, 2, 3, 4, 450/2, 450/3, 4, 449/8, 425/2, 425/7 and 421/1, 3, 5, no Development Permit is permissible.

11. On a perusal of Ext.5 order dated 01.03.2011 of the RDO, this Court finds that the conclusions made in Ext.P10 are factually incorrect. The operative portion of Ext.P5 reads as follows:

"In view of what is discussed above the land extending to 14.77.381 Acres comprised in Survey Nos.427/3, 4, 5, 450/1, 2, 3, 4, 421/1, 3, 5, 6, 424/1, 422/1 in Alangad Village in Parur Taluk wherein seen reclamation effected and the residential buildings constructed before the commencement of the Paddy Land and Wetland Act, 2008 are permitted to be carried out further constructional and developmental activities subject to the provisions of KMBR, 1999. The land lies as wetland shall be maintained as such and there shall be a total prohibition on reclamation of such wetland as per Section 11 of the Paddy Land and Wetland Act, 2008 except the removal of slurry and mud from such wetland to maintain the ecological condition."

The prohibition in EXt.P5 is only on reclamation of land remaining as wetland alone. There is no direction in Ext.P5 that no development is permissible in

Survey Nos.423/6-1-2-3, 424/1-2-3-4, 450/2, 450/3-4, 449/8, 425/2, 425/7 and 421/1-3-5. The only direction in Ext.P5 is that no wetland should be converted.

12. It is evident from Ext.P5 that the RDO has already granted permission to carry out construction and development activities in 14.77.381 Acres. The application submitted was for using 16.30.250 Acres of Nilam Nikarthu Purayidam. The Village Officer reported that 15.55.381 Acres of land lying on eastern side of the natural Thodu is Nilam Nikarthu Purayidam. Still, Ext.P5 permission was granted to carry out development activities only in 14.77.381 Acres. The only restriction in Ext.P5 is that in the larger extent of land held by the petitioner, no development activities is permissible in land lying as wetland. Relying on Ext.P3, the petitioner would contend that only the land in Survey Nos.423/6, 1, 2, 3 and 449/8 is lying as wetland. Ext.P10 order is obviously based on an erroneous assumption that Ext.P5 has prohibited development activities in Survey Nos.423/6-1-2-3, 424/1-2-3-4, 450/2, 450/3-4, 449/8, 425/7 and 421/1-3-5. Furthermore, these are not the items of survey numbers the development for which the petitioner has submitted Ext.P7 application.

In such circumstances, this Court finds that Ext.P10 order of the 2nd respondent is unsustainable. Ext.P10 is therefore set aside. There will be a consequential direction to respondents 1 and 2 to reconsider Ext.P7 application of the petitioner for Development Permit and issue Development Permit, if the petitioner is otherwise eligible for the same.