(2023) 08 KL CK 0090

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16781 Of 2023

Falcon Infrastructures Limited — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision : 09-08-2023

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 81, 81(3)
Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 2(xii), 5(4)(i), 27A

Citation : (2023) 08 KL CK 0090

Hon'ble Judges : N. Nagaresh, J

Advocate : V.M.Krishnakumar, P.S.Sidharthan, M.A.Ahammad Saheer, C.E.Unnikrishnan, Muhammed Yasil, E.A.Haris, Suresh Joseph

Judgement

N. Nagaresh, J

1. The petitioner, an incorporated Company, is before this Court aggrieved by Ext.P26 notice issued by the Village Officer, Eloor requiring the petitioner to stop filling up of land in their possession.

2. The petitioner states that in anticipation of the establishment of International Container Transshipment Terminal at Vallarpadam, Kochi, the petitioner-Company started a Container Freight Station and Logistic Service Centre at Eloor, which is first of its kind in India. The Company was established in the year 2000, logistic services were started in the year 2003 and the Container Freight Station was established in the year 2007.

3. The Company has 24.5 Acres of land in Old Survey Nos.121, 122 and 123 (Resurvey No.1, Block No.93) of Eloor Village, abutting the 'Vallarpadam Container Terminal Road'. The petitioner has established various services and facilities like Cargo Moving Facility, Supply Chain Management, Container Freight Station, Fuel Station, Weigh Bridge, Dormitories for Container Lorry Drivers and Staff, Bank, Toilets, Godowns, Parking Spaces, Truck Maintenance Workshop, Customs Bonded CFS area, etc. in the land.

4. The petitioner-Company possessed 24.5 Acres of land. As per the Kerala Land Reforms Act, 1963, the ceiling on land holdings is 15 Acres. Under Section 81(3) of the Kerala Land Reforms Act, the Government can exempt any holding from the provisions of the ceiling area, for public purpose. Since the petitioner is providing a logistic park facilitating smooth traffic of Containers, which was a requirement of the International Container Transshipment Terminal, the Government of Kerala in public interest exempted 9.7295 Hectares of land in Re-Survey No.1 of Block No.93 as per Exts.P16 and P17.

5. In Ext.P20 report, the Village Officer, Eloor stated that the land specified therein in Survey Nos.121, 122 and 123 was not cultivated for long duration, that there is a Puramboke Thodu on the eastern side and that filling up of land is not likely to cause waterlogging in the area. By Exts.P21 to P23 orders, the Additional Secretary to Government and the Revenue Divisional Officer accorded sanction under the Kerala Land Utilisation Order, 1967 to convert 5.33.727 Acres, 5.70.551 Acres and 11.04.278 Acres respectively, to use for non-agricultural purposes.

6. In the total extent of land, about 1.84 Acres of land in Survey No.121/5, 6, 7, 8, 10 and 11 remained unfit for vehicular parking in the rainy season. In a meeting convened by the District Collector, the petitioner was required to provide facilities for parking Tanker Lorries of Indian Oil Corporation Ltd. in that area in order to avoid parking/waiting of Tanker Lorries on the side of Container Road awaiting their turn for fueling. When the petitioner started levelling of the said 1.84 Acres of land, the Village Officer issued Ext.P26 notice directing the petitioner to stop levelling, as the land is described as 'Nilam' in Revenue records.

7. The Senior Counsel assisted by the counsel for the petitioner argued that Ext.P26 has been issued ignoring the fact that the land has been granted exemption under the Kerala Land Reforms Act for the specific purpose of starting a Container Freight Yard. Proceedings under the Kerala Land Utilisation Order, 1967 were also issued permitting the petitioner to use the land for non-agricultural purposes. The KLU orders were prior to the promulgation of the Kerala Conservation of Paddy Land and Wetland Act, 2008 and the land was converted prior to the year 2008.

8. The petitioner is not intending to make any construction in the land. The petitioner is only levelling the land, which stands converted before 2008 when the Act, 2008 came into force. The Village Officer has no authority to issue any Stop Memo. The petitioner is utilising the land for which the Company has been given exemption under the Kerala Land Reforms Act and permissions under the Kerala Land Utilisation Order. Ext.P26 is therefore liable to be quashed, urged the Senior Counsel.

9. The 3rd respondent resisted the writ petition filing counter affidavit and Additional Counter Affidavit. The 3rd respondent stated that the exemption given to 9.7295 Hectares of land under Section 81(3) of the Kerala Land Reforms Act,

1963 does not give a right to change the nature of the land otherwise than in accordance with law. Apart from Exts.P21 to P23 documents by which the petitioner was permitted to convert 15.34.355 Acres, no other orders have been obtained by the petitioner to convert the balance extent of land. The filling up of the remaining land is therefore highly illegal.

10. The land in question is described as ‘Nilam’ in Revenue records. Non-inclusion of the land in Data Bank will not give the petitioner a right to convert the land, in view of Section 27A of the Kerala Conservation of Paddy Land and Wetland Act, 2008. Utilisation of an un-notified land for any other purpose would require permission of the concerned authority. Whether attempt to reclaim a portion of the land is within the legally converted portion or not, can be ascertained only after conducting survey of the entire area.

11. In the additional counter affidavit filed, the 3rd respondent stated that after filing the counter affidavit in the matter, the competent authority, namely the Revenue Divisional Officer, has issued Ext.R3(e) prohibitory order dated 13.06.2023 and the said order has been sent to the mobile numbers of the petitioner, since the petitioner’s wife refused to accept Ext.R3(e) order.

12. I have heard the learned Senior Counsel assisted by the counsel for the petitioner and the learned Government Pleader representing the respondents.

13. The petitioner-Company runs a Logistic Service Centre in Eloor Village. The petitioner has established various services and facilities like Cargo Moving facility, Supply Chain Management, Container Freight Station, Fuel Station, Weigh Bridge, Dormitories for Container Lorry Drivers and Staff, Bank, Toilets, Godowns, Parking spaces, Truck Maintenance Workshop, Customs Bonded CFS Area, etc. It is beyond doubt that the industrial activity of the Company was intended to be integral to the infrastructural activities connected to the International Container Transshipment Terminal at Vallarpadam. The Company was started with the support of 200 Non Resident Indians.

14. The petitioner-Company possessed 24.5 Acres of land in Old Survey Nos.121, 122 and 123 of Eloor Village. It is pertinent to note that after re-survey, the land in the three old survey numbers was brought under new Survey No.1 of Block No.93. The petitioner can ordinarily hold only 15 Acres of land, in view of ceiling laws. Section 81 of the Kerala Land Reforms Act, 1963 provides exemption to the general rules of ceiling. Section 81(3) reads as follows:

“81 (3) The Government may, if they are satisfied that it is necessary to do so in the public interest-

(a) on account of any special use to which any land is put; or

(b) on account of any land being bona fide required for the purpose of conversion into plantation of for the extension or preservation of an existing plantation or for any commercial, industrial, educational or charitable purpose, by notification in the Gazette, exempt such land from the provisions of this Chapter, subject to such restrictions and conditions as they may deem fit to impose;

Provided that the land referred to in clause

(b) shall be used for the purpose for which it is intended within such time as the Government may specify in that behalf; and, where the land is not so used within the time specified, the exemption shall cease to be in force."

The provision is clear that for whomsoever the exemption is given or for whatsoever activity be the exemption is given, it should be given only if the Government is satisfied that public interest warrants such exemption.

15. On an application for exemption under Section 81(3) submitted by the petitioner for 24.04 Acres of land, the Government gave exemption to 9.7295 Hectares (24.04 Acres) as per Ext.P16 Government Order dated 14.06.2018. Ext.P16 Government Order would indicate that the Department of Agriculture as per order dated 15.05.2002 and the Revenue Divisional Officer as per orders dated 22.05.2002 and 08.05.2003, have granted permission to utilise the land for commercial purposes taking note of multifaceted service project, by converting the land.

16. The Secretary, Land Board also has reported that 24.04 Acres of land is being used for commercial establishments, dormitory services and for parking spaces, that 240 employees are working with PF/ESI benefits and 500 others were employed indirectly, that 12 Acres are designated as Custom Bonded area and is used for Transshipment of Containers, as Stocking Yards and for Parking. The Secretary has also reported that the land is not included in the Data Bank. The report of the Secretary, Land Board is dated 06.05.2017. It was taking note of all these aspects that the Government has granted exemption under the Kerala Land Reforms Act, 1963.

17. Ext.P18 Gazette Notification dated 12.03.2019 issued by the Government declares that the exemption is in public interest and mandates that the 9.7295 Hectares of exempted land can be used only for commercial or industrial purposes.

18. Ext.P20 report dated 15.05.2002 of the Village Officer would state that the land involved was not cultivated for long years and conversion of the land is not likely to result in waterlogging problems. By Exts.P21 to P23 orders issued during the years 2002 to 2003, the Revenue Divisional Officer granted permission under the Kerala Land Utilisation Order, 1967 to use 5.33.727, 11.04.278 and 4.30.177 Acres of land respectively for multiple service project. Exts.P21 to P23 would also indicate that the land is not under paddy cultivation for long, due to lack of proper irrigation and drainage facility and due to flow of industrial waste. It is also reiterated that the conversion will not result in waterlogging issues.

19. The petitioner-Company was carrying on with their business activities. Meanwhile, the State authorities found that many container lorries coming from distant places to the International Container Transshipment Terminal were being

parked on the sides of container road and at Irumbanam, causing serious threat to vehicular and pedestrian traffic.

20. The District Collector convened a meeting to discuss the issue, as evidenced by Ext.P25. Around 1.84 Acres of land of the petitioner can be utilised for parking container lorries. The Regional Transport Officer, Station House Officer and officials of Indian Oil Corporation Ltd. (whose fuel outlet is functioning in the petitioner's premises) visited the premises of the petitioner. At the instances of the District Administration, Police authorities and the IOCL, the petitioner agreed to make the 1.84 Acres of their land fit for container lorry parking.

21. When the petitioner started work to make the land suitable for the purpose, the Village Officer issued Ext.P26 Stop Memo directing the petitioner to stop the levelling of land. The reason stated in Ext.P26 is that the 24.5 Acres of land of the petitioner-Company is recorded as "Nilam" in Basic Tax Register. The allegation appears to be that the activity is in violation of the Conservation of Paddy Land and Wetland Act, 2008 and the rules made thereunder.

22. It cannot be disputed that the land is not cultivated with paddy for long years. The reports of Revenue Officers would show that the land is not fit for paddy cultivation and the land has, in fact, been converted before 2008. For the very same reason, the land is not included in the Data Bank of Paddy Land and Wetland prepared under Section 5(4)(i) of the Kerala Conservation of Paddy Land and Wetland Act, 2008.

23. The 1st respondent-State of Kerala, in fact, was of the opinion that the 9.7295 Hectares of land possessed by the petitioner- Company has to be utilised for industrial/commercial purpose as proposed by the petitioner, in public interest and it was for the said reason that exemption under Section 81(3) of the Kerala Land Reforms Act, 1963 was granted to the petitioner. The argument of the respondents is that exemption under the Kerala Land Utilisation Order has not been obtained for the entire extent of land and the question whether the disputed activity is within the land exempted under the Kerala Land Utilisation Order, can be ascertained only after conducting a survey of the entire land.

24. Grant of exemption under Section 81(3) of the Kerala Land Reforms Act, 1963 presupposes existence of public interest. Once the Government grants exemption to a property for a commercial or industrial purpose invoking Section 81(3) of the Kerala Land Reforms Act, 1963 knowing that the land is described as "Nilam" in Revenue records, ordinarily, the Government cannot later turn around and say that the activities permitted under the exemption order cannot be carried out.

25. In this case, the exemption under the Kerala Land Reforms Act, 1963 was granted as per Ext.P16 for the entire extent of land possessed by the petitioner-Company in the year 2018 by which time the Kerala Conservation of Paddy Land and Wetland Act, 2008 was enacted. Ext.P21 issued under the Kerala Land Utilisation Order, 1967 in the year 2002 would show that there was no paddy

cultivation in the land for long and that using the land for the designated purpose would not result in waterlogging issues. The land admittedly is not included in the Data Bank of Paddy Land and Wetland .

26. Is there any violation of the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 involved in the Matter ? The term "paddy land" is defined under Section 2(xii) of the Act, 2008 as follows.

" (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;"

27. Exts.P21 to P23 proceedings issued in the year 2002/2003, prior to the enactment of the Act, 2008, would show that there was no paddy cultivation in the land for long years and that is due to "lack of proper irrigation and drainage facilities and also due to flow of industrial waste from nearby industrial units".

28. In Ext.P22, the Principal Agricultural Officer has even found that "the property is found not suitable for paddy". True, Exts.P21 to P23 do not cover the entire extent of land possessed by the petitioner. But, it has to be noted that the entire land is lying contiguously. Even otherwise, the issue as to when a land which is not a cultivating paddy land is used for a purpose without actually altering its present nature, whether Section 27A will come into play, came up for consideration in Deepu D. v. District Collector, Kollam and others [2022 (4) KLT 583]. This Court held as follows:

"26. Now, if a particular unnotified land is a garden land (though it is described as paddy land / wetland in Revenue records) and the land owner desires to use the land as garden land in a more profitable way by levelling the land or by importing red earth / ordinary earth in the unnotified land, can one allege that the nature of the land is changed due to such activity and the land owner has violated Section 27A as he has not obtained permission of Revenue Divisional Officer? To take yet another situation, if the unnotified land is being used as a playground and the land owner is laying a sports turf in the land, can one allege that Section 27A is violated?

27. Such instances cannot be treated as violation of Section 27A for want of permission of Revenue Divisional Officer for the reason that Section 27A mandates permission of Revenue Divisional Officer only if the owner on an unnotified land desires to utilise such land for residential or commercial or for other purpose. The term 'other purpose' appearing in Section 27A can only mean any purpose other than the purpose for which the unnotified land is was being used as on 30.12.2017, with effect from which date Section 27A was inserted in the Act, 2008. Attribution of any other meaning to Section 27A or the term 'other purpose' would only create absolute clog on the user of the land, which is not contemplated by the Act, 2008 and which will not be in public interest."

29. In the case of the petitioner, the 24.5 Acres land was possessed by the petitioner since 2002-2003 and soon thereafter. The land is not cultivated with paddy for long. There are official reports that the land is not fit for paddy cultivation due to inadequate irrigation and drainage facilities and due to flow of industrial waste from nearby industrial units. The land is being used for services and facilities like Cargo Moving facility, Supply Chain Management, Container Freight Station, Fuel Station, Weigh Bridge, Dormitories for Container Lorry Drivers and Staff, Bank, Toilets, Godowns, Parking spaces, Truck Maintenance Workshop, Customs bonded CFS area, etc.

30. When the present nature of land usage is as stated above and since the work being carried out is only for facilitating parking of lorries, as long as the petitioner is going to use the land only for the purposes for which the land was used as on 30.12.2017, no permission of Revenue Divisional Officer under Section 27A is required. Ext.P26 therefore cannot stand the scrutiny of law. Ext.P26 is therefore set aside.

The writ petition is allowed as above.

