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**(2011) 02 KL CK 0140**  
**In the High Court Of Kerala**  
**Case No : Criminal M.C. No. 4915 of 2010**

Firose

APPELLANT

Vs

Revenue Divisional Officer and Another

RESPONDENT

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**Date of Decision :** 11-02-2011

**Acts Referred:**

Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 23, 5(4)(i)

**Citation :** (2011) 2 KLJ 130 : (2011) 1 KLT 868

**Hon'ble Judges :** Thomas P. Joseph, J

**Bench :** Single Bench

**Advocate :** P. Venugopal, for the Appellant; K.J. Mohammed Anzar (P.P), for the Respondent

**Final Decision :** Allowed

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## Judgement

Thomas P. Joseph, J.—Question raised for a decision in these proceedings at the instance of the accused is whether in the absence of the notification contemplated under Sec. 5(4)(i) of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (for short, "the Act") a person who converts paddy land/wet land could be prosecuted under Sec. 23 of the said Act? Petitioners own paddy lands within the local jurisdiction of jurisdiction of the Revenue Divisional Officer, Perinthalmanna. The said officer preferred complaints before learned Chief Judicial Magistrate, Manjeri alleging that petitioners in violation of the prohibition contained in Sec. 3 of the Act converted their paddy lands and hence are liable to be punished under Sec. 23 of the said Act. Annexure-B in these proceedings are copy of those complaints. Based on those complaints learned Chief Judicial Magistrate took cognizance of the said offence, filed C.C. Nos. 19 to 22 and 34 of 2010 and issued process to the petitioners. Petitioners have approached this Court to quash proceedings against them contending that at the time paddy lands were allegedly converted, no notification had been published as required under Sec. 5(4)(i) of the Act and hence whatever may be the power of the Government for reconversion of the land as provided under the Act, a

prosecution would not lie against petitioners. Learned counsel for petitioners have referred me to the relevant provisions of the Act and placed reliance on the decision of this Court *Kaipadath Property Development Company (P) Ltd v. State of Kerala*, 2011(1) KLT 526 where it is observed in paragraph 42 that the notification (under Sec. 5(4)(i) of the Act) will be a condition precedent for the applicability of certain provisions of the Act.

2. Replying to the averments in the petitions, the first respondent has sworn a counter affidavit in Crl. M.C. No. 4915 of 2010. Learned Public Prosecutor requested that the same may be read in answer to the allegations in the other petitions as well. In the counter affidavit, apart from averring that petitioners have converted their paddy lands in violation of Sec. 3 of the Act it is stated that the Act came into force with effect from August 12, 2008, a local monitoring committee was constituted as required under Sec. 5(4)(i) of the Act on December 14, 2010 vide order No. B4-49519/08 of the District Collector, Malappuram and that Data bank was prepared by the monitoring committee and published on September 30, 2010 in Kalikavu Grama Panchayath and Vellayur Village (within the limits of which admittedly the lands in question come). In paragraph 9 of the counter affidavit it is contended that after commencement of the Act, (i.e. from August 12, 2008 onwards) conversion of paddy land to dry land is totally prohibited and from the date of commencement of the Act onwards the first respondent, Revenue Divisional Officer being the authorised officer is competent to lodge complaint in the Criminal Court against persons who convert paddy lands without permission as per provisions of the Act. It is therefore contended that initiation of prosecution against petitioners is valid and is not required to be interfered. I have heard learned Public Prosecutor also in the matter. Learned Public Prosecutor pointed out the laudable object behind enactment of the Act and the object it is intended to achieve by making stringent provisions in the Act including penal provisions. Learned Public Prosecutor wanted me to bear in mind the said aspects while interpreting the relevant provisions of the Act to hold whether the complaints are maintainable.

3. No doubt the Act has a laudable object as is revealed from its preamble. It is stated that the Act is made to conserve paddy land and wet land and restrict conversion or reclamation thereof, in order to promote agricultural growth, to ensure food security and to sustain the ecological system in the State of Kerala. The statement of objects and reasons of the Act states that there has been alarming shift from rice and subsistence food farming to cash crops. The area under rice cultivation has drastically declined from above 8 lakhs hectares in the early 1970's to nearly 2 lakhs hectares in 2000s mainly due to conversion of paddy land, Kerala is importing more than 80% of its rice requirements from other states and that it is as a remedial measure to prevent such consequences that the Act is enacted.

4. A penal provision is required to be construed strictly for, it visits the person concerned with penal consequences. The rule of strict interpretation of a penal

statute can be said to be not rigid or universal application if it leads to absurd results. It is apposite to refer to the relevant provisions of the Act. Under Sec. 3 and 11 there is a total prohibition of conversion or reclamation of paddy land and wet land, respectively subject of course to the exceptions provided thereunder. Secs. 13 to 20 empower the authorities concerned with remedial measures when there is a violation of the prohibitions under Secs. 3 and 11.

I am now concerned with Sec. 23 of the Act which reads:

Any person who in violation of the provisions of this Act converts or reclaims any paddy land or wetland notified under sub-section (4) of Sec. 5, shall on conviction be punishable with imprisonment for a term which may extend to two years but shall not be less than six months and with fine which may extend to one lakh rupees but shall not be less than fifty thousand rupees.

5. It is the contention of learned counsel for petitioners that a penal consequence when there is a conversion of paddy land or wet land in violation of Secs. 3 or 11 would arise only if such land had been notified in the manner prescribed, be it by publication in the Gazette or otherwise as required under Sec. 5(4)(i) of the Act. Sec. 5 of the Act states that there shall be a Local Level Monitoring Committee in each Panchayat or Municipality, consisting of members specified in Sub Sec.(2), for the purpose of monitoring implementation of provisions of the Act. Sub Sec. (4) states that the Committee shall perform the functions enumerated therein. I quote Sec. (4)(i) (which alone is relevant for consideration in these proceedings) which is as under:

(4) - The Committee shall perform the following functions, namely:-(i) to prepare the Data-bank with the details of the cultivable paddy land and wetland, within the area of jurisdiction of the Committee, with the help of the map prepared or to be prepared by the State Land Use Board or Centre- State Science and Technology institutions on the basis of satellite pictures by incorporating the survey numbers and extent in the data bank and get it notified by the concerned Panchayat/Municipality/Corporation, in such manner as may be prescribed, and exhibit the same for the information of the public, in the respective Panchayath/Municipality/Corporation Office and in the Village Office/Offices:

The said provision informs me that the committee has to prepare the Data bank with details of cultivable paddy land and wet land within the area of its jurisdiction in the manner provided therein and "get it notified by the concerned Panchayat/Municipality/Corporation, in such manner as may be prescribed, and exhibit the same for the information of the public, in the respective Panchayath/Municipality/Corporation Office and in the Village Office/Offices". In the present case complaints were preferred against petitioners on January 26, 2010 alleging that conversion came to the notice of the authorities concerned on October 26, 2009. Paragraph 6 of the counter affidavit of the first respondent states that the "Data bank was prepared by the monitoring committee and published on 30.09.2010". Learned Public Prosecutor has an argument that it is not necessary

that the notification should be published in the Official Gazette. Without going into the acceptability of that contention and assuming so, there is nothing brought on record, not to say it is not mentioned in the counter affidavit also that there was publication of the notification in any manner whatsoever on any day prior to September 30, 2010. Even on the admitted case of the first respondent, alleged detection of conversion of paddy lands was on October 26, 2009 in which case I am persuaded to think that the alleged conversion was on or before October 26, 2009. In other words, conversion in these cases were before the notification dated September 30, 2010.

6. Now the question is whether in the light of the above, prosecution against petitioners could stand. I stated from Sec. 23 of the Act that penalty is imposed on any person who in violation of the provisions of the Act converts or reclaims "any paddy land or wet land notified under Sub-sec (4) of Sec. 5". Reason persuades me to hold that notwithstanding whatever power is vested with the authorities concerned for reconversion of the land under Secs. 13 to 20 of the land whether or not there is a notification, so far as prosecution is concerned, it could be initiated only with respect to conversion of land which is notified, meaning thereby that prosecution could stand only if conversion was after the notification was published in whatever manner it is prescribed. It is relevant to note that in the decision referred supra, learned Judge of this Court has observed in paragraph 42 that the notification (under Sec. 5(4)(i) of the Act) will be a condition precedent for the applicability of certain provisions of the Act. The publication of notification under Sec. 5(4)(i) of the Act is intended to provide protection to the landowner. I found that so far as these cases are concerned the alleged conversions were before the notification dated September 30, 2010. In the light of the interpretation I have given to Sec. 23 of the Act, prosecution against petitioners cannot stand.

Resultantly these petitions are allowed and Annexure-B, complaints in C.C. Nos. 19 to 22 and 34 of 2010, cognizance taken thereon and all further proceeding taken by the learned Chief Judicial Magistrate, Manjeri against petitioners are quashed.