

(2023) 10 KL CK 0035

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 21017 and 22746 Of 2023

K.C.C Buildcon Private Limited

APPELLANT

Vs

Government Of Kerala

RESPONDENT

Date of Decision : 05-10-2023

Acts Referred:

Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 2(iii), 2(xv), 5(3) (i), 8, 9, 10, 10(1), 10(2)

Kerala Conservation of Paddy Land and Wetland Rules, 2008 — Rule 5

Citation : (2023) 10 KL CK 0035

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : P.Deepak, Nazrin Banu, K.M.Firoz, Shameena Salahudheen, M.Shajna, C.E.Unnikrishnan

Final Decision : Dismissed

Judgement

N. Nagaresh, J.

1. W.P.(C) No.21017/2023 has been filed by a Private Limited Company seeking to quash Ext.P8 and to direct the 1st respondent to grant exemption as sought for by the petitioner under Section 10 of the Kerala Conservation of Paddy Land and Wetland Act, 2008 in the light of Ext.P7 report of the State Level Committee. W.P.(C) No.22746/2023 has been filed by the additional 6th respondent in W.P.(C) No.21017/2023 seeking to declare that the decision of the 5th respondent-State Level Committee regarding case No.1 of Ext.P1 (Ext.P7 in W.P.(C) No.21017/2023) relating to the petitioner-Company is illegal and without considering relevant matters. The 6th respondent seeks to quash Ext.P1. The parties and documents are referred to as they are arrayed/marked in W.P.(C) No.21017/2023, for convenience.

2. The National Highway Authority of India (NHAI) accepted the bid of the petitioner for the work of development, maintenance and management of "Six-laning of Thurvavoor-Paravoor Section of New NH-66 (Old NH-47) in the State of

Kerala on EPC mode under Bharatmala Pariyojana” and issued letter of acceptance dated 15.11.2021. Ext.P1 Engineering, Procurement and Construction (EPC) Agreement was executed on 17.01.2022.

3. In order to facilitate the said work relating to National Highway, the petitioner identified land measuring 66,000 square metres located in Kanjikuzhi Village of Cherthala Taluk by the side of the Project Highway for establishing a Base Camp. The Base Camp is to consist of Site Office, Stores, Materials Storage, Quality Assurance Lab, Workshop, Wet Mix Plant, Hot Mix Plant, etc. An MOU was executed with each of the land owners for use of the land as Base Camp.

4. Out of the 66,000 square metres of land, 55,341 square metres were included in the Data Bank prepared under the Kerala Conservation of Paddy Land and Wetland Act, 2008. Therefore, Ext.P2 request was made to the District Collector on 17.02.2022 seeking permission to reclaim the land for public purpose since there was no suitable and sufficient land available in the vicinity of the Project Area. The District Collector forwarded Ext.P2 to the Village Officer on 18.02.2022 itself.

5. The Village Officer submitted Ext.P3 report on 21.02.2022 stating that the proposed land has not been used for paddy cultivation for the last more than 30 years and that there are numerous trees including coconut palms standing in the property. The Village Officer further reported that for the last more than 8 years, no cultivation whatsoever has taken place in the land. The Village Officer, however, opined that the request for reclamation of land would have to be routed through the Local Level Monitoring Committee (LLMC).

6. The petitioner states that taking into consideration the importance and urgency of the work, the Chief Minister of the State convened a meeting on 26.02.2022 to discuss the progress in relation to the acquisition of land for National Highways. In the said meeting, the Regional Officer of NH, Kerala stated that request for conversion of wetland to dry land for establishing the Base Camp is pending with the District Administration, Alappuzha. The District Collector informed that the proposal has been duly recommended and forwarded to the Government for according permission and that the Chief Secretary informed that it will be processed at the earliest.

7. By way of abundant caution, the petitioner submitted Ext.P5 application in Form-2 under Rule 5 of the Kerala Conservation of Paddy Land and Wetland Rules, 2008 to the Convenor of the LLMC on 06.12.2022. The LLMC submitted its report to the State Level Committee. The State Level Committee unanimously resolved to recommend the application for conversion considering the fact that the construction of the Base Camp is temporary in nature and the project work has to be executed within 910 days. It also ordered that immediately after the completion of the project work, the land shall be restored to its original state.

8. To the surprise of the petitioner, the Government passed Ext.P8 order dated 26.05.2023 rejecting Ext.P4 application for conversion. Ext.P8 stated that there

is no provision under the statute for granting temporary exemption and that grant of such temporary exemption would create a bad precedent. Ext.P8 also alleged that the agreement between the petitioner and the owner of the paddy land which is included in the Data Bank for other purposes, is not in accordance with law. Ext.P8 also stated that on an earlier occasion, Stop Memo was issued against illegal reclamation of the said paddy land and grant of permission would lead to flooding and would adversely affect paddy cultivation.

9. The counsel for the petitioner pointed out that in Ext.P7 report the State Level Committee has found that the land can be converted for the purpose of constructing a Base Camp without any damage to local conditions. The said conclusion was arrived at after a detailed and objective consideration of the request made by the petitioner. Under Section 10(1) of the Kerala Conservation of Paddy Land and Wetland Act, 2008, the Government is empowered to grant exemption if such conversion/reclamation is essential for public purpose. When the jurisdictional preconditions for exercise of power under Section 10(1) are found to exist, the Government has power coupled with a duty to grant exemption on the basis of the report of the State Level Committee.

10. The counsel for the petitioner further pointed out that the definition clauses in the Act, 2008 would indicate that it is only when the land is converted "irreversibly" that it comes within the ambit of "reclamation". That is to say, "conversion" ordinarily is "temporarily" or "provisional" and not an "irreversible conversion". In the facts of the case, Ext.P8 order passed by the Government is highly illegal, arbitrary and unsustainable. The 1st respondent is compellable by appropriate writ of this Court to grant exemption as sought for by the petitioner, urged the counsel for the petitioner.

11. Respondents 6 to 10 resisted the writ petition. The property sought to be converted is well known as "Nellara" of Kanjikuzhi Village. Reclamation and conversion of the land will be in violation of the Act, 2008. Respondents 6 to 10 are farmers cultivating paddy in the nearby area. The petitioner is seeking reclamation of enormous extent of paddy/wetland. Once filling is done with soil or by any other means, it will affect the paddy land and ecology and the impact will be irreversible. After construction of Base Camp, reverting back to original position will be impossible. Filling up of land will affect water flow, minerals, soil condition and ecology. Wetland and paddy land are intermixed and are inseparable in the area.

12. There is no public purpose for the proposal, contended respondents 6 to 10. The petitioner is only a tool in the hands of paddy land owners who want to reclaim paddy land somehow. The NHAI is also not entitled to seek permission to reclaim the land. The writ petitioner is not holder of paddy land and therefore application submitted by the petitioner cannot be allowed. The LLMC had rejected the application submitted by the land owners twice earlier. The LLMC has not recommended establishment of Base Camp converting/reclaiming paddy land. The State Level Committee has not considered the relevant factors. The

Government therefore rightly rejected Ext.P5 application. Ext.P8 order of the Government is not liable to be interfered with on any of the grounds urged by the petitioner. Alternate lands are available in the area to establish Base Camp.

13. The 6th respondent has filed W.P.(C) No.22746/2023 challenging Ext.P7 minutes of the State Level Committee in so far as it relates to the proposal made by the petitioner in W.P.(C) No.21017/2023. The 6th respondent urged that the State Level Committee has not visited the land and the adjoining area. There are other properties belonging to SILK and Autocast Limited, available and suitable, to establish Base Camp. Ext.P1 in W.P.(C) No.22746/2023 is therefore liable to be quashed, contended the counsel for the 6th respondent.

14. I have heard the learned counsel for the petitioner, the learned Government Pleader representing respondents 1 to 5 and the respective learned counsel appearing for additional respondents 6 to 13.

15. The petitioner in W.P.(C) No.21017 of 2023 is challenging Ext.P8 order dated 26.05.2023 of the Government of Kerala declining permission to construct Base Camp for the purpose of construction of National Highway, in Kanjikuzhy Village of Alappuzha District. The land where proposed Base Camp is to come up, is described as paddy land in revenue records. According to Ext.P8, grant of approval for temporary conversion of the land in question would go against the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008.

16. Permission for temporary conversion has been declined on the ground that such permission would defeat the purpose of the Act, 2008 and that temporary constructions will have to be made in accordance with law. Ext.P8 states that the agreement between paddy land owners and the petitioner enabling the petitioner to use the land for purposes other than paddy cultivation, is not as per law. Ext.P8 would further state that if temporary conversion of paddy land is permitted, it would result in such conversions becoming a precedent and would result in large-scale conversion of paddy lands and wetlands. For declining permission to establish Base Camp, Ext.P8 takes umbrage on the fact that stop memos were issued in respect of the same lands earlier, against conversion.

17. The question arising for consideration in these writ petitions is whether temporary conversion of paddy land/wetland can be permitted under the provisions of the Act, 2008 and whether there is any illegality in denying such permission to the petitioner. The conversion of paddy land sought in W.P.(C) No.21017 of 2023 is admittedly for the purpose of construction of a Base Camp, which in turn is intended for 6-Laning of Thuravoor-Paravur section of NH-66, which is a public purpose.

18. The Government has, in exercise of the powers under Section 8 of the Act, 2008, constituted a State Level Committee for furnishing report to the Government for filling of paddy land for public purposes. The Committee is composed of the Agricultural Production Commissioner, the Commissioner of Land Revenue, an expert in the field of Environment and a Scientist in the field of

paddy cultivation. Section 8 contemplates thorough scrutiny of applications for conversion of land by the State Level Committee including ecological impact of conversion.

19. On the application of the petitioner, the State Level Committee scrutinised the matter and has issued Ext.P7 proceedings informing the Government that conversion can be permitted in view of the public purpose. Ext.P7 would show that the Committee has considered the application in detail. The Committee noted that the conversion is temporary as the project of the NH has to be completed within 910 days. The Committee found that a Base Camp is most needed for implementing the Highway project. Therefore, the Committee recommended grant of permission for temporary conversion on condition that the land will be restored to its original position and that the District Collector should monitor such restoration.

20. In spite of Ext.P7 recommendation, the Government has rejected the application for permission as per Ext.P8 Order. The reasons for rejection given in Ext.P8 are as follows:

(i) According to the Government, grant of such permission will be against the best interest in which the Act, 2008 has been enacted.

(ii) Temporary arrangements for construction activities have to be made as per extant laws.

(iii) There is no legal provision for temporary conversion of paddy land and if such conversions are permitted, it would set a wrong precedent resulting in large scale conversion of paddy land and wetland.

(iv) The Agreement between owners of paddy land included in Data Bank and the petitioner, for lease of land for non-agricultural purposes, is not as per law.

(v) The land is one in respect of which Stop Memos against conversion have been issued earlier.

(vi) Grant of permission for temporary conversion will result in waterlogging and would adversely affect paddy cultivation in the nearby areas.

Whether these reasons are sustainable and would justify rejection of application for permission for temporary conversion of paddy land for the purpose of a Highway 6-Laning Project, is the question arising in these writ petitions. The sustainability of reasons given at Serial Nos.(i) to (iii) above can be considered together.

21. As per Section 2(iii) of the Kerala Conservation of Paddy Land and Wetland Act, 2008, "conversion" means the situation whereby land which has been under paddy farming and its allied constructions like drainage channels, ponds canals, bunds and ridges, are put to use for any other purpose. As per Section 2(xv), "Reclamation" means such acts or series of acts whereby a paddy land or wetland as defined in the Act is converted irreversibly in such a manner that it

cannot be reverted back to the original condition by ordinary means. Sections 2(iii) and 2(xv) would show that the Act comprehends that conversion can be reversible and where conversion is irreversible, in a manner that it cannot be reverted back to its original condition by ordinary means, then the conversion becomes reclamation.

22. Section 10(2) grants the Government power of exemption for the purpose of conversion or reclamation of paddy land / wetland provided it is for any essential public purpose and that such conversion or reclamation will not adversely affect the cultivation of paddy in the adjoining paddy lands. Section 5(3)(i) empowers the Local Level Monitoring Committee (LLMC) to recommend reclamation of paddy land for public purpose or for construction of residential building. Section 9 empowers the District Level Authorised Committee to take suitable decision on applications for reclamation for public purpose and for construction of residential buildings. Therefore, it is evident that there is no absolute prohibition in the Act, on conversion or reclamation of paddy land.

23. Section 10(2) of the Kerala Conservation of Paddy Land and Wetland Act, 2008 has been amended as per Act 29 of 2018. By the said amendment, recommendation by the LLMC has been dispensed with. Similarly, non-availability of alternate land is no more a condition or requirement for grant of permission to convert paddy land for public purpose. Effect of conversion or reclamation on the 'ecological conditions in the area' is not a relevant factor under the amended provisions.

24. While doing away with the ecological factor, the Act retained provision for protection of paddy cultivation in the adjoining paddy lands and mandated water conservancy measures where exemption granted is for more than 20.2 Ares of paddy land / wetland. It is obvious that the amendment is intended to strike a balance between protection of paddy cultivation and wetlands on the one side and public purposes including public infrastructure development on the other.

25. In the case of the petitioner, the NHAI on 17.02.2022 has made Ext.P2 proposal to the District Collector to convert the land for public purpose. It is discernible from Ext.P3 that the Village Officer has reported that the proposed land has not been used for paddy cultivation for the last more than 30 years and that there are a number of trees including coconut palms standing in the property. It was also reported that for the last more than eight years no cultivation was made in the land.

26. The District Collector also has duly recommended the proposal for conversion. The LLMC has also given its report. Thereafter, the State Level Committee considered the matter in detail and has issued Ext.P7 proceedings informing the Government that conversion can be permitted in view of the public purpose. Ext.P7 would show that the Committee has considered the application in detail. The Committee noted that the conversion is temporary as the project of the NH has to be completed within 910 days. The Committee found that the Base

Camp is most needed for the Highway project. Therefore, the Committee recommended permission for temporary conversion on condition that the land will be restored to its original position and that the District Collector should monitor such restoration.

27. It is in spite of the recommendations of various statutory authorities that the Government has declined permission. According to the Government, grant of such permission will be against the best interest in which the Act, 2008 has been enacted. Going through the provisions of the Act, especially the amendments brought about as per Amendment Act 29 as discussed hereinabove, where a balance is sought to be maintained between paddy land protection and other public purposes, the conclusion in Ext.P8 that the permission will not be in the interest of the Act, 2008 is unsustainable.

28. The application for permission to temporarily convert paddy land for a public purpose, has been made by the petitioner as per the provisions of the Act, 2008 and hence it cannot be said that the temporary arrangement for construction activity in question is not made as per extant laws. The conclusion in Ext.P8 that there is no legal provision for temporary conversion of paddy land also is unsustainable in view of Section 10 of the Act, 2008 which will take within its ambit temporary conversion also for public purpose. The further conclusion in Ext.P8 that if such conversions are permitted, it would set a wrong precedent resulting in large scale conversion of paddy land and wetland is only an apprehension and is not a convincing reason, since such permissions can be granted only by the Government and that too on the basis of recommendation of an expert high level body like the State Level Committee.

29. Ext.P8 states that the agreement between owners of paddy land included in Data Bank and the petitioner for lease of land for non-agricultural purposes, is not as per law. The reason for such conclusion appears to be that paddy land cannot be leased out for other purposes by conversion. But, conversion of paddy land for public purpose is permissible under law and if such conversion is resorted to after obtaining exemption under Section 10 of the Act, 2008, there cannot be any objection. Furthermore, there is nothing in the Act, 2008 or in the Rules made thereunder which restrain the paddy land owners from leasing their land. Similarly, the fact that Stop Memos were issued earlier against illegal conversion of the same paddy land by itself cannot be a reason to deny exemption for a public purpose. The reports submitted by the Village Officer, LLMC, District Collector and the State Level Committee do not indicate any waterlogging issue or adverse effect on paddy cultivation in the nearby areas. The conclusion in this regard contained in Ext.P8 Government Order appears to be without any materials.

30. W.P.(C) No.22746 of 2023 has been filed by the 6th respondent challenging Ext.P1 (Ext.P7 in W.P.(C) No.21017 of 2023) alleging that the conclusions therein are based on surmises, that the observation regarding public purpose is wrong, that the State Level Committee has not visited the Site and that there are

alternate properties suitable to establish Base Camp. A reading of Ext.P1 would show that the State Level Committee has examined the matter in detail. Ext.P1 is minutes of the meeting of the Committee. There is no reason to conclude that reasonings given by the State Level Committee are based on surmises. The public interest involved in 6-Laning of NH Project is evident. Availability of alternate properties is not a relevant factor in view of the amendments made as per the Amendment Act 29 of 2018.

For all the aforementioned reasons, Ext.P8 in W.P.(C) No.21017 of 2023 is set aside. Taking into consideration the public interest involved in the project and the urgency warranted in completing the Project within the stipulated time, the 1st respondent is directed to pass order granting permission for temporary conversion of land as recommended by and subject to the conditions in Ext.P7 of the 2nd respondent, within a period of two weeks. W.P.(C) No.21017 of 2023 is disposed of as above. W.P.(C) No.22746 of 2023 is dismissed.