

(2023) 06 KL CK 0100

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28085 Of 2013

M/s Mecpro Infratech Pvt Ltd

APPELLANT

Vs

Alangad Grama Panchayath Neerikode P.O., Aluva Taluk,
Ernakulam District, Pincode 683513, Represented By Its
Secretary

RESPONDENT

Date of Decision : 09-06-2023

Acts Referred:

Kerala Conservation of Paddy Land and Wet Land Act, 2008 — Section 27A, 27C

Citation : (2023) 06 KL CK 0100

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : Peeyus A.Kottam, Dinesh Mathew J.Muricken, Vinitha.B

Final Decision : Disposed Of

Judgement

Mohammed Nias C.P., J

1. Petitioner is stated to be the owner in possession of 22.41 Ares of the property comprised in Survey Nos.470/1A, 489/10, 490/1A1, 490/1B, 490/1A2, 480/1A, 489/10, 490/2, 490/3, 466/7, 466/8 and 466/9 purchased as per registered Sale Deed Nos.983/2011, 982/2011, 898/2011, 4409/2011, 3538/2010, 3858/2010 of Alangad Sub Registrar Office having purchased the same from Mathew P.Jose, Davis Jose, M.C.Thomas and O.U.Zakir, who had submitted an application under the provisions of the Kerala Land Utilisation Order dated 26.03.2012 before the 3rd respondent-Revenue Divisional Office, Fort Kochi, seeking permission for construction and developmental activities in the abovementioned properties. By order dated 31.05.2013, the 3rd respondent-RDO passed Ext.P1 order lifting the prohibitory order issued against conversion and reclamation of the land in question, stating that all the reports showed that the applied land had already been converted/reclaimed and hence no further reclamation is necessary. It was also observed regarding the construction and developmental activities that it was open to the applicant to approach the local bodies concerned as per the rules. In

Ext.P1, the 3rd respondent also held that since the period when the conversion was made is in dispute, the Principal Agricultural Officer, Ernakulam, will find out the approximate period. Accordingly, the Principal Agricultural Officer, Ernakulam, after conducting an enquiry passed an order on 3.8.2012, Ext.P2 stating that the original conversion could have been made at least ten years back.

2. Based on Exts.P1 and P2, the petitioner submitted an application for a development permit before the first respondent Panchayath by Ext.P3. However, the same was rejected by Ext P4 order, stating that the property in question is described as 'nilam' in the revenue records, which was challenged before this Court in WP(C)No.14919/2013, wherein this Court, by Ext P5 judgment set aside the order impugned therein with a direction to the Panchayath to consider the application submitted by the petitioner afresh after conducting an inspection of the land of the petitioner to verify whether the same continues to be a paddy land as described in the revenue records or whether that the conversion was made prior to the coming into force of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 and to pass appropriate orders on the application. In spite of this judgment, by Ext.P6, the Secretary of the first respondent, Panchayath, again rejected the request stating the same reason as in Ext.P4 and passed Ext.P6 order. This is challenged by the petitioner primarily contending that the petitioner's property was lying as dry land even before the petitioner's purchase and sale deed also noticed the same. It is also stated that Exts.P1 and P2 also reinforce the fact that the petitioner's land cannot be treated as either a paddy land or a wetland, and Ext.P6 order falls in the teeth of Ext.P5 judgment and accordingly prays for quashing Ext.P6 order.

2. A counter affidavit has been filed on behalf of the third respondent stating that the filling of the land in the instant case was done unauthorizedly and disregarding the orders of prohibition issued from the office of the third respondent. It is also stated that the reports got through the Village Officer and the Agricultural Officer, Alangad also reported about the illegal filling of paddy fields and water sources, and the properties in question were included in the draft data bank prepared as per the provisions of the Kerala Conservation of Paddy Land and Wet Land Act, 2008.

3. The first respondent Panchayath has also filed a counter affidavit stating that the lands in question is a paddy field as per the village records, and it was converted in the year 2009-2010 and that on account of this act that a stop memo has been issued in respect of the properties. It is further stated that the property was included in the draft data bank prepared under the provisions of the Act and thus justified Ext.P6 order. It is also the contention of the Panchayath that going by Ext.P1 order, the petitioner was to approach the Government for regularization of the unauthorized conversion of the land, and since the same has not been done so far, Ext.P6 order passed refusing permission for construction is in order.

4. I have heard Sri. Peeyus A. Kottam, the learned counsel for the petitioner,

learned standing counsel for respondents 1 and 2 and the learned Government Pleader.

5. It cannot be disputed that by Ext.P1 order, the third respondent-RDO found that the land in question had already been converted/reclaimed and that no further reclamation is necessitated. The only observation in Ext.P1, which calls for a factual enquiry, was the period of conversion, which the Principal Agricultural Officer, Ernakulam, was left to decide. In such circumstances, the third respondent held in Ext.P1 that the petitioners are at liberty to approach the Government for regularization of the unauthorised conversion of the reclaimed land in accordance with the orders then in force.

6. Learned counsel for the petitioner is right in his submission that the consideration by the first respondent ought to have been under Clause 6 of the Kerala Land Utilization Order, 1967 (for short 'the KLU Order') and on account of his failure to pass orders strictly in accordance with the same, the Panchayath is taking advantage and declining the permit sought for construction by Exts.P4 and P6. It is relevant to note that In spite of Ext.P4 order being quashed by Ext.P5 judgment of this Court, the Panchayath has reiterated the same stand again in Ext.P6, which is clearly an error. Since the petitioner's application for permission under Clause 6 of the KLU Order is prior to the coming into force of the Act, neither Section 27A nor 27C (amended by Kerala Conservation of Paddy Land and Wet Land (Amendment Act) i.e, Act 29 of 2018) which came into force only on 30.12.2017, has any application in the instant case.

In the above circumstances, I quash Ext.P6 order passed by the Panchayath. The third respondent-RDO is directed to reconsider Ext.P1 and pass orders strictly in accordance with Clause 6 of the KLU Order as the application was made prior to coming into force of the Amended Act 29 of Act 2018. A decision in this regard will be taken with notice to the petitioner at any rate within four months from the date of receipt of a copy of this judgment. It is declared that the third respondent-RDO has to reconsider Ext.P1 without referring to the provisions of the Amended Act 29 of 2018. Based on the decision to be passed by the third respondent-RDO, the first respondent Panchayath is directed to reconsider the application for development submitted by the petitioner within two months from the date of receipt of the orders passed by the third respondent-RDO as directed above.

The writ petition is disposed of as above.