
(2016) 02 KL CK 0103
In the High Court Of Kerala
Case No : W.P. (C) No. 16434 of 2015 (D)

Sherin Varghese

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 02 KL CK 0103

Hon'ble Judges : A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Devan Ramachandran, K.M. Aneesh, Adarsh Kumar and Biju Varghese Abraham, Advocates, for the Appellant; P.K. Soyuz, Special Government Pleader, for the Respondent

Final Decision : Disposed off

Judgement

A. Muhamed Mustaque, J.—1. The petitioner claims to be the absolute owner and in possession of 36.82 Ares of land comprised in Survey Nos. 133/8A, 133/8B3, 157/5A, 157/5C and 157/5E2 of Naduvila Village, Vaikom Taluk (3.23 Ares in Survey No. 133/8A, 7.69 Ares in Survey No. 133/8B3, 14.16 Ares in Survey No. 157/5A, 6.07 Ares in Survey No. 157/5C and 5.67 Ares in Survey No. 157/5E2).

2. The land referred as above is included in the Data Bank prepared under the Act 28 of 2008.

3. The petitioner approached the Revenue Divisional Officer, Pala under clause 6 of the Kerala Land Utilisation Order, 1967 (for short, the "KLUO") for a permission to use the land for other purposes after correcting the entry in the revenue records. Ext.P1 is the request of the petitioner. Ext.P2 is the report of the Village Officer submitted before the Revenue Divisional Officer. This report would indicate that the land was converted completely. It also reports about coconut trees having age of 30 years as well as other trees. The report also states about an attempt to reclaim the land on 03/03/2012 and the vehicle seized from the said land. As seen from the report, the land is surrounded by

other dry land and reclaimed land except on the southern side.

4. On account of non-consideration of the application, the petitioner had approached this Court with W.P.(C).No.21338/2014. An Advocate Commissioner was appointed at the instance of the petitioner by order of this Court dated 24/09/2014 in W.P.(C). No. 21338/2014. The Commissioner had filed a report in the above case. Ext.P3 is the above report. The Commissioner reported about the lie and location of the land. It was reported by the Commissioner that a pathway passes through the land on account of the people residing in the western corner of the land. The Commissioner also reported that no agricultural activities are seen to have taken place at least for a period of more than 20 years. Photographs taken by the Commissioner would show that there are residential buildings around the petitioner's land.

5. This Court disposed the above writ petition by Ext.P4 judgment. Therein, this Court, noting the fact that the classification as nilam has to be corrected, directed the Local Level Monitoring Committee (LLMC) to consider the request of the petitioner for correction in the Data Bank. This Court also further observed in para.6 as follows:

"Since it is already found that this property is unfit for paddy cultivation, I am of the view that permission can be granted subject to other conditions to be imposed by the Revenue Divisional Officer. It is submitted by the learned Government Pleader that the petitioner has sold 18 cents of land to three different persons and applications are pending before the Local Level Monitoring Committee for permission to construct residential buildings. It is made clear that the above land held by those persons are not form part of this judgment. Application of this judgment is only with respect to 36.82 Ares of land held in the petitioner's ownership and possession."

6. Thereafter, the LLMC considered the request of the petitioner for correction. The LLMC decided to correct the entry as reclaimed land prior to three years in the Data Bank.

7. The petitioner, thereafter, approached the Revenue Divisional Officer under clause 6 of the KLUO. The Revenue Divisional Officer was of the view that the reclamation was prior to three years before the submission of the application to the LLMC and therefore, the petitioner's request under KLUO has to be rejected.

8. The only question remains is whether reclamation was prior to the enactment of the Act 28 of 2008 or not. The stand of the respondents and the Agricultural Officer is that the reclamation was during the year 2011. The respondents relied on the seizure mahazar effected in the year 2011 and the satellite images. Admittedly, the land in question is a reclaimed land. The LLMC did not state that the conversion was three years prior to 2014. The seizure of the vehicle effected from the land do not have any relevance to point out that the reclamation was done only in the year 2011. It is to be noted that at no point of time any action was initiated under Section 13 of the Act 28 of 2008. No doubt, so long as the

land remains as paddy land in the Data Bank, any attempt to reclaim the land, has to be prevented, unless the Data Bank is corrected. It is obvious that the seizure was effected when an attempt was made to reclaim the land. The mahazar prepared by the Village Officer at the time of seizure would indicate that the vehicle had only unloaded earth in the land. Nowhere it is stated that the entire land has been reclaimed in the year 2011 or 2012. It appears that it is on account that reason, no action has been initiated against the petitioner under Section 13 of the Act 28 of 2008. In the absence of any other evidence, it cannot be said that the land has been reclaimed only in the year 2011 or 2012. The satellite images would only indicate that the nature of land is same all the time except creation of pathway. The impugned order of the Revenue Divisional Officer would also refer to the proceedings of the District Collector while releasing the vehicle on interim custody. This report refers as follows:

9. The above report clearly indicates that the land in question is irreversibly converted before the Act 28 of 2008. Accordingly, the following directions are issued:

"i. The land referred as above is declared as irreversibly converted as paddy land prior to the enactment of the Act 28 of 2008.

ii. Necessary steps shall be taken by the LLMC to correct the Data Bank.

iii. If the Data Bank has been finally notified, steps shall be taken to issue an erratum notification.

iv. However, the petitioner will have to apply for permission to regularise the land in terms of the Act 28 of 2008. If the petitioner applies to the Collector in form No. 4 as appended in the Rules along with the fees, the same shall be considered within two months from the date of receipt of a copy of this judgment.

v. Since the land is declared as converted land prior to the Act 28 of 2008, no further report is necessary from LLMC.

vi. Once regularisation order is issued, necessarily, the petitioner is entitled to use the land as purayidam and dry land in accordance with law.

vii. The petitioner is also free to approach the Tahsildar for reassessment of land after regularisation order is issued in terms of Section 6A of Kerala Land Tax Act, 1961.

viii. If such an application is filed, the Tahsildar shall consider the application in the light of the directions in the judgment of this Court in Kizhakkambalam Grama Panchayat v. Mariumma [, 2015 (2) KLT 516].

ix. Till regularisation order is granted status quo shall be maintained."

The writ petition is disposed of as above. No costs.