

(2022) 02 KL CK 0152

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18481 Of 2021

Shoukathali

APPELLANT

Vs

Revenue Divisional Officer, Revenue Divisional Office,
Perinthalmanna, Malappuram District, Pin 679 322

RESPONDENT

Date of Decision : 17-02-2022

Acts Referred:

Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 2(12)

Citation : (2022) 02 KL CK 0152

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : Babu S. Nair, B.S.Syamanthak

Final Decision : Allowed

Judgement

T.R.Ravi,J.

1. The petitioner is the owner of an extent of 0.8367 hectares in Re-Sy.Nos.258/7 and 258/8 of Block NO.70 of Perakamanna Village. The old survey number corresponding to the properties is Sy.No.172/1 in Block No.70. The petitioner has leased out 0.1960 hectares out of the said properties to his

son for starting a petroleum retail outlet of Bharat Petroleum Corporation Ltd. Ext.P1 is the possession certificate issued by the 2nd respondent on

1.2.2019. Ext.P2 is the relevant pages of the draft data bank prepared for Edavanna, which shows that the properties in Sy.No.172/1 is converted

approximately 10 years prior to the date of preparation of the data bank. It can be seen from Ext.P2 that the property has not been classified as either

paddy land or wetland. By Ext.P4, the Additional District Magistrate, Malappuram wrote to the Divisional Officer, Fire and Rescue, Palakkad, the

District Medical Officer (Health), Malappuram, the Executive Engineer, PWD

(Roads), Manjeri, the Tahsildar, Ernad and the District Supply Officer, Malappuram, calling for reports on the application for permission to set up a petroleum retail outlet submitted by the petitioner's son. By Ext.P5, the petitioner submitted an application in Form 6 of the Kerala Conservation of Paddy Land and Wetland Rules, 2008 seeking permission to convert 0.1960 hectares of land in Sy.Nos.258/7 and 258/8. The petitioner thereafter approached this Court by filing W.P. (C)No.34113 of 2019 which was disposed of by Ext.P6 judgment directing the Revenue Divisional Officer, Perinthalmanna, who is the 1st respondent herein, to consider and pass orders on Ext.P5 application preferred in Form 6. Pursuant to Ext.P6, on 18.3.2020, the 1st respondent passed Ext.P7 order stating that the Tahsildar, Ernad has submitted a report stating that the property has been included in the data bank and hence Form 6 application is rejected. Ext.P7 order was challenged by the petitioner before this Court in W.P. (C)No.14760 of 2020 which was disposed of by Ext.P8 judgment. Ext.P8 is a very detailed judgment containing specific directions to the 1st respondent. This Court set aside Ext.P7 order dated 18.3.2020. Ext.P5 application in Form 6 was restored to the file of the 1st respondent. The petitioner was directed to file an application in Form 5 for removing the property from the data bank. The 1st respondent was directed to obtain satellite pictures and expert opinion from the KSREC. The KSREC was directed to forward the satellite pictures along with the report which is prepared based on the ground realities in respect of the subject property as on 12.8.2008 and whether the property comes under the definition of "paddy land" as per Section 2(12) of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (hereinafter referred to as the 2008 Act), and whether the property is cultivable and suitable for cultivation. The 1st respondent was directed to consider the report that is forwarded by the KSREC and also get the property inspected through a competent revenue official and with due reference to the definition of paddy land as contained in Section 2(12) of the 2008 Act and pass appropriate orders. It is specifically provided that the 1st respondent shall hear the petitioner before passing orders. It is further ordered that if the 1st respondent decides to exclude the properties covered by the Form 5 applications, he shall thereafter take up the Form 6 application and pass orders following the requisite procedure and after hearing the

petitioner. The very reason why this Court quashed Ext.P7 is that the petitioner was neither provided with the report relied on in Ext.P7, nor was he

heard. Subsequent to the judgment, the KSREC prepared Ext.P9 report and forwarded the same to the 1st respondent. It can be seen from Ext.P9

report that the KSREC has concluded that the survey plot 258 of which the property belonging to the petitioner forms part of, was observed under

crops/fallow land on the western side and with building and structures towards south eastern part, in the year 2006. It is also reported that the same

trend in land use practice continued in subsequent years as in 2012, 2017 and 2020.

2. On 3.8.2021, the 1st respondent has issued Ext.P10 order in purported compliance of the directions contained in Ext.P8 judgment. The 1st

respondent has decided as per Ext.P10 to reject the application of the petitioner to remove the properties from the data bank. Ext.P10 has been

challenged by the petitioner in this writ petition.

3. The petitioner submits that the same vice that was present in Ext.P7 order continues to be present in Ext.P10 order also. Even though this Court

had specifically directed that the petitioner should be heard before orders are issued, it can be seen from Ext.P10 that the 1st respondent has decided

the issue on the basis of the report of the KSREC, report of the LLMC and the report of the Village Officer. The petitioner was not heard before

Ext.P10 was issued. For that sole reason Ext.P10 is liable to be set aside. Apart from that, it is also seen that even though the KSREC has specifically

said that in the western part of the property there were crops and also fallow land while the south eastern part of the property was covered with

buildings and structures, even as early as on 13.3.2006, the said aspect has not even been noted in Ext.P10. No effort has been taken to see whether

the area which is sought to be removed from the data bank is lying on the south eastern part of survey plot 258 or on the western part of the survey

plot which was observed to contain crops in 2006. Instead, it is stated in the order that the KSREC report would show that the property was lying as

fallow land in 2006 and that in 2011, in the northern portion, there was mixed cultivation. A reading of Ext.P9 will show that what is stated in Ext.P10

is absolutely wrong. The KSREC report does not contain any such observations. This has to be compared with the entry that was there in the draft

data bank that the properties had been converted at least 10 years back. The said draft data bank had been published as early as in 2012 and as such,

going by the time period, the property would have been converted in 2002, much before the coming into force of the 2008 Act.

4. A counter affidavit has been placed on record on behalf of the 1st respondent. The counter affidavit says that the LLMC had submitted a report on

9.10.2020 and a copy of the same has been produced as Ext.R1(a). Ext.R1(a) would show that the property had been converted several years back.

It is stated that the Village Officer had given a stop memo. It is further stated that there are no trees standing in the property. It is also stated that on

the western side of the property there is a Panchayat road, on the eastern side is the property belonging to one Abdul Shukkoor, on the northern side,

there is a main road and on the southern side, there is fallow land. Ext.R1(a) reiterates the fact that in the data bank published in 2012, the property is

shown as converted about 10 years back. However, it is decided to retain the property in the data bank. The report does not say anything about the

directions issued by this Court in Ext.P8. There is no consideration on the question whether the property is a paddy land as defined under the Act. In

fact, the finding is that it is not a paddy land, but converted long back. The 1st respondent has also produced as Ext.R1(b), the decision taken at the

meeting of the LLMC held on 27.1.2020.Â Ext.R1(b) merely says that the properties belonging to the petitioner has been decided to be retained in the

data bank on the basis of the report of the KSREC.

5. This Court has held in *Jessy Abraham v. Land Revenue Commissioner* reported in [2021 (6) KHC 316] that what is liable to be included are

cultivable paddy lands as on the date of coming into force of the Act. The very reference to the land as converted 10 years before the preparation of

the data bank itself shows that the property is not liable to be included in the data bank. In *Joy v. Revenue Divisional Officer* reported in [2021 (1)

KLT 433], this Court held that whether a land is cultivable or not cultivable in the context of the 2008 Act has to be understood on the basis of the

natural features of the land and if on the natural features, the land is not fit for cultivation, it necessarily has to be excluded from the data bank. The

Court further held that it is not the capability of the land being used for paddy cultivation that matters, but the character and fitness of the land as

available on 12.8.2008. A reclaimed land cannot be treated as a paddy land under Section 2(12) of the 2008 Act. In Mather Nagar Residents

Association V. District Collector, reported in [2020 (2) KLT 192], a Division Bench of this Court held that a fallow land is never treated as wetland

under the provisions of 2008 Act. It was further held that merely because a property is water logged during the rainy season or is low lying also

cannot be a reason to state that the land is wet land or paddy land.

6. In the result, the petitioner is entitled to succeed in the writ petition. The order Ext.P10 issued by the 1st respondent is quashed. The 1st respondent

is directed to reconsider the application submitted by the petitioner based on the KSREC report and the fact that the property had been converted 10

years prior to the preparation of the data bank in 2012 as evident from Ext.P2 and Ext.R1(a) and on the basis of the observations contained in this

judgment, and, pass fresh orders within one month from the date of receipt of a copy of this judgment. Despite this Court directing the 1st respondent

to pass orders after hearing the petitioner, in Ext.P10 as already observed, the petitioner was not heard. This Court hence is repeating the said

direction that orders shall be passed by the 1st respondent after hearing the petitioner.