

**(1986) 02 KL CK 0020**  
**In the High Court Of Kerala**  
**Case No : Writ Appeal No. 191 of 1981**

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| State of Kerala and Another   | Vs | APPELLANT  |
| Venmony Panchayat and Another |    | RESPONDENT |

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**Date of Decision :** 20-02-1986

**Acts Referred:**

Kerala Panchayat Act, 1960 — Section 82(1)

**Citation :** AIR 1987 Ker 8

**Hon'ble Judges :** V.S. Malimath, C.J;K. Sukumaran, J

**Bench :** Division Bench

**Advocate :** Govt. Pleader, for the Appellant; M.N. Sukumaran Nair, N.A. Muraleedharan, B. Raman Pillai, K.K. Dinesan, Sunny Varghese, M.K. Narayana Menon and T.V. Ananthan, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Malimath, C.J.—This appeal is by the State Government and the Tahsildar, Chengannur, challenging the order made by the learned single Judge in O.P. No. 2795 of 1979. The 2nd respondent made an application to the State Government for assignment of 25 cents of land, which is part of the water course of Achankovil river within the jurisdiction of Venmoney Panchayat. The State Government remitted that application to the Tahsildar, Chengannur. The Tahsildar, Chengannur, notified the application of the 2nd respondent and called for objections. It is in this background that the 1st respondent-Panchayat presented O.P. No. 2795 of 1979 praying for a declaration that the entire land comprised in Sy. No. 375/1A of Venmoney village, having been vested in the said Panchayat u/s 82 of the Kerala Panchayats Act, 1960 (hereinafter referred to as the Act), no part of the said land is liable for assignment under the provisions of the Kerala Land Assignment Act and the Rules made thereunder and for consequential reliefs. It is not disputed that the land in Sy. No. 375/1A of Venmoney Panchayat is part of Achankovil river which flows through more than one Panchayat area. The case of the first respondent-Panchayat is that the land

stands transferred and vested in the Panchayat u/s 82(1) of the Act, it being part of the water course of Achankovil river. That being the position, the Panchayat contends that neither the Government nor the Tahsildar can treat the said land as Government land for the purpose of making assignment under the provisions of the Kerala Land Assignment Act and the Rules made thereunder. The appellants resisted the claim of the Panchayat inter alia contending that Achankovil river being a major river flowing through more than one Panchayat area, no part of its water course stood vested in the Venmoney Panchayat, even though the said river flows through the Panchayat area of the said Panchayat. The learned single Judge negatived the claim of the appellants and allowed the original petition of the Panchayat" by his order dt. 18th Feb, 1981. It is the said order that is challenged in this appeal.

2. The only question that arises for consideration in this case is as to whether the land in dispute which is part of the water course of Achankovil river which flows through more than one Panchayat, including the Venmoney Panchayat, stands transferred and vested in favour of Venmoney Panchayat u/s 82 of the Act. The answer to this question depends upon the proper interpretation of Section 82(1) of the Act, which reads as follows :

"(1) All public water courses other than rivers passing through more areas than the Panchayat area which the Government may, by notification in the gazette, specify, springs, reservoirs, tanks, cisterns, fountains, wells, kappus, chals, standpipes and other water- works (including those used by the public to such an extent as to give a prescriptive right to their use) whether existing at the commencement of this Act or afterwards made, laid or erected and whether made, laid or erected at the cost of the Panchayat or otherwise, and also any adjacent land (not being private property) appertaining thereto shall stand transferred to, and vest in, the Panchayat :

Provided that nothing contained in this sub-section shall apply to any work which is, or is connected with, a work of irrigation or to any adjacent land appertaining to any such work."

The expression "water-course" is defined in Section 2(33) of the Act, to include any rivers, stream or channel whether natural or artificial.

3. The language of Sub-section (1) of Section 82 of the Act is very clear and express. It is provided therein that all public water courses other than rivers passing through more areas than the Panchayat area which the Government may, by notification in the gazette, specify shall stand transferred to and vest in the Panchayat. The expression "other than rivers passing through more areas than the Panchayat area which the Government may by notification in the gazette specify" makes it clear that the power is given to the State Government to specify by notification in the gazette the rivers passing through more areas than the Panchayat area that shall not stand transferred to and vest in the Panchayat. Though the word used is "may", it is not suggestive of an inference

that it vests a discretion in the Government to issue or not to issue a notification for the purpose of declaring that a particular river does not stand transferred to and vest in the Panchayat. The word "may" has been used to convey that the Government has a discretion to declare that a particular river shall not stand transferred to and vest in the Panchayat. If the Government intends that a particular river should not stand transferred to and vest in the Panchayat then it is required to issue a notification. The learned Government Pleader contended that all major rivers which flow through more areas than one Panchayat area stand transferred to and vest in the Panchayat. In support of this submission of his, reliance was placed on the decision of a learned single Judge of this Court reported in Mattool Panchayat v. Abdurahim 1982 KLT 252. Particular attention was drawn to the following observations in the said judgment :

"The defendant Panchayat has produced Ext. B50 and Ext. B51. Ext. B51 dt. 25-3-1962 is a certified copy of the proceedings of the Collector of Cannahore as per which an approved list of lands vested in the Panchayat u/s 82 of the Kerala Panchayats Act, was directed to be delivered to the Panchayat. The list itself is not before Court. It is only the proceedings of the Collector as per which the Tahsildars are requested to deliver the lists to the Panchayats concerned. Ext. B50 dt. 19-10-1968 makes it clear that R.S. No. 359/1A of Mattool Village is reserved as a poramboke land. As per this order of Government all major rivers are declared as vested in the Government and R. Section 359/1A is declared as a river poramboke relating to a major river namely, the Baliapattam river vested in the Government. Ext. B50 would clearly show that Section 82 of the Panchayats Act can have no application in respect of land appertaining to the Baliapattam river vested in the Government u/s 3 of the Kerala Land Conservancy Act. On the wording of Section 82 itself, it is only such of the water courses as are mentioned therein, that would vest in the Panchayat. A major river such as the Baliapatam river does not fall u/s 82. It is not shown by what other process of law the land involved in the suit which is a river poramboke has vested in the Panchayat."

The case dealt with by the learned single Judge arose out of a suit that was instituted prior to the amendment to Section 82 of the Act, which was brought about by Ordinance 11 of 1975 and substituted by Act 3 of 1976, as could be verified from the records of the said case, which we called for during the course of the hearing of this appeal. It is by the said amendment that the expression "all public water-courses other than rivers passing through more areas than the Panchayat area which the Government may specify" was introduced in Sub-section (1) of Section 82 of the Act. It appears to us therefore that there was no occasion for the learned single Judge to consider the provisions of Section 82(1) of the Act, as amended. It is no doubt true that in the course of the judgment the learned single Judge has extracted the provisions Section 82, suggesting that it is the amended provisions of Section 82 that were considered by the learned single Judge. So far as Ext. B50 notification relied on by the learned single Judge is concerned, that was an order of the Government dt. 19-10-1968 and could not therefore be a notification issued u/s 82(1) of the Act. A notification could have

been issued only after Section 82(1) stood amended by Ordinance 11 of 1975 and later by Act 3 of 1976. So far as the provisions of Section 82 are concerned, the learned single Judge has observed that it is only such of the watercourses that are mentioned therein that would vest in the Panchayat. That is no doubt the correct position. But the question is as to what are the water-courses referred to in Sub-section (1) of Section 82. The learned single Judge further observes that a major river such as the Baliapatam river, does not fall u/s 82 of the Act. No reasons have been assigned for this inference of the learned single Judge, and, therefore, with great respect, it is difficult to agree with the view taken by the learned single Judge that because Baliapattam river is a major river that it does not vest in the Panchayat u/s 82 of the Act. As a matter of fact, Sub-section (1) of Section 82 does not make any difference between a major river or a minor river. What it really adverts to is the water-courses which include the rivers as defined in Section 2(33) of the Act. With great respect, it is not possible to agree with the observations of the learned single Judge that merely because a particular river is a major river that it does not stand transferred to and vest in the Panchayat u/s 82 of the Act.

4. A similar question did arise for consideration before another learned single Judge of this Court in the case reported in *Joseph v. Pallippuram Panchayat* ILR (1983) Ker 450. Khalid J., (as he then was) has observed as follows in para 8 of this judgment:

"Under Section 82(1) of the Panchayats Act all watercourses..... and other water works except those excluded by specific notifications vest in the Panchayat".

It is clearly held in the said judgment that all rivers, except those excluded by specific notification, shall stand transferred and vest in the Panchayat. With respect, we agree with the said interpretation of Section 82(1) by the learned single Judge in that case.

5. On a plain construction of Section 82(1) of the Act, we have no hesitation in taking the view that it is only such of the rivers which are included in the notification published in the gazette that shall not stand transferred to and vest in the Panchayat. In the absence of a notification, the river in question which flows through more areas than one Panchayat area stands transferred to and vest in the Panchayat.

For the reasons stated above, this appeal fails and it is dismissed. No costs.