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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

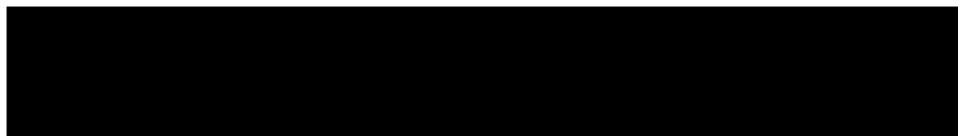
TUESDAY, THE 30<sup>TH</sup> DAY OF JANUARY 2024 / 10TH MAGHA, 1945

WP(C) NO. 3304 OF 2024

PETITIONER(S) :

SAROJAM L

AGED 85 YEARS



BY ADV A.S.SABU

RESPONDENT(S) :

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY,  
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DISTRICT COLLECTOR, ERNAKULAM DISTRICT,  
CIVIL STATION, KAKKANAD, ERNAKULAM, PIN -  
682030
- 3 THE REVENUE DIVISIONAL OFFICER  
FORTKOCHI, OFFICE OF THE REVENUE DIVISIONAL  
OFFICER, FORTKOCHI, ERNAKULAM DISTRICT, PIN -  
682001
- 4 THE CONVENOR/AGRICULTURAL OFFICER  
LOCAL LEVEL MONITORING COMMITTEE, MULAVUKAD  
GRAMA PANCHAYATH, MULAVUKAD, ERNAKULAM  
DISTRICT, PIN - 682012
- 5 THE PRINCIPAL AGRICULTURAL OFFICER  
OFFICE OF THE PRINCIPAL AGRICULTURAL OFFICE,  
CIVIL STATION, KAKKANAD, ERNAKULAM, PIN -  
682030



2024/KER/7166

WP(C) NO. 3304 OF 2024

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ADDL.R6 THE DISTRICT LEVEL AUTHORISED COMMITTEE,  
REPRESENTED BY ITS CONVENOR, THE PRINCIPAL  
AGRICULTURAL OFFICER, KAKKANAD, ERNAKULAM (IS  
SUOMOTU IMPLEADED AS ADDITIONAL 6TH  
RESPONDENT IN THE WRIT PETITION AS PER ORDER  
DATED 30.01.2024)

BY ADV.

SMT. DEVISHRI R, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 30.01.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**CR****P.V.KUNHIKRISHNAN, J.****-----  
W.P.(C)No. 3304 of 2024  
-----****Dated this the 30<sup>th</sup> day of January, 2024****JUDGMENT**

The petitioner is an octogenarian. She is now 85 years old. The petitioner's husband and only son died. She was abandoned by her relatives and hence she is residing in an Orphanage at Kakkanad. The dream of the petitioner now is to construct a house of her own, but it is not materialised because the entire 81 cents of land owned by her is a water logged property. Whether in such a situation, the court can allow the petitioner to construct a residential building after reclaiming a portion of her land by invoking the extraordinary jurisdiction under Article 226 of the constitution of India, when the rigour of the Kerala



Conservation of Paddy Land and Wet Land Act, 2008 (for short 'Act 2008') and the Kerala Conservation of Paddy Land and Wet Land Rules, 2008 (for short 'Rules 2008') is staring against the court is the question to be decided in this case.

2. Petitioner is the owner of 81 cents of water logged property comprised in Resurvey Block No.2, Resurvey No. 96/8-2, and 96/11.6 of Mulavukad Village. The last ambition of the petitioner is that she wants to reside in her own house before her death. Some well wishers in the locality are ready to construct a small house for the petitioner if the petitioner could reclaim 10 cents of land out of her 81 cents of property. It is an admitted fact that the petitioner has no house of her own and she has no other property except the above said property. Therefore the petitioner submitted an application



before the 4<sup>th</sup> respondent for reclaiming 10 cents of land for construction of a house. Ext.P2 is the application submitted by the petitioner in Form – 1 as per Rules 2008. The 4<sup>th</sup> respondent forwarded Ext.P2 application to the 5<sup>th</sup> respondent for his further action with a report, saying that on inspection they could satisfy that the property of the petitioner is waterlogged and she has no other property other than the said property. But the 4<sup>th</sup> respondent stated in the report that, if 10 cents of paddy is reclaimed, it will affect the environmental system and also that if it is allowed, there is every possibility to get similar request for reclaiming the other surrounding properties as well. Hence the 4<sup>th</sup> respondent had not recommended for reclamation as per Ext.P1 application. Ext.P3 is the proceedings of the 4<sup>th</sup> respondent along with his report which was sent to the



5<sup>th</sup> respondent. Since there was no response forthcoming from the 4<sup>th</sup> respondent, the petitioner again submitted representation before the 4<sup>th</sup> respondent as evidenced by Ext.P4. Petitioner also submitted representation before the 2<sup>nd</sup> respondent as evidenced by Ext.P5. It is submitted that Exhibit P-5 representation also remains unattended. According to the petitioner, there is a 7-meter width pathway to the property of the petitioner. It is also submitted that there are so many houses situated in the surrounding property of the petitioner. Hence it is submitted that the observation made by the 4<sup>th</sup> respondent in Ext.P3 report is incorrect. Hence this Writ petition is filed with the following prayers:

"(i). issue a Writ of certiorari or any other appropriate writ, order or direction, quashing Exhibit P-3 report of the 4<sup>th</sup> respondent;

(ii). issue a Writ of Mandamus or any other appropriate writ, order or direction, directing the



respondents 2 to 4 to allow the petitioner to reclaim 10 cents of land for residential purpose as applied vide Exhibit P-2 Application;

(iii). Petitioner also prays that this Hon'ble Court may be pleased to dispense with the English translation of the documents produced in the Vernacular Language. and

(iv). issue such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*[SIC]*

3. Heard the learned counsel appearing for the petitioner and the learned Government Pleader.

4. This Court carefully perused the pleadings in this Writ petition. An 85-year-old lady is coming before this Court to get shelter. Caring for all old people is perhaps the greatest responsibility of all of us. They are the people who walked before us. We should respect their last ambitions in a pragmatic manner. The senior citizens who walked before us have given so much and made possible the life we all



enjoy. Therefore, this peculiar case is to be dealt in a separate angle.

5. Section 9 of Act, 2008 deals with the constitution of the District Level Authorised Committee. Section 9(1) says that, notwithstanding anything contained in section 3, each Collector shall constitute in the District, District Level Authorised Committee for considering the applications for reclamation of paddy land for the construction of residential building to the owner of paddy land and for taking suitable decision. The proviso to Section 9(1) says that the District Level Authorised Committee shall not take any decision granting permission for filling up paddy land for the construction of residential building exceeding an extent of 4.04 Ares in a panchayat and an extent of 2.02 Ares in a Municipality/Corporation, as the case may be. Section 3 of Act 2008 says about





the prohibition on conversion or reclamation of paddy land. Section 9(8) says about the conditions in which an application under Section 9(1) of Act 2008 is to be considered. It will be better to extract Section 9(8) of Act 2008:

- 9. (1)xxxxxxxxxxxx
- (2)xxxxxxxxxxxx
- (3)xxxxxxxxxxxx
- (4)xxxxxxxxxxxx
- (5)xxxxxxxxxxxx
- (6)xxxxxxxxxxxx
- (7)xxxxxxxxxxxx

(8) Notwithstanding anything contained in subsection (1), no application shall be considered by the District Level Authorised Committee, unless the Local Level Monitoring Committee has recommended that –

- (i) Such reclamation shall not adversely affect the ecological condition and the cultivation in the adjoining paddy land;
- (ii) the owner of the paddy land or his family do not own a suitable land for this purpose in the District;
- (iii) the building to be constructed is for his own purpose; and



(iv) such paddy land is not situated surrounded by other paddy land.”

6. As per Clause (i) to (iv) of Section 9(8) of Act 2008, an application can be considered for the reclamation of paddy land for the construction of residential buildings only if such reclamation will not adversely affect the ecological condition and the cultivation in the adjoining paddy land; the owner of the paddy land or his family do not own a suitable land for this purpose in the District; the building to be constructed is for his purpose and such paddy land is not situated surrounded by other paddy land. There is no dispute to the fact that the petitioner does not own a suitable other land for the construction of a residential house in the district. It is also an admitted fact that the building is to be constructed for the own purpose of the petitioner. As far as Section 9(8)(i) of



Act 2008 is concerned, there is an adverse report from the authorized officers. This Court is aware of that report. But here is a senior citizen and an octogenarian, plead before this Court, to get a shelter to reside in her last days, who is now residing in an orphanage. Can this Court dismiss such an application stating that the reclamation of a small bit of land out of the 81 cents of land owned by the petitioner will adversely affect the ecological condition and cultivation in the adjoining paddy land? I am of the considered opinion that the respondents should take this as an exceptional case to see that the petitioner is constructing a house in any part of the 81 cents where there is less chance of adversely affecting the ecological condition. Balance of ecological conditions is a need for the citizen and not for the law. The petitioner, who is an 85-year-old lady, wants to



construct a residential house in her last days of life. She is an orphan residing in an orphanage. Her husband and son already died. I am of the considered opinion that this Court cannot turn its face to this ground reality and reject the application stating that the reclamation of the property will adversely affect the ecological condition and the cultivation in the adjoining paddy land. The ground stated in Ext.P3 that, there is a chance for similar requests from others also can be ignored for the simple reason that, this is to be taken as a separate one, and this need not be treated as a precedent.

7. It is true that in certain cases, law will be too strict; but the Court has to look into the ground reality in certain circumstances and decide the matter accordingly. Sometimes the law is an 'ass' as observed by Charles Dickens in 'Oliver Twist'. In such a situation,



the constitutional court should step in. I had the occasion to consider a similar situation in **Neyan Veettil Behsana V Local Registrar of Births and Deaths & Marriages (2024(1) KHC 331)**. The relevant portion of the above judgment is extracted hereunder:

“7. There is a dialogue in the Oliver twist, one of the famous novels by Charles Dickens. It is like this; "...If the law supposes that....the law is an ass – a idiot. If that’s the eye of the law, the law is a bachelor; and the worst I wish the law is that his eye may be opened by experience-- by experience.....”. The law is an ass is a derisive expression said when the rigid application of the letter of law is seen to be contrary to common sense. In such a situation, I am of the considered opinion that, the constitutional court should step in.”

This is a fit case in which the Constitutional Court and the respondents should come forward to see that the dream of this 85-year-old lady is fulfilled and to tell



the whole world that the petitioner is not an orphan and the Court and every citizen of this country is behind her. The respondents will find out at least 10 cents of land out of 81 cents owned by the petitioner for the purpose of constructing a residential house and allow her to reclaim that part of the property. This should be done within 3 weeks because every day is important to this Octogenarian who is now 85 years old.

Therefore, this writ petition is allowed in the following manner:

1. Respondent Nos.2 to 6 are directed to do the needful to see that the petitioner can reclaim 10 cents of land out of 81 cents owned by her for residential purpose as applied in Ext.P2 application, as expeditiously as



possible, at any rate, within three weeks from the date of receipt of a copy of this judgment. The respondents can find out and earmark any portion of the land out of 81 cents for this purpose.

2. The respondents need not treat this as a precedent and the directions issued by this Court do not apply to other adjacent owners of the property.

DM/JV

Sd/-  
**P.V.KUNHIKRISHNAN**  
**JUDGE**



**APPENDIX OF WP (C) 3304/2024**

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE LAND TAX RECEIPT  
DATED 14/7/2022 ISSUED BY THE  
VILLAGE OFFICER, MULAVUKAD
- EXHIBIT P2 TRUE COPY OF THE APPLICATION DATED  
02/09/2022 SUBMITTED BY THE  
PETITIONER TO THE 4TH RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE LETTER DATED  
30/9/2022 OF THE 4TH RESPONDENT  
ALONG WITH HIS REPORT SENT TO 5TH  
RESPONDENT OBTAINED UNDER RIGHT TO  
INFORMATION ACT
- EXHIBIT P4 TRUE COPY OF THE  
REPRESENTATION/APPEAL DATED  
31/12/2022 SUBMITTED BY THE  
PETITIONER BEFORE THE 4TH RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE REPRESENTATION  
DATED 15.12.2023 SUBMITTED BY THE  
PETITIONER BEFORE THE 2ND RESPONDENT

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE