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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 1ST DAY OF AUGUST 2022 / 10TH SRAVANA, 1944

CRL.MC NO. 6348 OF 2021

CRIME NO.154/2019 OF CUMBAMMETTU POLICE STATION, IDUKKI
C.C. NO.267/2020 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE
COURT, THODUPUZHA

PETITIONER/ACCUSED:

VASANTHAN. B
AGED 65 YEARS
S/O.BHARGAVAN, NOW RESIDING AT CLOUD 9, POOSARIPADI,
NORTH PARAVUR, COCHIN 683 513, (FORMERLY RESIDING AT
PERETIL VASANTH VIHAR MUNGODU P.O., VARKKALA, PIN
695 141)

BY ADVS.
N.K.MOHANLAL
LAKSHMI VARADA V.P.

RESPONDENTS:

- 1 THE SUB INSPECTOR OF POLICE,
CUMBAMMETTU POLICE STATION, IDUKKI 685 551
- 2 THAHSILDHAR
LR UDUMBANCHOLA, IDUKKI 685 553
- 3 STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM PIN 682 031

BY SRI. SUDHEER GOPALAKRISHNAN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
28.06.2022, THE COURT ON 1.8.2022 PASSED THE FOLLOWING:

O R D E R

The petitioner is the accused in C.C.No.267/2020 on the file of the Chief Judicial Magistrate Court, Thodupuzha. The aforesaid case arises from Crime No.154/2019 of Cumbammettu Police Station which was registered for the offences punishable under Section 7(a) of the Kerala Land Conservancy Act, 1957 (hereinafter referred to as 'the Act').

2. The allegation against the petitioner is that, with the intention to make unlawful gains, he encroached upon Government poramboke land comprised in Survey No.67/1 (Re-Survey No.334/1, Block No.52) having an extent of 0.4720 hectares and constructed a compound wall, gate and a room for the watchman. The aforesaid crime was registered based on a complaint submitted by the Tahsildar(LR) Udumbanchola. Annexure-A1 is the F.I.R and after completing the investigation, the

Police filed Annexure-A2 final report. This Crl.M.C. is filed for quashing all further proceedings pursuant to Annexure-A2 final report.

3. Heard Sri. N.K.Mohanlal, the learned counsel for the petitioner, Sri. Sudheer Gopalakrishnan, the learned Public Prosecutor for the respondents.

4. The contention of the learned counsel for the petitioner is that, the initiation of prosecution as per Annexure-A2 is not in compliance with the statutory procedure contemplated under the provisions of the Land Conservancy Act r/w. the rules framed under the said Act. According to him, the 2nd respondent, on whose complaint the F.I.R. was registered, is not competent to initiate proceedings and the only person who can launch the prosecution is the District Collector. To substantiate the contention, he relies on Section 15 of the Act and

Rules 4, 5, 6 and 7 of the Kerala Land Conservancy Rules, 1958 (hereinafter referred to as 'the Rules'). According to him, the aforesaid provisions contemplate a separate procedure for initiating the prosecution and the competent person for the same is the District Collector. The learned Counsel also places reliance on Section 4(2) of the Criminal Procedure Code (Cr.PC), which provides that, if the special statute provides for a separate procedure for initiation of prosecution, such procedure has to be followed meticulously, and since the present prosecution is instituted by following the provisions in Cr.P.C, which is in deviation from the procedure contemplated under Land Conservancy Act, it is unsustainable. In this case, the prosecution has been launched based on a complaint submitted by the 2nd respondent and the cognizance is taken based on a final report submitted by the police under section 173(2) of Cr.P.C. According to the

learned counsel, the prosecution is, therefore, liable to be quashed.

5. On the other hand, the learned Public Prosecutor would oppose the aforesaid contention. According to the learned Public Prosecutor, the provisions referred to by the learned counsel for the petitioner do not contemplate a separate procedure for initiating the prosecution and infact, those provisions are general provisions laid down to deal with the various instances of encroachment of Government land and the steps to be taken to restore the possession thereof. It is pointed out that, the aforesaid procedure includes various steps to evict the encroacher by initiating appropriate proceedings in this regard and initiation of prosecution is only one among the measures therein. It is also contended that, the aforesaid provisions do not contemplate a particular procedure for initiation of prosecution. On the other hand, the stipulations

contained therein are only to enable the officers concerned to initiate the proceedings for eviction as well as prosecution. It was also pointed out that, as per Section 9(2) of the Act, the offences specified under Section 7 of the Act are cognizable. Therefore, there is nothing illegal in initiating proceedings at the instance of the 2nd respondent herein.

6. I have perused the records and taken into consideration the rival contentions raised from either side. The specific case of the learned counsel for the petitioner is that Section 15 of the Act provides that, unless the Government, by notification in the Gazette, authorize any other officer to exercise powers conferred on the District Collector, no other officer can perform the functions of the District Collector. He also places reliance upon the rules under the Kerala Land Conservancy Rules, 1958 to contend that, as per the procedure contemplated therein, the only

person competent to initiate prosecution for encroachment of Government land is the District Collector. Therefore, in the absence of notification authorising the 2nd respondent herein to initiate prosecution, the proceedings initiated in this case based on a complaint submitted by the 2nd respondent are not legally sustainable, contends the learned counsel for the petitioner.

7. In order to examine the said contention, we need to have a look at the provisions referred to by the learned counsel for the petitioner. Section 15 of the Kerala Land Conservancy Act reads as follows:

"15. Officers to exercise powers of Collectors. - *The Government may, by notification in the Gazette, authorise any officer including the Secretaries of Panchayats and Municipalities by name or by virtue of his office to exercise all or any of the powers conferred on a Collector under this Act."*

The relevant Rules in the Kerala Conservancy Rules, 1958 referred to by the learned counsel are Rule 4,5,6 and 7, which read as follows:

"4. i. All officers of the Land Revenue Department shall have it as their primary duty to prevent unauthorised occupation of lands which fall under any of the descriptions given in the definitions of 'property of Government' and 'Poramboke' in Section 3 and Section 4 of the Act.

ii. The Village Officer, shall report to the Collector promptly all cases of encroachments on porambokes and on lands which are the property of Government other than porambokes, in Form A appended to these rules. The report shall be accompanied by a plotted sketch drawn to scale of the encroachment and a Mahazar containing full particulars of the land encroached upon, such as period of occupation, nature and value of improvements, if any, made on the land, the position of the land with reference to adjoining lands, etc. [Explanation.- For the purpose of these rules the erection of any wall, fence or building or the putting up of any overhanging structure or projection (whether on a temporary or permanent basis) on or over any land aforesaid without permission shall be deemed to be an encroachment;]

iii. [If any officer of the Land Revenue Department of and above the rank of Village Officer detects timber, earth, metal, laterite, sand, lime-shell or such other article of value, involved in unauthorised removal from Government land, such article shall be seized by him and taken under Government custody to be disposed of under the orders of the Collector. In such cases he shall prepared a mahazar giving the full particulars of the article so seized and shall as soon as may be, make a report of such seizure to the Tahsildar or the Taluk accompanied by a statement in Form 'AA' appended to these rules. The articles so seized shall be kept in custody or handed over for safe custody to a reliable third person and a receipt obtained therefor].

5. Departments other than the Land Revenue Department which are in charge of porambokes, shall intimate to the Collector all cases of unauthorised occupation of such lands. On receipt of the intimation the Collector shall arrange

for statements in Form A appended to these rules being prepared in respect of such encroachments.

6. *When reports in Form A under Rules 4 and 5 are received, the Collector shall inspect the land and satisfy himself that there is encroachment, before proceeding to deal with the case under the Act:*

[Provided that if on personal inspection the Collector is satisfied that there has been encroachment, it shall not be necessary to obtain report in Form 'A' to deal with the case of unauthorised occupation under the Act].

7. *Recourse may be had to the provisions of Sections 6,7,8,10 & 11 of the Act in dealing with cases of unauthorised occupation of Government lands and also to those of Section 9 where found necessary.*

Exception :- If however, the land encroached upon is available for assignment and the unauthorised occupant is eligible to have the land in issue on assignment under the law relating to the assignment of Government lands for the time being in force, without auction, orders need not be passed under the sections of the Act referred to in this rule provided the occupant agrees to take up the registry or lease of the land and puts in a formal application for the same.

Note :- In the event of eviction of the unauthorised occupant under the provisions of the Act, he shall not be entitled to any compensation from the Government for trees planted or other improvements effected by him on such land."

Rule 4(i) contemplates the primary duty of the Revenue Officers to prevent the unauthorized occupation of the land, and Sub-rule (ii) of Rule 4 provides that, all cases of encroachment shall be reported to the District Collector. Rules 5 and

6 contemplate the steps which have to be taken by the Collector upon getting information in this regard. Rule 6 further provides that, the Collector shall inspect the land and satisfy himself that there is encroachment before proceeding to deal with the case under the Act. Rule 7 further provides that recourse may be had to the provisions of Sections 6,7,8,10 & 11 of the Act in dealing with cases of unauthorised occupation of Government lands and also to those of Section 9 where found necessary. By placing reliance upon these statutory provisions, the learned counsel for the petitioner contends that, since Rule 7 specifically provides that recourse may be had to the provisions including Section 7 of the Act in dealing with cases of unauthorised occupation of Government lands, the only competent officer to initiate prosecution is the Collector. This, according to him, is because, Rule 7 is in continuation of Rules 4,5 and 6, and a conjoint reading of all the

provisions would clearly convey that, the power to initiate the prosecution is vested only upon the District Collector. It is further pointed out that, Section 4(2) of the Cr.PC states that, all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Thus, it is pointed out that, if a separate procedure is contemplated in the special statute for initiating the prosecution, such procedure has to be adopted.

8. In my view, the contention put forward by the learned counsel for the petitioner is not legally sustainable. Section 4(2) of the Cr.PC is applicable only in a situation where the special statute specifically provides a separate specific procedure for initiation of prosecution. As far as

the rules referred to by the learned counsel for the petitioner are concerned, under no circumstances can those provisions be treated as provisions contemplating a specific or separate procedure for the institution of prosecution of the offences under the Act by deviating from the procedure contemplated under the Cr.P.C. It is true that Rule 7 refers to the prosecution under Section 7 of the Act. However, in my view, the aforesaid provision is not an exclusive provision which prohibits the normal procedure under Cr.P.C, for initiation of prosecution. A careful reading of the same would indicate that the aforesaid Rule is only directory in nature, and it does not in any manner prevent the Police from investigating and filing charge sheet for the offences punishable under the Act based on the information furnished by the Tahsildar concerned. To be precise, nothing in the said provision excludes the application of the procedure contemplated in

the Cr.PC for the said purpose. Moreover, it is also not specifically mentioned in any of the provisions of the Land Conservancy Act or Rules thereunder that the prosecution has to be initiated by the Collector himself.

9. The learned counsel attempts to bring in an inference, by reading all the stipulations in Rules 4,5, 6 and 7 together, to the effect that the power to initiate the prosecution is exclusively vested upon the District Collector. This contention cannot be accepted for more than one reason. Firstly, the procedure contemplated in the said rules are not confined to the prosecution alone, but on other hand, it provides for the steps to be taken, by the revenue officers, upon detecting an encroachment on Government land. It also includes measures to restore the possession of the land by evicting the encroacher. Secondly, none of the provisions specifically provide that only at the instance of the District Collector

prosecution can be instituted. It is true that, Rules 4 and 5 provide that upon detection of encroachment, the revenue officers shall intimate the matter to the District Collector, and as per Rule 6, the District Collector has to inspect the land before proceeding to deal with the case under the Act. According to the learned Counsel, Rule 7, which provides for taking recourse to various measures including those under Sections 7 (deals with punishments) and 9 (making the offence cognizable) of the Act, can be invoked only after following the procedure in Rules 4,5 and 6. From the reading of Rule 7, there is nothing to indicate that, in the absence of compliance of procedure contemplated in Rules 4,5 and 6, the proceedings initiated would be vitiated. In my view, those are all directory in nature, to guide the revenue officers to perform their duties and under no circumstances the same can be treated as something to provide a right of defense for the

person accused of encroaching the Government Land. The conspicuous aspect to be noticed in this regard is that, Rule 7 only uses the expression "recourse may be had....." which in my view would indicate, taking recourse of the provisions in Sections 6,7,8,9,10 and 11 of the Land Conservancy Act, is provided only as a remedy which can be availed by the officers upon being satisfied about the encroachment, after following the procedure contemplated in Rules 4,5 and 6 of the Land Conservancy Rules. Under no circumstances it can be interpreted to mean that, for initiation of the prosecution, compliance with the procedure in the above rules is mandatory. It is also to be noted in this regard that, substantive provisions dealing with the offences/prosecution are as per Sections 7 and 9 of the Land Conservancy Act, and the said provisions are not subject to any pre-conditions or restrictions in the Act. Therefore, the applicability of, or the power to invoke such

provision cannot be regulated/curtailed by insisting on the compliance of the procedure in the rules, which is subordinate legislation.

10. At this juncture, it is relevant to notice that, as per Section 9(2) of the Act, the offences specified under Section 7 of the Act have been made cognizable. Since the offences are specifically made cognizable as per the statute, the Police are competent and bound to conduct an investigation by following the procedure contemplated under Section 154 of Cr.PC, which mandates the registration of F.I.R upon receiving information of commission of a cognizable offence. None of the provisions in the Land Conservancy Act or the Rules framed thereunder makes it necessary to file a complaint in any particular form, for initiating the prosecution. It is also not specified that such complaint or information shall be submitted by any particular officer. In other words, no statutory implications emerge from

provisions of the Land Conservancy Act and the Rules framed thereunder, necessitating any deviation from the procedure for registration of the crime, investigation of the same and prosecuting the accused as per the provisions of Cr.PC. Therefore, I do not find any reason to accept the contention of the learned counsel for the petitioner.

11. To substantiate the contention put forward by the learned counsel for the petitioner, he places reliance upon the decisions on **Ismail v. State of Kerala** [2019(3) KLT 1117], **Md. Israil v. State of Bihar** [2020 Cri.LJ 1676] (High Court of Patna), **Ebha Arjun Jadeja & Ors. v. State of Gujarat** [AIR 2019 SC 5203] and **Bablu v. State of Bihar** [2020 ICO 1776].

12. I have carefully gone through the observations made in the aforesaid judgments. In **Ebha Arjun Jadeja's case** (supra), the question considered was relating to the offence under the

Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA Act'). The aforesaid decision dealt with the registration of a crime by following the procedure contemplated under Section 154 of Cr.PC without obtaining sanction as contemplated under TADA Act. However, it is to be noted that Section 20(A) of the TADA Act specifically provided the manner in which cognizance of an offence under the Act has to be taken. The aforesaid provision starts with a non-obstante clause which states that no court shall take cognizance of any offence under that Act without the previous sanction of the Inspector-General of Police or as the case may be, the Commissioner of Police. Thus, it is evident that there was a specific prohibition in taking cognizance of the offence otherwise than in the manner contemplated in the said Act.

13. In **Ismail's case** (supra), this Court considered the question of initiation of

prosecution under the provisions of the Protection of Children from Sexual Offences Act, 2012. There also, this Court took note of the fact that Section 19 of the POCSO Act contemplates a non-obstante clause and also a special procedure for reporting the offence. It was observed that on account of such provisions, that would override the general provision in Section 154 of the Cr.PC.

14. In **Md.Israil's case** (supra), the High Court of Patna was dealing with the offences under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 ('MMDR Act'). In that decision also, the special procedure contemplated under the said Act was upheld as against the general provisions in the Code of Criminal Procedure. It is to be noted that Section 22 of the MMDR Act specifically provides that no court shall take cognizance of any offence under the said Act except on a complaint made by a person authorized by the Central Government or

State Government. Therefore, in that enactment also, a separate procedure was contemplated. In **Bablu's case** (supra), the High Court of Patna dealt with the offences under the Drugs and Cosmetics Act, 1940. There also, Section 32 of the Drugs and Cosmetics Act provided that no prosecution shall be instituted except by the officers specifically mentioned in the said provision.

15. Thus, when all the aforesaid decisions relied on by the learned counsel for the petitioner are examined, it can be seen that, the principles laid down in those decisions were in respect of enactments, where a separate and specific procedure was contemplated for initiation of prosecution. On the other hand, when coming to the provisions of the Land Conservancy Act, I am unable to find any provision which excludes the operation of Section 154 of Cr.PC and contemplates any separate specific procedure for initiation of

the prosecution. Therefore, I am of the view that, in the absence of such procedure, the proceedings as contemplated under Section 154 of Cr.PC and the other relevant provisions of Cr.PC are to be followed to prosecute the accused for the offence under Section 7 of the Land Conservancy Act. The fact that Section 9(2) of the Land Conservancy Act specifically made the offence under Section 7 of the Act 'cognizable' fortifies the above view.

In such circumstances, I do not find any merits in the contentions put forward by the learned counsel for the petitioner. In the result, this Crl.M.C. is dismissed, without prejudice to the other contentions of the petitioner.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF CRL.MC 6348/2021

PETITIONER'S ANNEXURES:

- Annexure A1 A TRUE COPY OF FIR DATED 19.10.2019 ISSUED BY CUMBAMETTU POLICE STATION BEFORE THE CJM, THODUPUZHA (FIR NO.154/2019]
- Annexure A2 A TRUE COPY OF CHARGE SHEET IN CC 267/2021 OF CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA
- Annexure A3 A TRUE COPY OF NOTICE NO.G2-12552/2017, (L.C.01/2019) DATED 29.01.2019 OF TAHSILDAR (LR) UDUMBANCHOLA
- Annexure A4 A TRUE COPY OF ORDER NO.G2-12552/2017, (L.C.01/2019) DATED 1.8.2019 OF TAHSILDAR (LR) UDUMBANCHOLA
- Annexure A5 A TRUE COPY OF ORDER NO.RDODVM/1181/2019/B6 DATED 26/9/2019 OF SUB COLLECTOR, DEVIKULAM
- Annexure A6 A TRUE COPY OF MEMORANDUM OF REVISION DATED 30.9.2019 FILED BY PETITIONER
- Annexure A7 A TRUE COPY OF REVISIONAL ORDER DATED 12/5/2020 OF DISTRICT COLLECTOR, IDUKKI