



2023:KER:8747

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 6<sup>TH</sup> DAY OF FEBRUARY 2023 / 17TH MAGHA, 1944

WP(C) NO. 23400 OF 2022

**PETITIONER:**

MOUSHMI ANN JACOB  
AGED 47 YEARS  
D/O. JACOB, KALARIKKAL (H) KAARIKODE KARA,  
KEERIKODE VILLAGE, THODUPUZHA, IDUKKI DISTRICT - 685585  
BY ADVS.  
JOBY JACOB PULICKEKUDY  
ANIL GEORGE(K/000347/1992)  
DAJISH JOHN  
HARIKRISHNAN P.  
POOJA SEBASTIAN

**RESPONDENTS:**

- 1 THE STATE OF KERALA  
REPRESENTED BY ITS SECRETARY REVENUE DIVISION,  
SECRETARIAT, THIRUVANANTHAPURAM - 695001
- 2 THE DISTRICT COLLECTOR,  
OFFICE OF THE DISTRICT COLLECTOR, PAINAVU P.O  
IDUKKI DISTRICT - 685603
- 3 THE REVENUE DIVISIONAL OFFICER  
REVENUE DIVISIONAL OFFICE, IDUKKI - 685613  
BY ADV ADVOCATE GENERAL OFFICE KERALA  
SMT.PARVATHY.K-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
06.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## **JUDGMENT**

**Dated this the 6<sup>th</sup> day of February, 2023**

This writ petition is filed seeking the following prayers:

*“(i) Issue a writ of certiorari or any other appropriate writ calling for the records relating to Exhibit P4 & P5 and quash the same.*

*(ii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 3<sup>rd</sup> respondent to calculate the fees for the purpose of Section 27 of the Kerala Conservation of Paddy Land and Wetland Act by taking the fair value prevailed as on 26.10.2019 in re-survey No.97/2 of Kaarikode Village.*

*(iii) Declare that the Petitioner is entitled for exemption upto 25 cents and need to pay fees only for the remaining extent of land.”*

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner is the owner in possession of 14.57 Ares of property in Re-Survey No.97/2 of Kaarikode Village in Thodupuzha Taluk. It is submitted that the petitioner had made an application for using the property for other purposes in Form 6 under Section 27A of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (hereinafter



referred as ‘the Act’) on 26.10.2019. The Village Officer had submitted Ext.P3 report stating that the property is dryland and had also stated the fair value of the property. Thereafter, on noticing that the property was included in the data bank, the 3<sup>rd</sup> respondent had directed the petitioner to file an application in Form 5 to correct the data bank. The said application was submitted by the petitioner and an order was passed on 13.01.2021 removing the property from the data bank. Thereafter, the petitioner was required to remit the fees for permission to use the property for other purposes.

4. The learned counsel for the petitioner challenges the demand for fees on two grounds. Firstly, it is contended that the correction effected in the data bank is a correction of a mistake and therefore the correction should be relatable back to the date of preparation of the data bank itself. It is contended that since the petitioner had filed a Form 6 application on 26.10.2019, the fair value of the property is to be reckoned taking note of the fair value as on the said date, that is, on 26.10.2019 and not the revised fair value. It is further contended that the fair value of the property in question is to be considered and not the



fair value of the neighboring dryland, since the amendment to the definition of fair value was brought into effect only in the year 2020.

5. The learned Government Pleader, on the other hand, would contend that Section 27A of the Act refers to a request for permission for change of nature of “unnotified land”. It is submitted that the property in question, being a part of the data bank in the year 2019, it becomes unnotified land only on the Form 5 application being allowed, that is, on 13.01.2021 and therefore, the Form 6 application earlier filed by the petitioner was only a defective application which could not have been considered. It is submitted that it is only after the removal of the property from the data bank that a valid Form 6 application could have been filed and that it is only thereafter that the question of the fair value of the fees would arise.

6. The 2<sup>nd</sup> contention raised by the petitioner is with regard to the demand for fair value in respect of the entire property. The learned counsel for the petitioner submits that the fees can be demanded for the conversion of 14.57 Ares of land only at 10% of the fair value of the property by which it exceeds 25 cents and not for the entire property.



7. Having considered the contentions advanced, I am of the opinion that since Section 27A of the Act specifically refers to permission for use of unnotified land for other purposes and for change of nature of unnotified land, it is only when the property in question is unnotified that an application under Section 27A would become maintainable. In the instant case, though the Form 6 application has been submitted by the petitioner on 26.10.2019, on coming to know that the property is included in the data bank, the petitioner had filed a Form 5 application and an order was passed removing the property from the data bank, admittedly, only on 13.01.2021. Though the Act provides for a correction of the mistakes in the data bank and a deemed removal of the property from the data bank if a Form 5 application is allowed, I am of the opinion that it is only when an order is passed by the RDO permitting the removal of the property from the data bank that the property in question becomes unnotified land and therefore, a Form 6 becomes maintainable. If that be so, it is only after 13.01.2021 that a valid Form 6 application could have been filed by the petitioner. Though the earlier Form 6 application filed by the petitioner probably



was considered by the RDO, it becomes maintainable only after 13.01.2021 and therefore, what is to be reckoned is the State of Affairs and the fair value after a Form 6 becomes maintainable. Even so, I am of the opinion that the 2<sup>nd</sup> contention raised by the petitioner with regard to the demand for fees at 10% of the fair value of the property by which it exceeds 25 cents is liable to be answered in favour of the petitioner. Since the Act, the Rules as well as the Fee Schedule appended to the Rules specifically provide for demand of fees at the rate of 10% of the fair value for the extent of property by which it exceeds 25 cents, I am of the opinion that the demand of the fees at much higher rates is unjustifiable.

8. In the above view of the matter, the demand notice issued to the petitioner is set aside. There will be a direction to the 3<sup>rd</sup> respondent to make a calculation of the fee payable on the Form 6 application submitted by the petitioner reckoning that the Form 6 application has been submitted immediately after 13.01.2021 and requiring the payment of fee only at the rate of 10% of the fair value of the property as it stood immediately after 13.01.2021 for the extent of 4.45 Ares of



land by which it exceeds 25 cents. Appropriate revised notices shall be issued within a period of three weeks from the date of receipt of a copy of this judgment.

This writ petition is ordered accordingly.

Sd/ -

**ANU SIVARAMAN**

**JUDGE**

NP



APPENDIX OF WP(C) 23400/2022

**PETITIONER'S EXHIBITS**

- Exhibit P1** THE TRUE PHOTOCOPY OF DOCUMENT NO.4208/2010
- Exhibit P2** THE TRUE PHOTOCOPY OF APPLICATION DATED  
26/10/2019
- Exhibit P3** THE TRUE PHOTOCOPY OF REPORT DATED 29/01/2020  
ISSUED BY THE VILLAGE OFFICER KAARIKODU
- Exhibit P4** THE TRUE PHOTOCOPY OF ORDER DATED 13/01/2021  
ISSUED BY THE 3RD RESPONDENT
- Exhibit P5** THE TRUE PHOTOCOPY OF NOTICE DATED 27/01/2021  
ISSUED BY THE 3RD RESPONDENT
- Exhibit P6** THE TRUE PHOTOCOPY OF APPLICATION DATED  
01/02/2021
- Exhibit P7** THE TRUE PHOTOCOPY OF REPRESENTATION DATED  
14/02/2022 SUBMITTED TO THE 2ND RESPONDENT
- Exhibit P8** THE TRUE PHOTOCOPY OF LETTER DATED 07/09/2021  
ISSUED BY THE 3RD RESPONDENT
- Exhibit P9** THE TRUE PHOTOCOPY OF LETTER DATED 07/02/2022  
ISSUED BY THE 3RD RESPONDENT
- Exhibit P10** THE TRUE PHOTOCOPY OF NOTICE DATED 20/05/2022
- RESPONDENTS' EXHIBITS: NIL**