

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

THURSDAY, THE 16TH DAY OF MARCH 2023 / 25TH PHALGUNA, 1944

WP(C) NO. 39909 OF 2022

PETITIONER:

SUDHEESH.U
AGED 47 YEARS
S/O. T.R UNNIKRISHNAN, THARAVANTHEDATH HOUSE,
THOTTAKKATTUTHARA, KODUVAYOOR P.O, PALAKKAD., PIN
- 678501
BY ADVS.
JACOB SEBASTIAN
K.V.WINSTON
ANU JACOB

RESPONDENTS:

- 1 THE REVENUE DIVISIONAL OFFICER PALAKKAD
OFFICE OF THE REVENUE DIVISIONAL OFFICER PALAKKAD,
PALAKKAD HEAD POST OFFICE, PALAKKAD DISTRICT., PIN
- 678001
- 2 THE VILLAGE OFFICER
PUTHUNAGARAM VILLAGE OFFICE, PUTHUNAGARAM P.O,
PALAKKAD DISTRICT, PIN - 678503
- 3 THE AGRICULTURAL OFFICER FOR THE PUTHUNAGARAM
GRAMAPANCHAYAT
PUTHUNAGARAM P.O, PALAKKAD DISTRICT, PIN - 678503

OTHER PRESENT:

GP - SYAMANTHAK B.S.

**THIS WRIT PETITION (CIVIL) HAVING COME UP
FOR ADMISSION ON 16.03.2023, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

“CR”

VIJU ABRAHAM, J.

W.P.(C). No. 39909 of 2022

Dated this the 16th day of March, 2023

JUDGMENT

The above writ petition is filed challenging Ext.P2 order whereby the application submitted by the petitioner in Form 5 under Rule 4 (4d) of the Kerala Conservation of Paddy and Wetland Rules 2008 was rejected.

2. Petitioner is the absolute owner and in possession of 0.0481 hectares of land comprised in Old Survey No. 177/2, 7, resurvey block No. 3, resurvey No. 6/22 of Puthunagaram Village, Palakkad Taluk, Palakkad District. The petitioner submits that the property is a garden land situated in a residential area, surrounded by houses and road. Even though the property is garden land, it has been wrongly included as paddy land in the land data bank of Puthunagaram Grama Panchayat. Thereupon, the petitioner preferred an application in Form 5 seeking to delete the above property from the land data

bank. The said application was rejected as per Ext P2 order for the reason that the property is lying fallow and there are paddy cultivation nearby and conversion will affect the flow of water and the environment. The petitioner submits that his property is a garden land which is in a residential area that has been converted long back, and these aspects were not properly considered while issuing Ext P2 order. Petitioner further submits that no site inspection was conducted or a report from the KSREC was obtained by the 1st respondent before issuing Ext P2 order. Only for the reason that the property is left fallow and there are paddy lands nearby, the application submitted by the petitioner cannot be rejected.

3. A detailed counter affidavit was filed by the 1st respondent mainly contending that the Local Level Monitoring Committee(LLMC) visited the property of the petitioner and from the apparent appearance of the property it was found to be paddy land. The fact that the property is surrounded by other properties and a PWD road is admitted in the counter affidavit. But based on Ext. R1(a) report of the LLMC, the application was rejected.

4. I have considered the rival contentions. The question to be considered is whether the reason stated in Ext P2 for rejecting the application is legally sustainable. It is settled law that it is the character and fitness of the land, as available on 12.08.2008, i.e., date of coming into force of the Kerala Conservation of Paddy and Wetland Act, 2008, (hereinafter referred to as 'the Act 2008') that is relevant for inclusion or exclusion of the land in the data bank. (See the judgment in **Joy v. Revenue Divisional Officer/Sub Collector, [2021 (1) KLT 433]** and **Arthasasthra Ventures (India) LLP v. State of Kerala, [2022 (4) KLT OnLine 1222]**). A perusal of Ext. P2 order would reveal that there is no consideration by the 1st respondent as to whether the land in question was a paddy land when the Act 2008 came into force and whether the land is fit for paddy cultivation. The specific case of the petitioner is that no site inspection nor report from the KSREC was obtained before rejecting the application as per Ext P2. In **Arthasasthra's** case (supra), this Court has held that if the Revenue Divisional Officer is not satisfied with the available materials, the said authority ought to have resorted to scientific

data including satellite photographs obtained from KSREC. Therefore, the action of the 1st respondent in rejecting the application of the petitioner without ascertaining as to the character and fitness of the land as on 12.08.2008 and as to whether it was fit for paddy cultivation, without even conducting a site inspection or calling for a report from the KSREC, is absolutely arbitrary and unjust.

5. Another reason stated for rejecting the application is that the land is lying as fallow. Paddy land is defined in Section 2(xii) of the Act, 2008 as follows:

“2(xii). ‘paddy land’ means all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals;”

Going by the definition in Section 2(xii) of “paddy land” in the Act, 2008, to bring in a land within the definition of paddy land, it should be suitable for paddy cultivation, but uncultivated and left fallow. Just for the reason that the property is left fallow, the land cannot be brought within the definition of paddy land

but the Revenue Divisional Officer should be satisfied that the land is suitable for paddy cultivation and left fallow and therefore only on satisfaction of the said twin conditions that a land could be treated as paddy land coming under the definition of Section 2(xii) of the Act, 2008. This Court in ***Mather Nagar Residents Association and another v. District Collector, Ernakulam, [2020 (2) KHC 94]*** has held that only for the reason that property is lying as fallow, the same cannot be termed as paddy land or wetland under the Act,2008. A perusal of Ext.P2 order reveals that no such consideration was done by the 1st respondent while rejecting the application submitted by the petitioner. The stand taken in the counter affidavit that from the apparent appearance of the property it is a paddy land will only reflect total nonapplication of mind and the casual way in which the application submitted by the petitioner was considered.

6. Therefore, Ext.P2 order is set aside with a consequential direction to the 1st respondent to reconsider the application in accordance with the provisions of the Act and Rules of 2008 and after conducting a site inspection, and calling for a fresh report

from the Agricultural Officer concerned, if required after obtaining a report from the KSREC, which shall be at the expense of the petitioner, and also after taking into consideration the directions in **Joy's** case and **Arthasasthra's** case (supra). A decision as directed above shall be taken within a period of 3 months from the date of receipt of a copy of the judgment.

With the aforesaid direction, the writ petition is disposed of.

Sd/-
VIJU ABRAHAM
JUDGE

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APPENDIX OF WP (C) 39909/2022

PETITIONER EXHIBITS

Exhibit -P1 A TRUE COPY OF THE POSSESSION
CERTIFICATE NUMBER 71542930 DATED
27.10.2022 ISSUED BY THE SECOND
RESPONDENT.

Exhibit-P2 A TRUE COPY OF THE ORDER DATED
22.08.2022 ISSUED BY THE FIRST
RESPONDENT

RESPONDENT EXHIBITS

Exhibit R1(a) True copy of the report of the
Agricultural Officer