

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 18TH DAY OF SEPTEMBER 2020 / 27TH BHADRA, 1942

WP(C).No.41282 OF 2017(I)

PETITIONER/S:

SUDHEESH R, S/O.C.RAJAN, AGED 31 YEARS, RESIDING AT
MANNADI HOUSE, VENNAKARA VADUKATHARA, NOORANI P.O.,
PALAKKAD DISTRICT, PIN-678004.

BY ADVS.

SRI.JACOB SEBASTIAN

SRI.K.V.WINSTON

SMT.ANU JACOB

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, REVENUE DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
- 2 THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT INSTITUTIONS DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN-695001.
- 3 THE DISTRICT LEVEL AUTHORISED COMMITTEE
CONSTITUTED UNDER SECTION 9 OF THE KERALA
CONSERVATION OF PADDY LAND AND WET LAND ACT 2008,
REPRESENTED BY ITS CHAIRMAN, REVENUE DIVISIONAL
OFFICER, PALAKKAD DISTRICT, PIN-678001.
- 4 THE TOWN PLANNER, CIVIL STATION, PALAKKAD,
PIN-678001.
- 5 THE PALAKKAD MUNICIPALITY, REPRESENTED BY ITS
SECRETARY, PALAKKAD, PIN-678001.
- 6 THE REVENUE DIVISIONAL OFFICER,
PALAKKAD, PIN-678001.

BY SRI. RANJITH THAMPAN, ADDL. AG

R5 BY ADV. SRI.P.S.APPU

R5 BY ADV. SRI.BINOY VASUDEVAN

ADV.T.C.SURESH MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-09-
2020, THE COURT ON 18-09-2020 DELIVERED THE FOLLOWING:

=====

W.P.(C).No.41282/2017

~~~~~

**“C.R.”**

**J U D G M E N T**

Dated this the 18<sup>th</sup> day of September, 2020

Relief, as sought for by the petitioner, is against the objections raised by the Town Planner, Palakkad, in a matter related to the construction in paddy land. This construction was undertaken based on the order of permission granted by the District Level Authorised Committee (DLAC) constituted under Section 9 of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 [Act 28 of 2008]. The objection pointed out by the Town Planner, essentially, is referring to non-compliance of coverage under the Kerala Municipality Building Rules, 1999 for constructing the residential house in a land of 5 cents based on permission granted by DLAC.

2. During the course of hearing this Court entertained doubt in regard to the legality of the order passed by DLAC by granting permission to a landowner who consciously purchased a land being a paddy land in the year 2015. Taking note of nature of order and its impact, if such order is

allowed to muster the backing of the law, this Court sought views of the Government. Accordingly, the learned Additional Advocate General, Shri Renjith Thampan addressed this Court.

3. The learned Additional Advocate General after referring to the very statement of objects and reasons of Act 28 of 2008 submitted the Act itself was brought in to preserve and conserve the paddy land. However, the Legislature taking note of the rigour of the statutory provision which would prevent the owner from converting or reclaiming the land, allowed the owner of such paddy land to reclaim paddy land for construction of a residential building. According to the learned Additional Advocate General, 'owner', referred to under the statutory provision in Section 9 of Act 28 of 2008 is the owner who would be affected at the time of introduction of Act 28 of 2008 as on 12/8/2008. Therefore, the learned Additional Advocate General argued that the title 'owner', who becomes successor by virtue of alienation or transfer could not claim the

benefit of reclamation as provided under Section 9 of Act 28 of 2008.

4. The learned Additional Advocate General referred to the judgment of the learned Single Judge of this Court in **Thankachan K.S. V. District Collector, Alappuzha and Others [2017 (3) KHC 402]**. This Court in the above judgment accepted the argument that the 'owner' referred to under Section 9 is the 'owner as on the date of enactment'. The learned Additional Advocate General also placed reliance on another judgment of this Court in **Yousuf Chalil v. State of Kerala and Others [2019 KHC 699]** wherein the learned Single Judge declined to issue a writ of mandamus to the Local Level Monitoring Committee to consider an application for reclamation of paddy land for construction of a residential building. In **Yousuf Chalil's** case, the applicant purchased the property only in the year 2019. Therefore, the learned Single Judge was of the view that no direction can be issued contrary to law, nor can the Court direct an authority to act in contravention of the statutory provisions. This judgment was set aside by the Division Bench reported

in 2019 KHC 5618 [Yousuf Chalil v. State of Kerala and Others]. The Division Bench did not answer the question related to reclamation by an owner of a paddy land who became the owner by subsequent purchase after the enactment came into force. The Division Bench set aside the judgment solely for the reason that the learned Single Judge could not have refused a writ of mandamus as it is for the statutory authority to consider whether the application is maintainable or not. It is in that background this Court has to examine the scope of power exercised by DLAC to grant permission to reclaim a paddy land purchased after the Act 28 of 2008 came into force on 12/8/2008.

5. As already observed, the issue as above is not directly involved in this case. Nevertheless, this Court cannot remain oblivious to such a blatant violation of the statutory provisions by DLAC while granting permission. If this Court ignores such an illegal order, it would assume that such illegal orders have also got the stamp of approval from this Court.

6. Section 9 of Act 28 of 2008 confers power on DLAC to allow reclamation of paddy land for construction of a residential building by the owner of paddy land. Such a permission can be given for reclamation of 4.04 Ares in Panchayats and an extent of 2.02 Ares in Municipality/Corporation. The point arises for consideration is whether the benefit should confine to the owner of paddy land at the time of Act 28 of 2008 came into force, i.e., as on 12/8/2008; or should it be extended to all types of the owner, who became the owner after Act 28 of 2008 came into force, by way of purchase or any other mode of transfer by the original owner of paddy land in whose name the land stood as on 12/8/2008?

7. If this Court construes literal meaning of the 'owner of the paddy land' overlooking the object and goals and aims intended to be achieved by the Act 28 of 2008, it may result into a situation which was never contemplated by the Legislature. The literal rule is not to be decisive criteria interpreting the statutory provisions. If the literal meaning of the 'owner' of the paddy land as referred

under Section 9 is adopted and accepted, it may lead to a situation as pointed out by the learned Single Judge in **Thankachan's** case (supra). Therein, the learned Single Judge noted at para.7 as follows:

*7. Such an exercise could lead to gross misuse, since, then, large extents of paddy land could be cut up into small properties and sold to different individuals, who could then separately seek exemption. Different members of a family could also claim the exemption for small tracts of land, out of a commonly held paddy land; citing a desire to have an independent existence. That would be defeating the very object of the enactment, which has the preservation of paddy lands at its core. This Court is not inclined to permit such exemption, especially since both the LLMC and DLAC has declined the claim and a contrary direction would go against the clear statutory interdict.*

The application of purposive textualism is a well-accepted canon of interpretation in our jurisprudence. The Apex Court in **Mc Dowell & Company Limited vs The Commercial Tax Officer [(1985) 3 SCC 230]** and in **Novartis AG v. Union of India [(2013) 6 SCC 1]** used purposive textualism as a matter of interpretation to ascribe the meaning of the Statute. If the Court is of the opinion that any statutory provision is construed literally it would lead to a situation defeating

the object and purpose of the Statute, it must endeavour to construe by applying 'purposive textualism'.

8. The Court is expected to interpret the word 'owner of paddy land' as referred under Section 9 of Act 28 of 2008 in the context of regulatory nature of the Act. The regulatory Statute demands strict interpretation consistent with the objects and aims of the Act. If the Statute is construed to permit a transaction as a device to defeat the objects and aim of the Act, it is the duty of the Court to interpret the statutory provision to further the objects and purpose of the Act. The whole text of Act 28 of 2008 is to preserve and conserve paddy land. Any exception, therefore, has to be construed narrowly consistent with the scope and object of such exception. The Apex Court in **U.P. Bhoodan Yagna Samiti, U.P v. Braj Kishore & Ors [(1988) 4 SCC 274]** interpreting the word 'landless persons' under the U.P. Bhoodan Yagna Act, 1952 narrowly construed to mean that it refers 'landless persons' whose main source of livelihood was agriculture and who had no land in their name at that time and held that the Statute never contemplate to include



landless businessmen. At para.15, after quoting Lord Dennings observations in The Discipline of Law, it was held at para.16 as follows:

*And it is clear that when one has to look to the intention of the Legislature, one has to look to the circumstances under which the Law was enacted. The Preamble of the Law, the mischief which was intended to be remedied by the enactment of the Statute and in this context, Lord Denning, in the same book at Page No. 10, observed as under:*

*At one time the Judges used to limit themselves to the bare reading of the Statute itself--to go simply by the words, giving them their grammatical meaning, and that was all. That view was prevalent in the 19th century and still has some supporters today. But it is wrong in principle. The meaning for which we should seek is the meaning of the Statute as it appears to those who have to obey it--and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the Statute does not come to such folk as if they were eccentrics cut off from all that is happening around them. The Statute comes to them as men of affairs--who have their own feeling for the meaning of the words and know the reason why the Act was passed--just as if it had been fully set out in a preamble. So it has been held very rightly that you can inquire into the mischief which gave rise to the Statute--to see what was the evil which it was sought to remedy."*

*It is now well settled that in order to interpret a Law, one must understand the background and the purpose for which the Law was enacted. And in this context as indicated earlier if one has*

*bothered to understand the common phrase used in the Bhoodan Movement as 'Bhoomihin Kissan' which has been translated into English to mean 'Landless persons' there would have been no difficulty but apart from it even as contended by learned counsel that it was clearly indicated by Sec. 15 that the allotments could only be made in accordance with the scheme of Bhoodan Yagna. In order to understand the scheme of Bhoodan and the movement of Shri Vinoba Bhave, it would be worthwhile to quote from 'Vinoba, And His Mission' by Suresh Ram printed with an introduction by Shri Jaya Prakash Narain and foreword by Dr. S. RadhaKrishnan. In this work, statement of annual Sarvodaya Conference at Sevapuri has been quoted as under:*

*The fundamental principle of the Bhoodan Yagna movement is that all children of the soil have an equal right over the Mother Earth, in the same way as those born of a mother have over her. It is, therefore, essential that the entire land of the country should be equitably redistributed anew, providing roughly at least five acres of dry land or one acre of wetland to every family. The Sarvodaya Samaj, by appealing to the good sense of the people, should prepare their minds for this equitable distribution and acquire within the next two years at least 25 Lakhs of acres of land from about five lakhs of our villages on the rough basis of five acres per village. This land will be distributed to those landless labourers who are versed in agriculture, want to take to it, and have no other means of subsistence. " (emphasis added)*

*This would clearly indicate the purpose of the scheme of Bhoodan Yagna and it is clear that Sec. 15 provided that all allotments*

*in accordance with Sec. 14 could only be done under the scheme of the Bhoodan Yagna.*

9. Similarly, the Apex Court in **Hindustan Lever Ltd v. Ashok Vishnu Kate & Ors [(1995) 6 SCC 326]**, in the context of social welfare legislation observed that such legislation should be construed as to effectuate the purpose of the Act. Therefore, in the light of the regulatory Statute, provisions of such Statute should be construed to advance and further the purpose of the object of such enactment.

10. As observed in **Thankachan's** case (supra), if the owner of paddy land, who became the owner after 12/8/2008 by virtue of the transfer of the individual right of the original owner, will be able to defeat the purpose of the Act by fragmenting and cutting the property into small pieces and sell it to different individuals to put up a residential building. Necessarily, it means to say that the only owner of paddy land who at the time of enactment has been affected on account of the rigour of restriction of the enactment, alone will be eligible to apply for reclamation.

11. The object of Act 28 of 2008 is to preserve and conserve paddy land. It prohibits the conversion of paddy land (Sec.3). The intention of the legislation is very clear; to retain paddy land as such to maintain it as paddy land forever. Taking note of the hardships, that is likely to arise, the beneficial provision is made to the owner of the paddy land to reclaim the land for the purpose of a residential building. DLAC is the final authority to take a decision on such reclamation. The decision to be taken by DLAC is based on different parameters under Section 9(8). These parameters also ensure that reclamation shall not affect the remaining paddy land. The owner can be denied reclamation if he or his family members owns suitable land for the purpose of constructing a residential building.

12. In the backdrop of objects and reasons of the enactment, it is clear that reclamation by the paddy landowner is the conferment of personal benefit to the owner of paddy land who stood as the owner as on 12/8/2008. This personal benefit will not be available to a successor-in-interest by way of transfer. This benefit is

only conferred to the owner and his family members as on 12/8/2008. As seen from Section 3, the owner of paddy land as on the date of commencement of the Act is prevented from undertaking any activity for conversion or reclamation of paddy land. This rigour would apply to the owner as on the date of commencement of the Act. Therefore, the reference of 'owner of paddy land' under Section 9 has to be understood with reference to the 'owner' as referred under Section 3.

13. The personal benefit conferred to the owner of the paddy land as on 12/8/2008 is not running with the land. The subsequent owner will not get any right to apply for reclamation under Section 9. The law only intended to confer it as a personal benefit to the owner of the paddy land as on 12/8/2008. If any other owner is allowed to reclaim the land, the purpose of the Act would be defeated by allowing such claim. The Legislature never intended to confer any benefits to the owner of any paddy land, who becomes the owner by virtue of transfer after 12/8/2008. If the Legislature had not intended to confer such benefits, DLAC

lacks the power to entertain such application for reclamation.

14. Thus, it is obvious, in this case, the decision of DLAC is without any power. It is made clear that this Court is not interfering with the decision of DLAC for the simple reason that the building has been allowed to come up. There is no challenge to the decision of DLAC. Therefore, without unsettling the decision, the remaining question has to be answered.

15. DLAC permitted to put up construction in 5 cents of land. Nobody has a case that the petitioner has constructed beyond 5 cents. Admittedly, the total extent of the land is 9.909 cents. The coverage has to be taken into account based on the total extent of the land belonged to the petitioner. The permission granted to undertake construction within 5 cents cannot be construed to hold that the remaining land cannot be taken into account for the purpose of permission. Purpose of permission for reclamation is something different from the issue of the coverage under the Building Rules. For the purpose of coverage, the total extent of land available

has to be taken into account. However, the authority will have to ensure that construction should not exceed 5 cents as authorised by DLAC. In such circumstances, the impugned proceedings are set aside. The Town Planner shall consider the application forwarded as though the petitioner's land is 9.909 cents in extent. The petitioner also is liable to cure any other defects pointed out. The coverage has to be taken into account based on the total extent. Needful shall be done within one month.

The writ petition is disposed of as above.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

ms/ln

## APPENDIX

### PETITIONER'S/S EXHIBITS:

- EXHIBIT P1: THE TRUE COPY OF THE DOCUMENT NO.731/2015 DATED 10.2.2015 OF PALAKKAD SRO.
- EXHIBIT P2: TRUE COPY OF THE PROCEEDING DATED 6.1.2016 OF THE THIRD RESPONDENT.
- EXHIBIT P3: THE TRUE COPY OF THE PLAN SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- EXHIBIT P4: THE TRUE COPY OF THE PROCEEDINGS OF THE 5TH RESPONDENT DATED 3/8/2016.
- EXHIBIT P5: THE TRUE COPY OF THE PROCEEDINGS DATED 20.7.2016 OF THE 4TH RESPONDENT.

RESPONDENTS EXHIBITS:NIL.

//TRUE COPY//

P.S.TO JUDGE