

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 17TH DAY OF MARCH 2020 / 27TH PHALGUNA, 1941

WP(C).No.8297 OF 2020(J)

PETITIONER/S:

K. MURALI
AGED 50 YEARS
S/O. KUTTAPPA PANICKER, KALARICKAL HOUSE,
THUMMARAMANDATH, CHITTUR P. O., PALAKKAD DT. - 678
101.

BY ADVS.
SRI.LINDONS C.DAVIS
SMT.E.U.DHANYA

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF AGRICULTURE, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 DISTRICT COLLECTOR
COLLECTORATE, PALAKKAD - 678013.
- 3 DISTRICT LEVEL AUTHORIZED COMMITTEE
REPRESENTED BY ITS CONVENER, PRINCIPAL AGRICULTURAL
OFFICER, KENATHUPARAMBU, PALAKKAD - 678 013.
- 4 LOCAL LEVEL MONITORING COMMITTEE
REPRESENTED BY ITS CONVENER, AGRICULTURAL FIELD
OFFICER, KRISHI BHAVAN, THATTAMANGALAM, PALAKKAD DT.
- 678 102.
- 5 PRINCIPAL AGRICULTURAL OFFICER
KENATHUPARAMBU, PALAKKAD - 678 013.
- 6 AGRICULTURAL FIELD OFFICER
KRISHI BHAVAN, THATTAMANGALAM, PALAKKAD DT. - 678
102.

OTHER PRESENT:

SRI.K.J.MANU RAJ, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.03.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

'CR'

W.P.(C.) No. 8297 of 2020

Dated this the 17th day of March, 2020

JUDGMENT

The case set up in the W.P.(C.) is as follows :

That the petitioner is having absolute title and possession over Re-survey No.8/8 with an extent of 2.06 Ares of land in Chittur Village of Palakkad District. The said land is a barren land for years. The petitioner belongs to a very poor family and he has no house and therefore, living in a rented house. The petitioner is classified as an urban poor and is found to be a beneficiary of PMAY Scheme. The petitioner has no property other than said above. Therefore, the petitioner has made an application to permit him to utilize the land for residential purpose as per Section 9 of the Kerala Conservation of Paddy land and Wetland Act. But the said application was rejected by the District Level Authorized Committee by way of Ext.P4 and P5 orders for the sole reason the land is a “barren paddy land”.

Against the same, the petitioner has filed an appeal before the District Collector, Palakkad. The District Collector has summarily rejected 20 appeals, including that of petitioner, for the reason that, the property had come to the hands of the appellants after the date of commencement of Act.

The order of rejection of appeals was passed in bulk without hearing and without considering the facts of each case.

In ***Yousuf Chalil Vs. State of Kerala and others*** [2019 KHC 5618] the Division bench of this Court has considered the issue and found that there is no express prohibition contained in the Act and it is for the statutory authority to consider the application as per the Act. As decided above reported decision, since there is no express bar on considering the appeal, the District Collector has got a duty to consider the appeal and pass appropriate orders on the appeal filed by the petitioner herein.

That the right to property is guaranteed by the Constitution as per Article 300-A of the Constitution. Likewise, the right to shelter is also a fundamental right under Article 21 of the Constitution of India. The petitioner who belongs to poor back ground has no means to purchase other land. It is trite to law that, there cannot be any restriction on property rights without express provision of legislated law, i.e., Act or Rules. It is clear that there is no provision in the Act or Rules by restricting the permission to the person who owned the property on the commencement of the Act, ie, 12.08.2018. Since, there is no condition or qualification for considering the application or appeal as per Section 9 of the Act, the District Collector has no authority to impose such a condition on property rights, without any authority of law. Therefore, the order of the District Collector shall be set aside/quashed for that reason also.

2. The main contention urged by the petitioner is as follows :

That the petitioner's appeal against the rejection of the application for reclamation of the paddy land for residential purpose was rejected by District Collector for the reason that, the petitioner owned the property after the commencement of Act. There is no such condition in law that the property shall be obtained before the commencement of Act. Therefore, such a condition restricting the property rights, without any authority of law, is therefore to be quashed.

3. It is in the light of these averments and contentions that the petitioner has filed the instant W.P.(C.) with the following prayers :

- i) *to issue a Writ of Certiorari or any other appropriate writ, order or direction to quash Exhibit P4 to P6 as unjust, illegal and unconstitutions;*
- ii) *to issue a Writ of Mandamus or any other appropriate writ, order or direction directing respondents to permit the petitioners to reclaim the paddy land as per Exhibit P3 for the construction of petitioner's house.*
- iii) *to issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 2nd respondent to consider the appeal filed by the petitioner against the order of District Level Authorized Committee on merits and permit the petitioners to reclaim the paddy land as per Exhibit P3 for the construction of petitioner's house.*
- iv) *to issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 3rd respondent to consider the application filed by the petitioner for reclamation of paddy land on merits and permit the petitioners to reclaim the paddy land as per Exhibit P3 for the construction of petitioner's house.*
- v) *to declare that the petitioner has right to reclaim the paddy land as per Exhibit P3 for the construction of petitioner's house.*
- vi) *to grant such other appropriate Writ or further relief as deemed fit and proper by this Honourable Court on the facts and circumstances of the case.*

4. Heard Sri.Lindons C Davis, learned counsel appearing for the petitioner and Sri.K.J.Manuraj, learned Government Pleader appearing for the respondents.

5. According to the petitioner, he belongs to the class of urban

poor and he has no house of his own and he is living in a rented house and that he fulfils all the eligibility conditions to be the beneficiary of the PMAY (Pradhan Manthri Awaaz Yojana) housing scheme.

6. The petitioner is now a resident within the limits of Chittur-Thattamangalam Municipality and he has secured Ext.P1 certificate dated 5.1.2018 issued by the Secretary of the Chittur–Thattamangalam Municipality that the petitioner has been included as a beneficiary in the 2nd stage of the PMAY housing scheme in ward No.11 of the said Municipality. That the petitioner's brother has obtained 5 cents of land as per Ext.P2 registered sale deed and petitioner's brother in turn has conveyed the said small plot of land having an extent of 5 cents in favour of the petitioner as per Ext.P3 gift deed. It is pointed out that the subject property covered by Ext.P1 deed is classified as paddy land/nilam as per the basic tax register and that it is an unused paddy land. For the purpose of getting benefit of PMAY housing scheme, the petitioner has submitted application under Sec.9 of the Kerala Conservation of Paddy Land and Wetland Act, 2008 before the 4th respondent, Local Level Monitoring Committee for orders for permission to construct a residential building in the said subject property covered by Ext.P3 deed having an extent of 2.06 ares (about 5 cents). The 4th respondent has rejected the request of the petitioner under Sec.9 of the abovesaid Act for use of the said property for construction of the residential building as per the impugned Ext.P4 order

dated 21.6.2019 solely on the ground that the subject property is barren paddy land (തരിശു ഇട്ടിരിക്കുന്ന ചാടം). Aggrieved by Ext.P4 rejection order issued by the 4th respondent Local Level Monitoring Committee, the petitioner has preferred statutory appeal before the 2nd respondent, District Collector. The 2nd respondent, District Collector by Ext.P6 order dated 3.2.2020 has rejected the said appeal of the petitioner solely on the ground that as the petitioner has admittedly obtained the said land after coming into force of the 2008 Act, he cannot be given permission under Sec.9 of the Act. In view of the dictum laid down by the judgment of this Court in the case of **Thankachan v. District Collector** rendered on 6.6.2017 in W.P.(C.) No.3466/2017, [2017 (3) KLT 35]. It is the orders at Exts.P6 and P4 that are under challenge in this W.P.(C.).

7. The learned Single Judge of this Court in the case in **Thankachan v. District Collector** [2017 (3) KLT 35] has held that in a case where the applicant who seeks the benefit of Sec.9 of the abovesaid 2008 Act has admittedly obtained the said property after coming into force of the said Act, then such an exercise under Sec.9 of the Act for giving permission to construction of residential building, could lead to gross misuse since large extents of paddy land could be cut into small properties and sold to different people, who could then separately seek exemption and so also different members of a family could claim exemption for small tracts of land out of a commonly held paddy land citing a desire to have

independent houses and such exercises would be defeating the object and purpose of the enactment which is for the preservation of the paddy land at its core etc.

8. The view taken by the learned single Judge in ***Thankachan's case*** (supra) [2017(3) KLT 35] has been reiterated in yet another judgment of a learned Single Judge decided on 25.7.2019 in W.P.(C.) No.15893/2019 in the case ***Yousuf Chalil v.State of Kerala*** [2019 (4) KLT 33]. The writ petitioner in ***Yousuf Chalil's case*** had preferred writ appeal No.2073/2019 in which the Division Bench of this Court has rendered judgment on 3.10.2019 in the case in ***Yousuf Chalil v. State of Kerala*** [2019 (4) KLT 540] and therein it has been held that the lordships of the Division Bench are of the considered opinion that it is for the Local Level Monitoring Committee at the first instance to consider the said application preferred by the party concerned under Sec.9 of the 2008 Act and that as there is no express prohibition in the said Act, it is for the statutory authority concerned to consider whether the application preferred by the party is to be considered in favour of him and that in case, the Local Level Monitoring Committee finds that the application preferred by the party concerned is to be recommended, then the same could be forwarded with its recommendation to the District Level authorised committee etc. It is profitable to refer to para 7 of the judgment of the Division Bench of this Court in the case in ***Yousuf Chalil's case (supra)*** [2019 (4) KLT 540]

which reads as follows :

7. *Having considered the submissions advanced on either side, we are of the considered opinion that it is for the Local Level Monitoring Committee, at the first instance, to consider Ext.P3 application preferred by the petitioner. In view of the fact that there is no express prohibition contained in the Act, it is for the statutory authority to consider whether the application preferred by the petitioner is to be considered favourably. In case the 5th respondent finds that the application preferred by the petitioner is to be recommended, the same is liable to be forwarded with its recommendation to the District Level Authorised Committee.*

9. In the light of the abovesaid categorical view rendered by the Division Bench of this Court in ***Yousuf Chalil's case (supra)*** [2019 (4) KLT 540], the approach made by the 2nd respondent District Collector as if an application preferred by a party like the petitioner seeking the benefit of Sec.9 of the 2008 Act for permission to construct a residential building in the limited extent of land should be automatically dismissed or rejected merely on the ground that the party concerned has obtained the said property after coming into force of the 2008 Act by itself cannot be justifiable. Such a strict approach made by the 2nd respondent, District Collector as per the impugned Ext.P6 separate order, may not be justifiable or warranted in the light of the categorical views rendered by the Division Bench of this Court in ***Yousuf Chalil's case (supra)*** [2019 (4) KLT 540]. But that does not mean that such an application preferred by a party who was admittedly obtained the property after coming into force of the 2008 Act is to be liberally or automatically granted. As held by the Division Bench of this Court in ***Yousuf Chalil's case (supra)*** [2019 (4) KLT 540], it is the statutory obligation of the Local Level Monitoring

Committee to consider the various pros and cons of the application and find out whether the plea of the party is genuine for the purpose of construction of the residential building or for some extraneous purposes as has been dealt with in the judgment of the learned Single Judge in ***Thankachan's case (supra)*** [2017 (3) KLT 35].

10. The counsel for the petitioner would strongly urge that in the instant case the petitioner admittedly belongs to the urban poor class and is fully eligible and fulfils all the eligibility conditions and norms for being considered for the conferment of the benefits of the Prime Minister's Awaz Yojana (PMAY housing scheme) as can be seen from Ext.P1 certificate issued by the local Municipal authority concerned. The correctness or otherwise of the said assertion made by the petitioner is to be ascertained by the 4th respondent, Local Level Monitoring Committee by some appropriate enquiry mechanism. If as a matter of fact, the party belongs to the economically deprived sections of people like the urban poor and he is otherwise entitled for the conferment of the benefits as per the PMAY housing scheme and he has no other property and has purchased the said property solely for the purpose of constructing a residential building to avail the benefit of PMAY scheme etc., then certainly the discretion of the 4th respondent, Local Level Monitoring Committee could be invoked by them as has been held by the Division Bench of this Court in ***Yousuf Chalil's case*** (supra) [2019 (4) KLT 540]. Therefore, the matter requires

serious reconsideration at the hands of the respondent authorities concerned and matter about warrant or remit.

11. For effectuating such a remit, it is ordered that the impugned rejection orders as per Ext.P4 as confirmed by Ext.P6 order will stand set aside and the application of the petitioner for grant of the benefit under Sec.9 of the 2008 Act for permission to construct a residential building in the property concerned will stand remitted to the 4th respondent Local Level Monitoring Committee for consideration and recommendation afresh. The Local Level Monitoring Committee by itself may not have a proper mechanism to ascertain the genuineness of a party like the petitioner. Accordingly, to obviate further delay, it is ordered that a competent revenue official like the Tahsildar or the Village Officer of the area concerned should conduct an appropriate enquiry to ascertain whether the petitioner would *prima facie* broadly satisfy the norms and eligibility conditions in the PMAY housing scheme as has been certified in Ext.P1 certificate issued by the Chittur Thattamangalam Municipality. The petitioner may give the details of the PMAY scheme to the Village Officer or Tahsildar concerned, who will ascertain from the Secretary of the Chittur Thattamangalam Municipality as to whether they have issued Ext.P1 certificate and also the details as to the eligibility conditions of the petitioner for consideration for conferment of the benefits under the PMAY housing scheme. If it is found by the said revenue official concerned like

Village Officer that the petitioner would broadly satisfy the said eligibility conditions as per the PMAY scheme etc, then the report in that regard may be duly submitted by the revenue official concerned to the 4th respondent, Local Level Monitoring Committee and a copy of the report should also be given to the petitioner in advance. The enquiry and report in this regard should be duly completed by the revenue official concerned like Village Officer/Tahsildar etc. within one month from the date of production of a certified copy of this judgment.

12. The learned Government Pleader will ensure that copies of this judgment are given to the Village Officer and Tahsildar of the area concerned and appropriate enquiry may be conducted so as to enable the said authority to conduct appropriate enquiry as aforesaid. After obtaining the said report, the 4th respondent will consider the plea of the petitioner and after following the requisite procedure, may also ascertain as to whether the petitioner fulfils all the eligibility conditions prescribed in Sec.9 of the 2008 Act and after affording reasonable opportunity of being heard to the petitioner, may make appropriate recommendations in the matter as to whether the petitioner is entitled for the benefits of Sec.9 of the abovesaid Act. Taking into consideration the abovesaid report of the revenue official concerned and recommendations of the 4th respondent, Local Level Monitoring Committee, the report should be furnished by them to 3rd respondent, District Level Authorised Committee within 6

weeks from the date of receipt of the report of the revenue official concerned as aforesaid. Thereafter, the 3rd respondent, District Level Authorised Committee will consider the matter, after affording reasonable opportunity of being heard to the petitioner will render a final decision in the matter as to the entitlement of the petitioner for getting the benefits under Sec.9 of the abovesaid Act.

13. Taking note of the aspects regarding the eligibility conditions under Sec.9 of the Act and also the abovesaid enquiry report of the Village Officer regarding the eligibility of the petitioner under the PMAY scheme, appropriate decision in this regard under Sec.9 of the abovesaid Act should be rendered by the 3rd respondent, District Level Authorised Committee within one month after receipt of the recommendations by the 4th respondent, Local Level Monitoring Committee as aforesaid.

With these observations and directions, the above W.P.(C.) will stand finally disposed of.

Sd/-

**ALEXANDER THOMAS,
JUDGE**

SKS

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 A COPY OF THE LETTER DATED 05.01.2018
ISSUED FROM THE MUNICIPAL OFFICE, CHITTUR-
TATTAMANGALAM MUNICIPALITY.
- EXHIBIT P2 TRUE COPY OF THE SALE DEED NO.2924/2018
DATED 21.08.2008.
- EXHIBIT P3 A TRUE COPY OF THE GIFT DEED NO.2565/2017
DATED 25.11.2017.
- EXHIBIT P4 A COPY OF THE ORDER DATED 21.06.2019 ISSUED
BY THE PRINCIPAL AGRICULTURAL OFFICER,
PALAKKAD.
- EXHIBIT P5 A COPY OF THE LETTER DATED 02.07.2019
ISSUED BY THE AGRICULTURAL FIELD OFFICER,
THATTAMANGALAM.
- EXHIBIT P6 A COPY OF THE ORDER DATED 03.02.2020 ALONG
WITH THE ANNEXURES OF LIST OF APPEALS
REJECTED BY THE DISTRICT COLLECTOR.