

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 10TH DAY OF AUGUST 2023 / 19TH SRAVANA, 1945

WP(C) NO. 16472 OF 2023

PETITIONER:

M/S. WAYANAD GRANITES
KODENCHERIKUNNU, VENGAPALLY, PUZHAMUDI P.O,
KALPETTA, WAYANAD REPRESENTED BY ITS MANAGING
PARTNER SRI. M.M. THOMAS., PIN - 673121

BY ADVS.
ENOCH DAVID SIMON JOEL
S.SREEDEV
RONY JOSE
LEO LUKOSE
KAROL MATHEWS SEBASTIAN ALENCHERRY
DERICK MATHAI SAJI

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR
CIVIL STATION, KALPETTA, WAYANAD, PIN - 673122
- 2 THE TAHSILDHAR
TALUK OFFICE, VYTHIRI TALUK, VYTHIRI, WAYNAD, PIN -
673576
- 3 THE VILLAGE OFFICER
VILLAGE OFFICE, ACHOORANAM, WAYNAD, PIN - 673121

OTHER PRESENT:

SRI. JAFFARKHAN (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court challenging Ext.P3 communication issued by the 2nd respondent rejecting the application filed by the petitioner for certain revenue certificates on the ground that the land in respect of which the certificates are sought cannot be issued since the lands in question are lands which were exempted from land ceiling proceedings under Section 81(e) of the Kerala Land Reforms Act, 1963 (hereinafter referred to as the KLR Act). It is the case of the 2nd respondent that such certificates cannot be issued as the purpose for which certificates were sought was to process applications for obtaining permission for granite quarry.

2. The learned counsel appearing for the petitioner would submit that the refusal on the part of the 2nd respondent to issue the revenue certificates in question is illegal and unsustainable in law. It is submitted that there is absolutely no bar under the KLR Act in utilising land exempted under Section 81 for any other purpose. It is submitted that the only consequence of conversion is that the said land will also be reckoned for the purposes of calculating the ceiling area. It is submitted that this is the law laid down by this Court in ***Mathew K. Jacob and another v. District Environmental***

Impact Assessment Authority; 2018 (5) KHC 487. Reliance is also placed in the judgment of this Court in ***Kinallur Rock Sand v. State of Kerala and others; 2021 (2) KLT 351.*** It is submitted that the judgment of the Full Bench has been affirmed by the Supreme Court in ***K.H. Nazar v. Mathew K. Jacob; (2020) 14 SCC 126.*** The learned counsel also places reliance on the judgment of a Division Bench of this Court in ***Village Officer v. Karnataka Fransalian Society; 2017 (2) KLT OnLine 2198*** (Ext.P4) as also on Ext.P5 judgment of this Court in ***Jacob George @ Jaico George v. State of Kerala and others;*** (judgment dated 4.1.2023 in W.P.(C)No.8401/2022) in support of his contention.

3. The learned senior Government Pleader refers to the counter affidavit filed in this case and submits that the property in question is situated in hilly terrain in Wayanad District. It is submitted that the land belongs to 3rd parties and is leased out to the petitioner for the purposes of operating a granite quarry. It is submitted that Wayanad is an ecologically sensitive area, and almost 90% of the people in Wayanad depend on agriculture as a means of livelihood. It is submitted that the very purpose for giving exemption to plantations was to ensure that there was no fragmentation of plantations. It is submitted that the conversion of plantation land without considering the ecological and social situations and economic contribution of the

plantation industry cannot be permitted. It is submitted that in the case on hand, apart from the fact that the land would lose exemption under Section 81(e) of KLR Act, the land is also a coffee plantation and therefore, no other activity can be carried out in the land without an order for conversion under the Kerala Land Utilisation Order, 1967. It is submitted that the decision of the Division Bench of this Court in ***Harrisons Malayalam Ltd. and another v. State of Kerala and others; 2018 (2) KLT 369*** as also the judgment of another Division Bench of this Court in ***One Earth One Life and others v. State of Kerala and others; 2019 KHC 221*** is authority for the proposition that fragmentation of a plantation is to be treated as a case of conversion of plantation into some other category of land. It is also submitted that a Division Bench of this Court in ***State Human Rights Protection Centre and others v. State of Kerala and others; 2009 (3) KHC 682*** has held that every exemption from ceiling provisions under the KLR Act has a purpose and even though there is no restriction on alienation of exempted category of lands, the assignee can also put the exempted lands only to the same purpose for which exemption was granted. It is submitted that the judgment of the Supreme Court in ***Kunhikoman and others v. State of Kerala; AIR 1962 SC 723*** has clearly delineated the purposes for which the plantations were treated as exempted lands for the purposes

of the KLR Act. It is submitted that following the amendment of Section 81(4) of the KLR Act with effect from 19.6.2012, exempted land can be used for non-plantation purposes subject to a maximum of 5% of the total holding. Reference is also made to the provisions of Section 81(4) of the KLR Act as amended with effect from 19.6.2012 and the provisions of the Kerala Land Reforms (using of five percent plantation land for non-plantation purposes) Rules, 2015 to contend that any use for non-plantation purposes other than in the manner permitted by the provisions of Section 81(4) and the Rules will be illegal. It is submitted that the petitioner is, therefore, not entitled to any of the reliefs prayed for in the writ petition. It is also submitted that several orders issued by this Court to issue revenue certificates in similar circumstances have been challenged before the Division Bench by the State, and the Division Bench has granted an interim stay in favour of the State. Reference is made in this regard to the order of the Division Bench placed on record as Ext.R2(a) in W.A.No.2299/2019 filed against the judgment in W.P.(C)No.17847/2018.

4. Having heard the learned counsel for the petitioner and the Learned Senior Government pleader, I am of the view that in the facts and circumstances of this case, revenue certificates cannot be denied on the ground that the land in respect of which such certificates are sought form part of land exempted from land ceiling

proceedings under the provisions of the Kerala Land Reforms Act, 1963. In the facts of the present case, it is evident that the certificates are being sought to process applications for the issuance of permits for mining activities. It is also fairly clear from the authorities cited before me that while the land owner may lose the benefit of the exemption (if the land is converted for other activities), fragmentation is *per se* not illegal. Whether such land can be put to use for quarrying activities and whether such permission should be refused on environmental grounds or on the ground that permission is required under the provisions of the Kerala Land Utilisation Order, 1967 etc. are all matters to be decided at the appropriate stage. The only prayer in this writ petition is for a direction to the 2nd respondent to issue certain revenue certificates. These need not be denied for the reason that the land is part of exempted land under the Kerala Land Reforms Act, 1963 or on the ground that no permission has been obtained to convert land under the provisions of the Kerala Land Utilisation Order, 1967. However, it has to be clarified that the issuance of these revenue certificates will not mean that the petitioner is entitled to the issuance of mining permit or for the grant of environmental clearance or that no permission under the provisions of the Kerala Land Utilisation Order, 1967 is required for conversion of the land for purposes other than cultivation of coffee. It also has to be clarified that

the issuance of these revenue certificates will not mean that the landowners are not liable for action under the provisions of the Kerala Land Reforms Act, 1963. Therefore this Writ Petition is disposed of directing the 2nd respondent to issue the revenue certificates applied for in terms of the application referred to as Ref.No.2 in Ext P3 communication. The issuance of these certificates shall not be treated as a no-objection from the revenue department to start quarrying operations over the land in question. Notwithstanding the issue of such revenue certificates, it will be open to the competent among the respondents to initiate action in accordance with the law, for reasons indicated above or for any other purpose. The certificates shall be issued within a period of one month from the date of receipt of a certified copy of this judgment.

Sd/-

GOPINATH P.

JUDGE

acd

APPENDIX OF WP (C) 16472/2023

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE TAX RECEIPT DTD.
06.06.2022 RELATING TO 3.3154 HECTARES
OF LAND IN RE.SY.NO. 445/3 OF ACHOORANAM
VILLAGE.

Exhibit P1(a) TRUE COPY OF THE TAX RECEIPT DTD.
14.07.2020 RELATING TO 2.8180 HECTARES
OF LAND IN RE.SY.NO. 368 OF ACHOORANAM
VILLAGE.

Exhibit P2 TRUE COPY OF THE POSSESSION CERTIFICATE
DTD. 16.07.2022 RELATING TO 3.3154
HECTARES OF LAND IN RE.SY.NO. 445/3 OF
ACHOORANAM VILLAGE ISSUED BY THE 3RD
RESPONDENT.

Exhibit P2(a) TRUE COPY OF THE POSSESSION CERTIFICATE
DTD. 15.07.2020 RELATING TO 2.8180
HECTARES OF LAND IN RE.SY.NO. 368 OF
ACHOORANAM VILLAGE ISSUED BY THE 3RD
RESPONDENT.

Exhibit P3 TRUE COPY OF THE LETTER DATED 28.02.2023
ISSUED BY THE 2ND RESPONDENT.

Exhibit P4 TRUE COPY OF THE JUDGMENT DATED
04.04.2017 IN W.A. NO. 564/2017 AS
REPORTED IN 2017 (2) KLT ONLINE 2198.

RESPONDENT EXHIBITS

EXHIBIT R2(a) TRUE COPY OF THE ORDER DATED 21.11.2019
IN WRIT APPEAL NO. 2299/2019.

PETITIONER EXHIBITS

Exhibit P5 TRUE COPY OF THE JUDGMENT DATED
04.01.2023 IN WP(C) NO. 8401/2022 ON THE
FILES OF THIS HON'BLE COURT.