

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 28TH DAY OF FEBRUARY 2024 / 9TH PHALGUNA, 1945

WP(C) NO. 42811 OF 2023

PETITIONER(S):

UMMU SALMA P.,
AGED 39 YEARS
W/O. USMAN PALLIKKAL, PALLIKKAL HOUSE,
KODINHI, NANNAMBRA P.O., TIRURANGADI TALUK,
MALAPPURAM DISTRICT, PIN - 676309

BY ADV C.M.MOHAMMED IQUBAL

RESPONDENT(S):

- 1 THE SUB COLLECTOR, TIRUR,
REVENUE DIVISIONAL OFFICE, TIRUR P.O.,
MALAPPURAM DISTRICT, PIN - 676101
- 2 THE AGRICULTURAL OFFICER,
NANNAMBRA AGRICULTURAL OFFICE, NANNAMBRA P.O.,
TIRURANGADI TALUK, MALAPPURAM DISTRICT, PIN - 676309
- 3 THE TAHSILDAR,
TIRURANGADI TALUK, TIRURANGADI P.O.,
MALAPPURAM DISTRICT, PIN - 676306
- 4 THE VILLAGE OFFICER,
NANNABRA VILLAGE OFFICE, NANNAMBRA P.O., TIRURANGADI
TALUK, MALAPPURAM DISTRICT, PIN - 676309
- 5 THE LOCAL LEVEL MONITORING COMMITTEE,
REPRESENTED BY ITS CONVENER, NANNAMBRA AGRICULTURAL
OFFICE, NANNAMBRA P.O., TIRURANGADI TALUK,
MALAPPURAM DISTRICT, PIN - 676309

BY ADV.

SRI E G GORDEN, SR. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

W.P.(C) No.42811 of 2023

Dated this the 28th day of February, 2024

JUDGMENT

The above Writ Petition is filed with the following prayers:

“a) Call for the records leading up to Ext.P4 order and quash the same by issuance of a Writ of Certiorari or any other appropriate writ, order or direction.

b) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 1st respondent to pass an order removing the property covered by Ext.P1 document from the data bank.

c) Pass an order dispensing with the production of English translation of vernacular documents at the time of filing of the writ petition.

d) Pass any other appropriate writ, order or direction which this Hon'ble Court may deem fit to issue and the petitioner may pray from time to time." [SIC]

2. The husband of the petitioner is the owner and in possession of 32.57 Ares of land in Survey No.387/8-2 and No.387/8-3 of Nannambra Village in Tirurangadi Taluk, is the submission. It is submitted that the the petitioner is managing the aforesaid property on his behalf since he is working abroad. He purchased the same for constructing a residential house is the submission. It is submitted that the land is a dry land. But, the said land is included in the data bank by the 5th respondent. Therefore, the husband of the petitioner filed an application before the 1st respondent to remove the property from the data bank, but it was rejected by virtue of Ext.P4 order. According to the petitioner, Ext.P4 is not a speaking

order and the Revenue Divisional Officer has not considered the matter in a proper manner. Hence, this writ petition is filed.

3. Heard learned counsel appearing for the petitioner and the learned Government Pleader.

4. This Court perused Ext.P4 order. Ext.P4 is not a speaking order. Except relying on the report of the Agricultural Officer, the contention of the petitioner is not adverted while passing Ext.P4 order.

In ***Muraleedharan Nair v. Revenue Divisional Officer*** [2023 (4) KLT 270], this Court observed that, it will not be sufficient for the Revenue Divisional Officer to dismiss the application simply stating that Local Level Monitoring Committee has decided not to remove the land from the Data Bank.

5. The Revenue Divisional Officer, being the competent authority, has to independently assess the status of the land and come to a conclusion that,

removal of the land from the Data Bank will adversely affect paddy cultivation in the land in question and nearby paddy lands or that, it will adversely affect sustenance of wetlands in the area and in the absence of such findings, the impugned order is unsustainable.

6. In ***Aparna Sasi Menon v. Revenue Divisional Officer*** [2023 (5) KLT 432], this Court observed that the predominant factor for consideration while considering Form 5 application should be whether the land which is sought to be excluded from the Data Bank is one where paddy cultivation is possible or feasible.

7. According to the petitioner, the impugned order is passed in violation of the provisions of the Kerala Conservation of Paddy and Wet Land Act, 2008. It is also submitted that the Revenue Divisional Officer has not applied his mind and simply accepted the report. It is also submitted that, the KSREC report is

not properly considered by the Revenue Divisional Officer. The contention of the petitioner is that the status of the land as on 12.08.2008 is not ascertained properly as per scientific process.

8. After going through the impugned order, I am of the considered opinion that, there is some force in the argument of the petitioner. The impugned order is not a speaking order. The contentions of the petitioner is not adverted by the 1st respondent while passing the order. Therefore, I am of the considered opinion that the impugned order is to be set aside.

Therefore, this Writ Petition is disposed of with the following directions:

- a) Ext.P4 order is set aside.
- b) The 1st respondent is directed to reconsider Form 5 application submitted by the petitioner, as expeditiously as possible, at any rate within a period of

three months from the date of receipt of a copy of this judgment.

c) The petitioner is free to submit an application before the appropriate authority for getting the KSREC report within two weeks from the date of receipt of a copy of this judgment and if such an application is filed, the authority concerned will do the needful to obtain the same, in accordance with law. If KSREC report is available, the same will be considered by the 1st respondent. If any report from the KSREC is called for, the Revenue Divisional Officer need to pass final orders in Form 5 application only within three months from the date of receipt of the report from KSREC.

d) The petitioner will produce the

certified copy of this judgment along with
a copy of the Writ Petition with exhibits
before the 1st respondent for compliance.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

nvj

APPENDIX OF WP(C) 42811/2023

PETITIONER EXHIBITS

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|-------------------|--|
| EXHIBIT P1 | THE TRUE COPY OF THE LAND TAX RECEIPT ISSUED BY THE NANNAMBRA VILLAGE OFFICE DATED 17.01.2022 |
| EXHIBIT P2 | THE TRUE COPY OF THE PHOTOGRAPHS OF THE PROPERTY |
| EXHIBIT P3 | THE TRUE COPY OF THE FROM 5 APPLICATION FILED BY THE HUSBAND OF PETITIONER DATED 09.02.2022 |
| EXHIBIT P4 | THE TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 05.06.2023 |

RESPONDENTS EXHIBITS : NIL

//TRUE COPY// PA TO JUDGE