

നക്ഷത്ര ചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ.6104

04.07.2019-ൽ മറുപടിക്ക്

കുന്നത്തുനാട് വില്ലേജിലെ ഭൂമി നികത്തുന്ന കാര്യത്തിൽ നിയമോപദേശം

ചോദ്യം

ഉത്തരം

ശ്രീ.തിരുവഞ്ചൂർ രാധാകൃഷ്ണൻ :

ശ്രീ. ഇ. ചന്ദ്രശേഖരൻ

(ബഹു. റവന്യൂവും ഭവനനിർമ്മാണവും വകുപ്പ് മന്ത്രി)

(എ) കേരള നെൽവയൽ തണ്ണീർത്തട (എ) നിയമം ലംഘിച്ചു കൊണ്ടും കലക്ടറുടെ ഉത്തരവ് റദ്ദ് ചെയ്തുകൊണ്ടും എറണാകുളം കുന്നത്തുനാട് വില്ലേജിലെ പതിനഞ്ച് ഏക്കർ ഭൂമി നികത്തുന്ന കാര്യത്തിൽ അഡ്വക്കേറ്റ് ജനറലിന്റെ ഉപദേശം എന്തായിരുന്നു; അഡ്വക്കേറ്റ് ജനറലിന്റെ ഉപദേശം മറികടന്നിട്ടുണ്ട് എങ്കിൽ പ്രസ്തുത സാഹചര്യം വിശദമാക്കുമോ; വിശദാംശം വ്യക്തമാക്കുമോ?

കുന്നത്ത് നാട്ടിൽ Speaks Properties Ltd എന്ന സ്ഥാപനത്തിന്, തരം മാറ്റിയ നിലം വിഭാഗത്തിൽ ഉൾപ്പെട്ട ഭൂമി പൂർവ്വ സ്ഥിതിയിലാക്കുന്നതിന് ജില്ലാ കളക്ടർ പുറപ്പെടുവിച്ച ഉത്തരവ് റദ്ദ് ചെയ്തുകൊണ്ട് പുറപ്പെടുവിച്ച ഉത്തരവിൻമേലും, ടി ഉത്തരവ് മരവിപ്പിച്ചു കൊണ്ട് പുറപ്പെടുവിച്ച ഉത്തരവിൻമേലും അഡ്വക്കേറ്റ് ജനറലിന്റെ ഉപദേശം തേടിയിരുന്നു. നിയമോപദേശത്തിന്റെ പകർപ്പ് ഇതോടൊപ്പം ഉള്ളടക്കം ചെയ്തിട്ടുണ്ട്. കേസ്സ് ഇപ്പോൾ ബഹു.ഹൈക്കോടതിയുടെ പരിഗണനയിലാണ്.

സെക്ഷൻ ഓഫീസർ

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No. SS- 13/2019/AG

11<sup>th</sup> June, 2019

The Principal Secretary  
Revenue (P) Department  
Government Secretariat  
Thiruvananthapuram

Sir,

Sub: Reclamation of Paddy Land in Kunnathunad Village by M/s Speaks Properties Pvt. Ltd. -Clarification sought- legal opinion forwarding of - Reg.

Ref: Government Letter No. REV. 01/765/2018-REV dated 15.05.2019

The Managing Director of Synthite Properties and Investments Ltd (now Speaks Properties Ltd) submitted an application in terms of the provisions of the Kerala Land Utilisation (hereinafter referred to as "KLU" for short) Order before the District Collector, Ernakulam (hereinafter referred to as " the Collector" for short) for conversion of 18 acres of "Nilam" comprised in Survey Nos. 96/1, 96/2, 100/1, 95/9, 95/8, 95/10, 95/6, 95/5, 95/3, 90/2, 100/2, 94/1, 100/4, 95/1, 98/1-2, 98/3-2,

99/5-2, 97/4-2, 97/4-3, 97/4-4, 97/1-2, 95/7 and 91/4 in Kunnathunadu Village, Kunnathunadu Taluk(hereinafter referred to as "the property" for short). The Revenue Divisional Officer, Muvattupuzha (hereinafter referred to as "the RDO" for short), to whom the application was forwarded by the Collector, reportedly opined that the said property had been lying uncultivated for fifteen years and was a water logged plot. The Principal Agricultural Officer, Ernakulam, reportedly opined that the property had been lying uncultivated for past fifteen years and was not suitable for any cultivation due to the flow of waste water from Companies like FACT, Kochi Refinery etc.

The Collector rejected the application for conversion as the extent of the property sought to be converted was very large. Aggrieved, an appeal was filed before the Commissioner of Land Revenue.

Relying on the reports of the Village Officer and Agricultural Officer to the effect that the property was not fit for paddy cultivation and taking into account that there were coconut trees, which were more than twenty five years old in the said property, the Land Revenue Commissioner held that it was not conclusively proved that the land was under paddy cultivation for a period of three years continuously since the enactment of the KLU Order and permitted conversion as per Proceedings No. LR (A) 1-9474/05 dated 23.02.2006.



The arguments of the appellant therein have been taken note of by the Land Revenue Commissioner. It, inter alia, refers to report dated 09.12.2004 of the Agricultural Department to the effect that the property was not suitable for paddy cultivation and the report dated 18.12.2004 of the Principal Agricultural Officer reiterating the same. It further refers to latter dated 02.12.2004 of the Padashekhara Samithi to the effect that they had no objection in the property being converted and paddy had not been cultivated there for twenty years,

*(The files sent to me did not contain copies of the reports of the RDO or the Principal Agricultural Officer or the Agricultural Department or the letter of the Padashekhara Samithi or the Order of the District Collector rejecting the application, which Order was impugned before the Land Revenue Commissioner. I gathered the facts regarding the reports of the RDO, Agricultural Department and the Agricultural Officer as well as the Letter of the Padashekhara Samithi and the Order of the District Collector from the references made in the Proceedings No. LR (A) 1-9474/05 dated 23.02.2006 of the Land Revenue Commissioner.)*

Later, as per Reports No. A4-1259/15 dated 09.03.2015 and A4-9068/17 dated 28.12.2017, the RDO reported to the Collector that the said property was unauthorisedly filled up and converted and that action in terms of Sections 13 of the Kerala Conservation of Paddy lands and Wetlands Act, 2008 (hereinafter referred to as "the 2008 Act" for short)



might be initiated to get the property restored. It was also reported by the RDO that though the land was permitted to be converted as per Proceedings No. LR (A) 1-9474/05 dated 23.02.2006 of the Land Revenue Commissioner, the same continued to be as "Nilam" till the coming into force of the 2008 Act and that the same was included as "Nilam" in the data bank.

The Collector noted that there was a report from the Village Officer as per Letter No. 17/14 dated 09.01.2014 to the effect that the property was being filled up and that locals were protesting against the same. The Collector also noted that stop memos were ordered to be issued in this regard and the Village Officer had issued such stop memos. As per Proceedings No. 11-2995/14 dated 26.09.2018, the Collector held that the property was filled up in violation of Section 3 (1) of the 2008 Act and ordered, in exercise of powers under Section 13 of the said Act, to restore the property within fifteen days from then on.

Proceedings No. 11-2995/14 dated 26.09.2018 of the Collector was impugned in Revision before the Government. The revision was disposed of as per GO (Rt) No. 337/2019/Rev dated 31.01.2019, whereby the same was allowed and the impugned Order of the Collector was set aside. The landholder was permitted to take steps to get the property removed from the data bank in accordance with the prevailing law. GO (Rt) No.



337/2019/Rev dated 31.01.2019 was later kept in abeyance as per GO (Rt) No. 1090/2019/Rev dated 08.05.2019.

GO (Rt) No. 337/2019/Rev dated 31.01.2019 was passed holding, interalia, that the impugned order did not reveal that the Collector considered the reports of the RDO and Agricultural Officer as well as the letter of the Padashekhara Samithi referred in the Proceedings dated 23.02.2006 of the Land Revenue Commissioner; that the contentions advanced during hearing were not dealt with by the Collector; that the Collector had not considered the Certificate of the Principal Agricultural Officer that the land was converted in 2006; and that the verification of the files at the Collectorate revealed that no detailed inspection was done as to whether the property was reclaimed before 2008.

Now, as per the letter referred to above, legal opinion has been requested as to whether GO (Rt) No. 337/2019/Rev dated 31.01.2019 is sustainable in law. I am also requested to advice whether there are any judicial verdicts in this regard and as to what follow up actions are necessitated.

The Collector's order dated 26.09.2018 is in terms of Section 13 of 2008 Act. The said Section 13 empowers the Collector to order restoration of a paddy land reclaimed violating the provisions of the Act. As per Section 2(xii) of the 2008 Act, "Paddy land" means types of land where paddy is cultivated at least once in a year or is suitable for paddy



cultivation, but uncultivated and left fallow. That means, a land, to be paddy land as defined under the 2008 Act, has to be either (1) a land cultivated with paddy at least once in an year or (2) a land suitable for paddy cultivation, but left uncultivated. In essence, it has to be land which is being cultivated with paddy or is suitable for paddy cultivation.

As per Section 2(xv) of the 2008 Act, reclamation means act(s), whereby a paddy land/wet land, as defined under the Act, is converted irreversibly. That means, irreversible conversion of only that land which is either being cultivated with paddy or which, though not cultivated with paddy, is suitable for paddy cultivation will amount to reclamation in terms of the 2008 Act.

The District Collector had passed order dated 26.09.2018 holding that the land in question was not reclaimed pursuant to order dated 23.02.2006 of the Land Revenue Commissioner and that the property continued to be paddy land as defined under the 2008 Act even after the advent of 2008 Act. He had relied on communications from Revenue Officials during the period 2014-2015 to conclude that the land in question was reclaimed only after the advent of the 2008 Act. The Collector had not relied on any reports of the Kerala State Remote Sensing Centre or any other Satellite images or any other records. The Collector had also noted that the property has been included in the data bank.



The following details/ documents, interalia, are discernible from the files at the Collectorate.

- Letter dated 09.01.2014 from the Village Officer to the Collector. It is stated in the letter that the land has been filled up earlier, though not filled up to full height. The said letter also refers to an earlier letter dated 30.10.2013 (also available in the file) reporting filling up, which filling up was later on reportedly not done. The said letter further refers to filling up on 08.01.2014 and interim order dated 06.01.2014 of police protection issued by the Honourable High Court (also available in the file) in WP(C) No. 29490 of 2013. It is reported that on 09.01.2014, further filling up occurred and that stop memo, subject to clarification from the Honourable High Court, was issued.
- The aforementioned stop memo dated 09.1.2014 issued by the VO is also available in the file. In the stop memo, it is stated that the land was filled up at an earlier point of time with sand at various areas therein, though without required height.
- Letter dated 16.01.2014 of the authorised signatory of the land owner stating that the land was filled up in 2006 and that due to efflux of time, the soil got settled.
- Copy of WP(C) No. 29490 of 2013 is also available in the file. The cause of action traced in the writ petition is that the private respondents therein were obstructing construction activities in the





land. It was averred that the land was filled up in accordance with the 2006 Order of the LRC and that the entire land had been converted and was not in a cultivable stage.

- Exhibit P2 in the said writ petition is a letter dated 25/07/2012 from Principal Agricultural Officer to M/s Synthite Properties regarding the then position of the land in question. As revealed from the said letter, according to the Principal Agricultural Officer, the land was converted in 2006 and it was no more paddy land/ wet land; that the surface of the converted land was solid; and that the land appeared as converted land since 2006.
- Letter dated 22.01.2014 from the Collector to the Village Officer ordering to withdraw the stop memo issued by him on condition that water bodies and paddy land were not affected.
- As discernible from the Judgment in WP(c) No. 29490 of 2013, which is available in the file, the Petitioner therein, the owner of the property, was relegated by the Honourable High Court to civil court in the event of obstruction to its/their possession; however Police was directed to interfere if there was commission of any offence.
- Injunction Order of the Munsiff, Perumbavoor in IA No: 270 of 2005 in OS No. 42 of 2005.



- Letter dated 19/02/2015 from Additional Tahsildar to the Collector referring to report dated 18.02.2015 of Village Officer regarding filling up of the property.
- Complaint from public.
- Letter dated 23.02.2015 of the Collector to RDO and Agricultural Officer directing to issue stop memo if the property came within the scope of the 2008 Act.
- Letter dated 18.02.2015 from the Village Officer to Collector.
- Letter dated 09.03.2015 from the RDO to the Collector. As per the letter, the land was filled up from 2014.
- Letter dated 09/04/2015 from the Collector to RDO. Collector directed them to issue stop memos to get the filling works stopped. It was also stated in the said letter that steps in terms of Section 13 of the 2008 Act were being taken.
- Reminder letter dated 12.06.2016 from the RDO to the Collector.

The Order dated 26.09.2018 of the Collector, as stated above, was impugned in revision by the owner of the property before the Government in terms of Section 28 of the 2008 Act. In revision, the aforementioned order of the District Collector was set aside by the Government as per its above referred Order dated 31.01.2019.

The conclusions of the Government in the Order dated 31.01.2019, whereby the order of the District Collector was set aside, were to the



effect that the Collector did not consider the reports of the RDO and Agricultural Officer as well as the letter of Padasekhara Samithi referred to in the proceedings dated 23.02.2006 of the Land Revenue Commissioner. It was further found that the District Collector had not considered the certificate of the Principal Agriculture Officer that the land was converted in 2006. It was also found that the files at the Collectorate did not reveal any detailed verification as to whether the property was reclaimed before 2006.

The Order dated 23.02.2006 of the Land Revenue Commissioner was reportedly passed relying on the reports of the Village Officer and Agriculture Officer to the effect that the property was not fit for paddy cultivation. The Land Revenue Commissioner has also held that it was not conclusively proved that the property was under paddy cultivation for three years continuously since the promulgation of the KLU Order. It was in the said circumstances that land conversion order was passed by the Land Revenue Commissioner on 22.03.2006.

In letter dated 09.01.2014 from the Village Officer to the Collector, it was stated that the property was filled up earlier, though not filled up to the full height. In the stop memo dated 09.01.2014 issued by the Village Officer, it is stated that the property was filled up at an earlier point of time at various areas therein, though without required height. The



certificate of the Principal Agriculture Officer was to the effect that the property was converted as early as in 2006.

The order dated 31.01.2019 was passed by the Government, in exercise of the powers conferred under Section 28 of the 2008 Act, primarily on the following circumstances/ grounds:

- It was found by the Land Revenue Commissioner in the Order dated 23.02.2006 that the property was not fit for paddy cultivation. It was discernible from the said Order itself that even as on 2005=2006, there were coconut tress aged more than 25 years in the property. The said order was passed relying on the report of the Principal Agricultural Officer in the year 2004 to the effect that the property was not suitable for paddy cultivation. It further referred to the letter of the Padashekhara Samithi to the effect that they had no objection in the property being converted. The Order also took note of the Report of the Tahsildar to the effect that the property was not fit for paddy cultivation. The Collector, in his Order dated 26.09.2018, had not taken note of the aforementioned documents.
- The Collector had also not taken note of the Certificate of the Principal Agricultural Officer to the effect that the property was reclaimed in 2006 itself.

The findings in the Order dated 31.01.2019 of the Government are based on materials available on records. The said findings cannot be



said to be based on extraneous materials or no materials. Therefore, it cannot be said that the said order is patently illegal and manifestly or apparently erroneous. The said Order has been rendered, whereby findings of facts have been reached relying on documents. It cannot be said that the order is illegal or unsustainable in law.

Further the order dated 26.09.2018 of the Collector also injuncts transfer of the said property and effecting of transfer of registry with regard to said property, for which no power has been conferred on the Collector under the 2008 Act. The Order of the Collector has been rightly held by the Government to be not sustainable in this count.

In Revenue Divisional Officer, Fort Kochi and others v. Jalaja Dileep and another [2015(2) KHC 109], it has been held by the Honourable Apex Court that if a property is included as paddy land in the Data Bank or Draft Data Bank, the provisions of 2008 Act will apply. The order dated 31.01.2019 states that the owner of the property can approach the concerned official for exclusion of the property from the Data Bank in accordance with the provisions of the 2008 Act. The proviso to Section 5 (4) (i) of the 2008 Act empowers the Revenue Divisional Officer to remove any land included as paddy land from the Data Bank if the same is not paddy land as such. In the matter of removal of the property from data bank, recourse can be had to the law laid down by the Honourable High



Court in Kunhumoideenkutty and Others v Marakkara Grama Panchyath and others (2018 (4) KHC 484).

Order dated 31.01.2019 has been kept in abeyance as per order G.O.(Rt) No. 1090/2019/Rev dated 08.05.2019. The order dated 31.01.2019 has been issued in accordance with the powers conferred under Section 28 of the 2008 Act. There is no express review powers conferred on the Government as per the provisions of the 2008 Act. It is trite and settled law that review is a creature of a statute and such an order of review can be passed only when a express power of review is provided in the statute. (As held by the Honourable Apex Court in a catena of decisions, one among it being Assistant Commercial Sales Tax Officer v M/s Makkad Plastic Agencies 2011 (4) SCC 750). Therefore, proceedings, if any, pursuant to order dated 08.05.2019, being in the nature of review, is unsustainable in law.

Yours faithfully,



C.P. SUDHAKARA PRASAD  
ADVOCATE GENERAL



Handwritten text, possibly a name or title, in Kannada script.