



2023/KER/63498

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

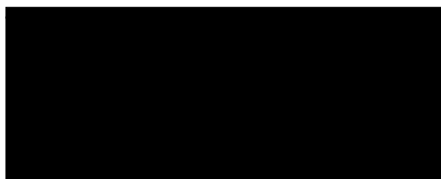
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 18TH DAY OF OCTOBER 2023 / 26TH ASWINA, 1945

WP (C) NO. 23660 OF 2023

PETITIONER:

HEMA ANIL



BY ADVS.

SMT.CHITRA JOHNSON

SRI.JOHNSON VARGHESE

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF LOCAL SELF GOVERNMENT
THIRUVANANTHAPURAM, PIN - 695001
- 2 MANEED GRAMA PANCHAYATH
MANEED-PIRAVOM ROAD,
MANEED, PIN - 686664
REPRESENTED BY ITS SECRETARY
- 3 DISTRICT OFFICER
GROUND WATER DEPARTMENT,
CIVIL STATION,
KAKKANAD P.O., PIN - 682030

BY SMT.K.AMMINIKUTTY, SR. GOVERNMENT PLEADER
SRI.SUNU P.JOHN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 30.09.2023, THE COURT ON 18.10.2023 DELIVERED
THE FOLLOWING:



“C.R.”

BECHU KURIAN THOMAS, J.**W.P.(C) No.23660 of 2023**Dated this the 18th day of October, 2023**JUDGMENT**

The question arising for consideration in this writ petition is whether a well can be dug in a paddy land for commercial use.

2. Petitioner claims to have taken steps for setting up a manufacturing unit for packaged drinking water. She obtained a permit to construct a building in Re.Sy. Nos.358/3-4 and 356/2D-7 of Maneed Village, Muvattupuzha Taluk. Petitioner intends to set up her manufacturing unit on land, which is classified as a nilam and notified in the data bank. The Kerala Ground Water Department, after conducting its tests, confirmed that the area is suitable for construction of an open well with dimensions of 8 metres in length, 6 metres in width and 10 metres in depth in Sy. Nos.359/3-10, 359/3 and 359/4 of Maneed Village. Based on the confirmation from the Kerala Ground Water Department, petitioner applied to the Panchayat seeking a No Objection Certificate for the project. However, by communication dated 14.07.2022, the Panchayat informed her that approval from the Revenue Divisional Officer is



necessary and that as per Rule 75(1) of the Kerala Panchayat Building Rules, 2019, prior permission of the Panchayat is also essential before constructing a well.

3. In the meantime, petitioner approached the Revenue Divisional Officer to remove her land from the data bank. She filed an application under Form 5 of the Kerala Conservation of Paddy Land and Wetland Act, 2018 (for short 'the Act'). While so, petitioner received an intimation from the Ground Water Department that permission of the Grama Panchayat is necessary for considering her application for using the groundwater for the project. It is in such circumstances that this writ petition has been filed seeking to quash the communication issued by the Panchayat on 14.07.2022 as well as for a direction to the Panchayat to issue a No Objection Certificate to the petitioner.

4. A counter affidavit has been filed by the Panchayat, pointing out that petitioner is attempting to mislead the authorities by misinterpreting the No Objection Certificate obtained by her. The said NOC was obtained to dig a well in a dry land, but she has misused it to dig a well in a paddy land, that too, in a different survey number and far away from the dry land. The counter affidavit further pleaded that the digging of a well for manufacturing purposes in the wetland was a clear violation of rule 4(2) of the Wetland (Conservation and Management) Rules, 2017 and that petitioner had dug a well in a wetland without the permission of the



Panchayat and has thereafter attempted to obtain a NOC. Panchayat further pleaded that the construction of a well in a paddy land, that too, for using it for commercial purposes, is not contemplated under the Act. Respondent also stated that such a construction is opposed to the Objects and Reasons of the Act and that such activities will deplete the water source, ultimately drying up the ground.

5. I have heard Smt. Chitra Johnson, the learned counsel for the petitioner, Sri. Sunu P. John, learned Standing Counsel for the Panchayat, as well as Smt.K. Amminikutty, learned Senior Government Pleader.

6. Paddy lands and wetlands play a significant role in the ecological balance. They are a vital part of the hydrological cycle and are highly productive ecosystems which support rich biodiversity, providing for the numerous services of the ecosystem such as water storage, water purification, flood mitigation, erosion control and even aquifer recharge. The large-scale conversion of paddy fields will result in enormous ecological degradation, leading to intensification of soil erosion, affecting the fertility of soil and reduction of groundwater levels in wells, ponds and even rivers.

7. The State of Kerala noticed that the land cover change in the paddy lands and wetlands in the State caused by human activities has led to regional climate alterations. The Kerala Conservation of Paddy Land and Wetland Act, 2008, was enacted to halt the unregulated conversions



of paddy lands in the State. The salutary objectives of the Statute, as discernible from the Statement of Objects and Reasons itself, indicate the purpose of the said enactment. Considering the nature of the issue to be dealt with in this writ petition, it is necessary to extract, in the abstract, the Statement of Objects and Reasons:

“.....The paddy fields throughout Kerala are facing severe threats as they are being converted to cash crop plantations. Even the marshes are filled for new constructions..... Paddy field conversion had led to enormous ecological degradation in the watershed region, reduction in humus formation, intensification of soil erosion that affected the fertility of soil, reduction in water level in wells, ponds etc. The ecological system loses its quality irrecoverably forever and the entire society is a loser. It has led to loss of direct and indirect employment to farmworkers and rural women. The rural poor will have to experience acute water shortage than at present. They lost access to nutrient-rich, low-cost food materials which had been available in and around the paddy fields. Now majority are unaware of the true value of the loss of resources and its consequences on the livelihood conditions and gravity of the problem. In the wider interest of the society and mankind paddy lands are to be preserved. Paddy is an amphibious crop that can be cultivated along with the maintenance of ecological functions of wetland and hence paddy cultivation is to be preserved and promoted at any cost.....”

8. With the above objective in mind, the Statute defines paddy land in 2(xii) of the Act as all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation but uncultivated and left fallow and includes its allied constructions like bunds, drainage channels, ponds and canals. In the decision in **Shaju C.J. v.**



State of Kerala (2022 (6) KLT 676), a learned single Judge of this Court had held that digging of a well or a pond inside a paddy land would not amount to conversion or reclamation. It was further observed that there is no law which necessitates the permission of the revenue officers or agricultural officers for digging the well on private property based on the Kerala Panchayat Building Rules, 2011.

9. At this juncture, it is necessary to point out that in **Shaju's case** (supra), the well that was sought to be constructed was not for any commercial purposes. A perusal of the said judgment also does not reveal that the permission sought therein was for any commercial activity or for an industry that requires the extraction of water commercially. Since permission sought, in that case, was not for any commercial activity, the said decision cannot come to the aid of the petitioner. Thus, the decision in **Shaju C.J. v. State of Kerala** (2022 (6) KLT 676) has no applicability to the present issue.

10. Utilizing the water from a paddy land for cultivation or agricultural purposes is distinct from extracting water from the paddy land for commercial purposes, that too, for taking it out of the limits of the property. An activity in the nature of manufacturing packaged drinking water contemplates the usage of groundwater for a commercial purpose, which no doubt is a purpose unconnected with paddy land. Water, if extracted for the commercial activity proposed by the petitioner, will result



in it being taken out of the property, which is contrary to the purpose of paddy cultivation. If the digging of a well, pond or bund, as contemplated under the Act, has to be permitted, it must be an activity connected with paddy cultivation and not for any extrinsic purposes. As is clear from the definition, the construction of bunds, drainage channels, ponds and canals must be an allied activity of the paddy land and not otherwise. A well to be constructed inside a paddy land must therefore satisfy the aforesaid parameter. Manufacturing of packaged drinking water is not an allied activity of paddy land. By no stretch of imagination can such an activity be even remotely connected with paddy cultivation.

11. The purpose behind the Statute includes the need to maintain the water level and the ecological balance. These purposes will be wholly defeated and destroyed if wells or ponds are permitted to be set up in paddy lands for commercial activity. In this context, the definition of the word 'reclamation' in section 2(xv) of the Act is relevant and is as follows:

“reclamation” means such act or series of acts whereby a paddy land or a wetland as defined in this Act is converted irreversibly and in such a manner that it cannot be reverted back to the original condition by ordinary means.”

12. Once the water from a paddy land is drawn out for commercial purposes, the original water level will not be able to be maintained, thereby making it impossible to revert back to the original condition by ordinary means. Therefore, this Court holds that the construction of a well



in a paddy land, for purposes unconnected with paddy cultivation amounts to conversion and reclamation falling within the purview of a prohibited activity under section 3 of the Act.

13. Apart from the above, rule 75(1) of the Kerala Municipality Building Rules, 2019, specifically prescribes that permission of the Panchayat is necessary before constructing a well. The said rule reads as follows:

“S.75. Essentially of permit.—

- (i) No new well shall be dug without the permission of the Secretary.*
- (ii) Where any person intends to dig an open well/tube well/bore well, he shall submit an application in the form in Appendix A1 to the Secretary, together with site plan and documents to prove the ownership.*
- (iii) The site plan shall show the position and dimension of the well and all existing and proposed buildings and structures in the site and within 7.5 metres radius from that well”.*

14. The permission obtained from the Panchayat on 28.09.2020 as per Ext.P1 was for digging a well and constructing a water treatment building in a dry land in Sy.Nos.358/3-4 and 356/2D-7 in Maneed Village. A perusal of the report reveals that the Ground Water Department carried out tests and inspections in Sy. Nos. 359/3-10, 359/3 and 359/4, which are different from the areas for which permissions were granted as per Ext.P1 and Ext.P2. Thus, it is evident that petitioner has been attempting to use the paddy land under the cover of a permission granted in a dry land.



2023/KER/63498

W.P.(C) No.23660/23

-:9:-

15. Having regard to the above discussion, this Court is of the view that the reliefs sought for by the petitioner cannot be granted. If the petitioner has carried out any construction contrary to the Act, it is a matter which will have to engage the attention of the authorities under the Act.

The writ petition is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX

PETITIONER'S/S' EXHIBITS

- EXHIBIT 1 TRUE COPY OF THE SITE APPROVAL AND
BUILDING PERMIT DATED 28.09.2020
- EXHIBIT 2 TRUE COPY OF THE DEVELOPMENT PERMIT NO:
A2-2516/20 DATED 09.09.2020
- EXHIBIT P3 TRUE COPY OF THE REPORT ISSUED BY THE
3RD RESPONDENT DATED 13.10.2020
- EXHIBIT P4 TRUE COPY OF THE ORDER ISSUED BY 2ND
RESPONDENT DATED 14.07.2022
- EXHIBIT P5 TRUE COPY OF THE COMMUNICATION ISSUED BY
THE 3RD RESPONDENT DATED 10.03.2023

RESPONDENT'S/S' EXHIBITS

- EXHIBIT R2 (a) TRUE COPY OF THE ORDER OF RDO NO.A14-
12132/2022K. DIS DATED 16.5.2023