

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

Wednesday, the 29th day of July 2020/7th Sravana, 1942

WP(C) No.17983/2019 (W)

PETITIONER:

LALY GEORGE, AGED 49 YEARS
W/O. GEORGE, PALLICKAKUDIYIL HOUSE (H), BISON VALLEY,
MUTTUKADU, IDUKKI DISTRICT, PIN - 685 565.

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
2. THE DISTRICT COLLECTOR, COLLECTORATE, IDUKKI, PIN - 685 602.
3. THE PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, THIRUVANANTHAPURAM, PIN - 695 001.
4. REVENUE DIVISIONAL OFFICER, DEVIKULAM, IDUKKI, PIN - 685 602.
- *5. ADDL.R5-STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO LSGD,
THIRUVANANTHAPURAM

(ADDL.R5 IS SUO MOTU IMPEADED AS PER ORDER DATED 16.08.2019 IN WP(C))

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an order or direction staying Exhibit P3 and P4 orders issued by the respondents pending disposal of this Writ Petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 25.06.2020 and upon hearing the arguments of M/S.DR.MATHEW KUZHALANADAN, APARNA SATHIANATHAN & SUDEEP ARAVIND PANICKER, Advocates for the petitioner and of GOVERNMENT PLEADER for the Respondents, the court passed the following:

P.T.O.

A.MUHAMED MUSTAQUE, J.

WP(C) Nos.17983, 29865 & 32098/2019

Dated this the 29th day of July, 2020

ORDER

These cases depict a sorry state of affairs exist in the State where the revenue department refused to comply with the directions of this Court which were issued to sustain the action initiated by State Government itself. These directions were issued in the wake of action initiated by the Government to stop construction in a land assigned for agricultural activities or for other purposes. If the Government is serious in preventing any construction being undertaken in such land, the Government ought to have complied with the order passed by this Court on 25.06.2020.

2. It is to be noted that in the Government order dated 22.08.2019 the Government had decided as follows:-

"9. ഭൂമി പതിവ് ചട്ടങ്ങൾ പ്രകാരം പട്ടയം അനുവദിച്ചിട്ടുള്ള ഭൂമിയിൽ പട്ടയ വ്യവസ്ഥകൾ ലംഘിച്ച് വാണിജ്യ നിർമ്മാണ പ്രവർത്തനങ്ങൾ ഭാവിയിൽ നടത്താതിരിക്കുന്നതിനായി ബന്ധപ്പെട്ട കെട്ടിട നിർമ്മാണ ചട്ടങ്ങളിൽ എന്ത് ആവശ്യത്തിനാണ് പ്രസ്തുത പട്ടയം അനുവദിച്ചതെന്ന വില്ലേജ് ഓഫീസറുടെ സർട്ടിഫിക്കറ്റിന്റെ അടിസ്ഥാനത്തിലേ ബിൽഡിംഗ് പെർമിറ്റ് അനുവദിക്കാവുന്ന വ്യവസ്ഥ ഉൾപ്പെടുത്തി ബന്ധപ്പെട്ട കെട്ടിട നിർമ്മാണ ചട്ടങ്ങളിൽ ഭേദഗതി വരുത്തേണ്ടതാണ്."

This was with an intention to prevent any such illegal construction in

the land assigned for agricultural activities.

3. It is to be noted that on 22.08.2019, the Government passed the order in the background of large number of conversion of land assigned for agricultural activities or for other purposes. In that order, the Government had decided to amend the Building Rules to prevent such construction. Taking note of the above decision of the Government, this Court by order, dated 30.01.2020, directed the Government to carry out amendment. However, the Government could not bring an amendment. The Government sought time to comply with the directions in that regard.

4. Taking note of the delay involved, this Court directed the Government by the order dated 25.06.2020 to issue a direction to all the revenue authorities to mention the nature of the land whether it is assigned for specific purposes or not while issuing possession certificate. This Court was of the view that such an endorsement would enable the authority acting upon such certificate while considering the application to refuse such construction in such assigned land. It is to be noted that this order was preceded by another order dated 27.05.2020 in these writ petitions. In that order, this Court had directed the Government to come out with any mechanism to prevent such construction.

5. In spite of the above two directions, the Government is

lethargic in issuing any direction to revenue authorities at least to describe the nature of land in revenue certificate like possession certificate.

6. The land belongs to the State. The Government being the trustee of the land has duty to protect the land. If the land was assigned for public purpose, the Government is bound to ensure that the land is used for public purpose in all circumstances. The Government's inaction clearly spell that the Government is not interested in taking action against the person who have undertaken construction in the land assigned for agricultural purpose. This Court can understand the delay in amending the Building Rules. However, this Court cannot understand the delay for issuing a government order directing all the Revenue Authorities to mention the nature of the land whether it was assigned for agricultural purposes or not.

7. Since the Government failed in its responsibility, there is no other option but to subserve public purpose except by directing the Principal Secretary, Revenue Department, to forward a copy of this order to all the revenue authorities in the State to act upon. The Revenue Authorities in the State, hereafter, shall issue a possession certificate only after verifying the purpose for which the land was assigned. If the land was assigned for specific purpose, the Revenue Authority shall incorporate

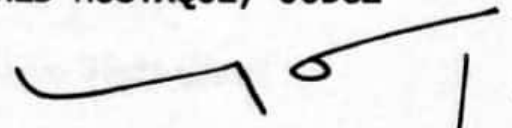
the purpose for which the land was assigned under the Kerala Land Assignment Act, 1960. The copy of this order shall be forwarded to all the Revenue authorities within a week from the date of receipt of a copy of this order. Incorporate the time extension petition filed by the Principal Secretary, Revenue Department, along with these writ petitions.


Post on 14.08.2020.

Sd/- A.MUHAMED MUSTAQUE, JUDGE

SAS/29/07/2020

/true copy/


ASSISTANT REGISTRAR


4/8/2020