



GOVERNMENT OF KERALA

Abstract

Local Self Government Department- Judgment in WP(C) No.19982/2010 filed by Prathap Foundation for Education and Training, SCMS Campus, Prathap Nagar, Muttom, Aluva ,Cochin-Compliance of Court direction - Orders Issued.

LOCAL SELF GOVERNMENT (RB) DEPARTMENT

G.O.(Rt) No.2360/2011/LSGD,Dated,Thiruvananthapuram,15.10.2011

Read:- Judgment dated 7.4.2011 in WP(C) No.19982/2010 filed by Prathap Foundation for Education and Training , SCMS Campus,Prathap Nagar, Muttom, Aluva ,Cochin

ORDER

The Hon'ble High Court in judgment dated 7.4.2011 in, WP(C)No.19982/2010 filed by Prathap Foundation for Education and Training, SCMS Campus, Prathap Nagar, Muttom, Aluva, 'Cochin had directed the Government (1st Respondent) to pass orders in the matter of construction of Hostel Buildings in the reclaimed land by the petitioner within a period of 6 weeks from the date of receipt of a copy of judgment after considering the actual nature of the property and in light of Government Circular No.4545/RA1/2011/LSGD dated 22.1.2011 (Exhibit P14) and other relevant circulars, orders and provisions of the law on the subject. It is further directed that the petitioner shall be afforded with an opportunity of being heard. Based on such an order it is further directed that the 3 rd respondent ie, the Secretary, Choornikkara Grama Panchayat shall consider the application for building permit by the petitioner.

2. The matter was heard in accordance with orders of the Hon'ble High Court . The issue relates to the request of M/s Prathap Foundation for Education and Training for building permit for students Hostel adjacent to the campus at Muttom in Aluva west village under Choornikkara Grama Panchayat. As per the report of the District Collector it is found that Copies of the referred application were forwarded to Agriculture Officer, Choornikkara, the President Choornikkara Grama Panchayat, and the Village Officer Aluva West regarding the status of the land.

3. The Choornikkara Grama Panchayat committee has passed a resolution to the effect that they have no objection for constructing the students hostel in the land acquired for the purpose. The Village Officer, Aluva West has reported that the subject land is classified as ' Nilam ' in village records and there is no paddy cultivation in the land for years. It was also reported that SCMS College is functioning in the building constructed in above land for last 8 years and they have also constructed multi storied building for the educational purposes in the said land. The application is for constructing a new building in the land.

4. The Agriculture Officer, Choornikkara has reported that at present the subject land seems reclaimed with soil 7 or 8 years earlier. Aged coconut trees are also seen in the plot. Adjacent to this land, SCMS College Building are situated. It is also informed that the land can be utilised for paddy cultivation if proper irrigation and drainage facilities are provided. Hence the permission may not be granted.

5. The issue that arises in this case as raised by the party during the hearing is whether the proposed land which has been filled up at least 7 to 8 years back and perhaps earlier, as understood from the age of coconut trees on the site, qualifies as the paddy land as per the Kerala Conservation of Paddy land and Wet Land Act 2008. The legal position is that Revenue records will not determine the status of the land as much as the actual status of paddy land as on 12.8.2008. In a recent decision of the Hon'ble High Court of Kerala in Praveen Vs Land Revenue Commissioner Thiruvananthapuram (2010 (2) KHC 499), confirming the judgment in Jayakrishnan Vs District Collector (2009 (1) KLT 123), it was held that after the coming into force of Act 28 of 2008, any application for conversion or reclamation of paddy land can be dealt with only under the act and not under the order. In Shahnaz Shukkoor Vs Chelanur Grama Panchayat (2009 (3) KLT 899) the Hon'ble High Court has held that, 'the mere description of an item of property as Nilam (Paddy field) or wet land, in the revenue records, is insufficient to assume that the land can not be used for any purpose other than those for which a paddy field or wet land can be used. This is because The Kerala Conservation of Paddy Land and Wet Land Act 2008, deals with the conversion of land, which are wet land or paddy fields on the basis of the actual fact situation and not depending on the description of property in revenue records. The definition of the term 'paddy field' and 'wet land' in the said act is sufficient material to hold that said the statute operates on the basis of the facts or extent on ground realities and not on any quality or type of land depending on description in the title document.

6. On the basis of the records provided by the M/S Prathap Foundation including photographs of the site, the report of the Agriculture officer, and

the Village Officer and the fact that the area is fully filled up inside an already built up educational campus, it is difficult to conclude that the land will attract the provisions of the paddy Land and Wet land Conservation Act since all the evidence point to the fact that the land in question does not fall under the definition of paddy land on the date of coming into the effect of the act.

7. In the circumstances there is no option but to conclude that the land in question does not fall under the definition of paddy land on the date of coming into effect of Conservation of Paddy land and Wet Land Act . Regarding the issue of illegal filling prior to 12.8.2008 , thereby violating the then prevailing Kerala Land Utilization Order, the Revenue Department/ District Collector, Ernakulam, will decide on whether any such violation was done by the property owner or his predecessor in interest and if so what action under the KL U Orders can be taken against them.

8. The directions contained in the Judgment read above are complied with accordingly.

(By Order of the Governor)
Rajesh Kumar Singh
Secretary to Government.

To

Chairman, Prathap Foundation for Education and Training,
SCMS Campus, Prathap Nagar, Muttom, Aluva.
The District Collector, Ernakulam.
The Chief Town Planner, Thiruvananthapuram.
The Secretary, Choornikkara Grama Panchayat.
Revenue Department
The Advocate General, Kerala, Ernakulam (With C/L)
✓ Stock file/Office Copy.

Forwarded by Order


Section Officer