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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 30TH DAY OF MARCH 2023 / 9TH CHAITHRA, 1945

WP(C) NO.3538 OF 2023

PETITIONERS :-

- 1 SUMESH.U, AGED 41 YEARS
S/O.T.R UNNIKRISHNAN, THARAVANTHEDATH HOUSE,
KODUVAYUR AMSOM & DESOM, CHITTUR TALUK,
KODUVAYUR P.O, PALAKKAD DISTRICT, PIN - 678 501
- 2 SUDHEESH.U, AGED 46 YEARS
S/O.T.R UNNIKRISHNAN, THARAVANTHEDATH HOUSE,
KODUVAYUR AMSOM & DESOM, CHITTUR TALUK,
KODUVAYUR P.O, PALAKKAD DISTRICT, PIN - 678 501

BY ADVS.
JACOB SEBASTIAN
K.V.WINSTON
ANU JACOB
DIVYA R. NAIR

RESPONDENTS :-

- 1 THE REVENUE DIVISIONAL OFFICER PALAKKAD
OFFICE OF THE REVENUE DIVISIONAL OFFICER PALAKKAD,
PALAKKAD HEAD POST OFFICE, PALAKKAD DISTRICT,
PIN - 678 001
- 2 THE VILLAGE OFFICER
KODUVAYUR-1 VILLAGE, KODUVAYUR P.O,
PALAKKAD DISTRICT, PIN - 678 501
- 3 THE AGRICULTURAL OFFICER FOR THE KODUVAYUR PANCHAYAT
AGRICULTURE OFFICE, KODUVAYUR P.O,
PALAKKAD DISTRICT, PIN - 678 501

BY SMT.PARVATHY K., GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07.3.2023, ALONG WITH WP(C).4450/2023, THE COURT ON
30.3.2023 DELIVERED THE FOLLOWING:

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 30TH DAY OF MARCH 2023 / 9TH CHAITHRA, 1945

WP(C) NO.4450 OF 2023

PETITIONERS :-

- 1 SARESH SANKER, AGED 52 YEARS
S/O.SANKARANARAYANAN, EYYANI THOTTUNGAL, TRIPRAYAR,
NATTIKA, THRISSUR, PIN - 680 566.
- 2 RANCY SARESH, AGED 52 YEARS
W/O.SARESH SANKER, EYYANI THOTTUNGAL, TRIPRAYAR,
NATTIKA, THRISSUR, PIN - 680 566.

BY ADVS.
S.SREEDEV
ENOCH DAVID SIMON JOEL
RONY JOSE
LEO LUKOSE
KAROL MATHEWS SEBASTIAN ALENCHERRY
DERICK MATHAI SAJI
V.T.KAVITHA

RESPONDENTS :-

- 1 STATE OF KERALA REPRESENTED BY SECRETARY
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001
- 2 DISTRICT COLLECTOR
FIRST FLOOR, CIVIL STATION, CIVIL LANES ROAD,
KALYAN NAGAR, AYYANTHOLE, THRISSUR, PIN - 680 003
- 3 REVENUE DIVISIONAL OFFICER
RDO OFFICE, THRISSUR, PIN - 680 003
- 4 VILLAGE OFFICER
NATTIKA VILLAGE OFFICE, THRISSUR, PIN - 680 566
- 5 LOCAL LEVEL MONITORING COMMITTEE
NATTIKA GRAMA PANCHAYAT,

REPRESENTED BY ITS CONVENER, AGRICULTURAL OFFICER,
KRISHI BHAVAN, NATTIKA, THRISSUR, PIN - 680 566

BY SMT.PARVATHY K., GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07.03.2023, ALONG WITH WP(C).3538/2023, THE COURT ON
30.03.2023 DELIVERED THE FOLLOWING:

'CR'

JUDGMENT

[W.P.(C) Nos.3538 and 4450 of 2023]

Dated this the 30th day of March, 2023

The prayers in these writ petitions are for consideration of the application submitted by the petitioners under Section 27A of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (for short, 'the 2008 Act') without insisting on payment of fees.

2. It is submitted that the petitioners are owners in possession of the property, the extent of property in both these cases is below 25 cents. It is submitted that the property was purchased from the prior owner and the extent of the property was identical. It is, therefore, contended that since the extent of the property as on 30.12.2017 was below 25 cents, the petitioners are entitled to consideration of their Form 6 applications, without payment of any fee as provided in Section 27A of the 2008 Act and Rule 12(9) and the Schedule to the Kerala Conservation of Paddy Land and Wetland Rules, 2008. It is submitted that the respondents are refusing to consider the application on the ground that the properties were purchased on a later date and that therefore, the fees have to be paid.

3. A statement has been placed on record by the 3rd respondent in W.P.(C) No.4450/2023 contending that the exemption

from payment of fee for the conversion of the property is provided only to specific extents of property which are below 25 cents each. It is contended that since the petitioners had purchased the properties after 2017, they are not entitled to the exemption. It is contended that even if properties having a lesser extent is purchased after 2017, the benefit of conversion without fee will be lost.

4. Having considered the contentions advanced on either side, I notice that Section 27A of the 2008 Act provides for application seeking permission for use of unnotified land for other purposes. It is specified that land below an extent of 25 cents can be converted without payment of fees. The provision with regard to payment of fees is provided in Rule 12(9), which reads as follows :-

12. 27എ വകുപ്പ് (2) ഉപവകുപ്പ് പ്രകാരം വിജ്ഞാപനം ചെയ്യപ്പെടാത്ത ഭൂമിയുടെ സ്വഭാവവ്യതിയാനം അനുവദിക്കുന്നതിനുള്ള നടപടിക്രമം :-

(9) വിജ്ഞാപനം ചെയ്യപ്പെടാത്ത ഭൂമിയുടെ സ്വഭാവ വ്യതിയാനം അനുവദിക്കുന്ന അപേക്ഷകളിൽ, ചട്ടങ്ങൾക്ക് അനുബന്ധമായുള്ള പട്ടികയിൽ വ്യക്തമാക്കിയിട്ടുള്ള നിരക്കിലുള്ള തുകയ്ക്ക് ഡിമാൻഡ് ഡ്രാഫ്റ്റോ അല്ലെങ്കിൽ ഇലക്ട്രോണിക് ട്രാൻസ്ഫർ മുഖേന പ്രസ്തുത തുക ഫണ്ടിലേക്ക് അടച്ചതിന്റെ തെളിവോ ഹാജരാക്കുന്നതിന്മേൽ, അപ്രകാരം അനുമതി നൽകപ്പെട്ട ഭൂമിയുടെ വിസ്തീർണ്ണം, സർവ്വെ നമ്പർ, അപേക്ഷകൻ ജലസംരക്ഷണ നടപടികൾ സ്വീകരിക്കേണ്ട ഭൂമിയുടെ സർവ്വെ നമ്പരും വിസ്തീർണ്ണവും എന്നിവ വ്യക്തമാക്കിക്കൊണ്ടും ജലസംരക്ഷണ നടപടികൾ വിശദമാക്കിക്കൊണ്ടും റവന്യൂ ഡിവിഷണൽ ഓഫീസർ ഉത്തരവ് പുറപ്പെടുവിക്കേണ്ടതും ഉത്തരവിനോടൊപ്പം മേൽ പറഞ്ഞ വിശദാംശങ്ങൾ സൂചിപ്പിച്ചു കൊണ്ടുള്ള പ്രസ്തുത ഭൂമിയുടെ ഒരു സ്കെച്ച് ഉണ്ടായിരിക്കേണ്ടതുമാണ്.

The provision with regard to fee in the Schedule is as follows :-

**“2008-ലെ കേരള നെൽ വയൽ - തണ്ണീർത്തട സംരക്ഷണ ചട്ടങ്ങൾ
വിജ്ഞാപനം ചെയ്യപ്പെടാത്ത ഭൂമിയുടെ സ്വഭാവ വ്യതിയാനം
അനുവദിക്കുന്നതിനു അടയ്ക്കേണ്ട ഫീസ്**

ക്രമ നമ്പർ	വിസ്തീർണ്ണം (ആർ)	ഫീസായി അടയ്ക്കേണ്ട ഭൂമിയുടെ ന്യായവിലയുടെ ശതമാനം (%)		
		പഞ്ചായത്ത്	മുനിസിപ്പാലിറ്റി	കോർപ്പറേഷൻ
1.	20.23 വരെ	10	20	30
2.	20.23 മുതൽ 40.47 വരെ	20	30	40
3.	40.47-നു മുകളിൽ	30	40	50

കുറിപ്പ് :- (1) അപ്രകാരം സ്വഭാവ വ്യതിയാനം വരുത്താൻ ഉദ്ദേശിക്കുന്ന ഭൂമിയിൽ നിർമ്മിക്കാൻ ഉദ്ദേശിക്കുന്ന കെട്ടിടത്തിന്റെ തറ വിസ്തീർണ്ണം 3000 ചതുരശ്ര അടിയിൽ കൂടുതൽ ആണെങ്കിൽ അപ്രകാരം അധികമായി വരുന്ന ഓരോ ചതുരശ്ര അടിക്കും 100 രൂപ നിരക്കിലുള്ള ഫീസ് കൂടി അടയ്ക്കേണ്ടതാണു.

കുറിപ്പ് :- (2) 4.04 ആർ ഭൂമിയിൽ 120 ചതുരശ്രമീറ്റർ വരെ വിസ്തൃതിയുള്ള വീട് നിർമ്മിക്കുന്നതിനോ, പുനർനിർമ്മിക്കുന്നതിനോ വിപുലീകരിക്കുന്നതിനോ 2.02 ആർ ഭൂമിയിൽ 40 ചതുരശ്രമീറ്റർ വിസ്തൃതിയുള്ള വാണിജ്യകെട്ടിടം നിർമ്മിക്കുന്നതിനോ, പുനർനിർമ്മിക്കുന്നതിനോ വിപുലീകരിക്കുന്നതിനോ യാതൊരു ഫീസും നൽകേണ്ടതില്ല.”

Ext.R3(a) Government Order produced by the Government Pleader also specifically states as follows :-

“(2) 30.12.2017 വരെ ഒന്നായിക്കിടന്ന ഭൂമി, അതിനുശേഷം തിരിച്ച് 25 സെന്ററാ അതിനു താഴെയോ വിസ്തീർണ്ണമുള്ള പ്ലോട്ടുകളാക്കിയിട്ടുണ്ടെങ്കിൽ, അവയ്ക്ക് മേൽപ്രകാരമുള്ള സൗജന്യം ബാധകമല്ല. അവ ഒന്നായി കണക്കാക്കിയാണു ഫീസ് ഈടാക്കേണ്ടത്.”

Reliance is sought to be placed by the learned Government Pleader on Exts.R3(b) and R3(c) documents. It is pertinent to note that Ext.R3(c) circular dated 23.7.2021 has been set aside by this Court

in its entirety in the decision reported in **Baby v. District Collector** [2021 (6) KLT 316]. With regard to the clarification which is relied on by the learned Government Pleader, I notice that the clarifications are not in the form of either a circular or a Government Order and they are only communications issued by individual officers apparently to queries raised with regard to the applicability of the exemption. Since the said communications are not orders issued by the Government, I am clearly of the opinion that they cannot have any applicability or operation over and above the statutory provisions or the executive Government Orders validly issued on the subject.

5. A reading of the provisions of the Act, the Rules, the Schedule as well as Ext.R3(a) Government Order would make it amply clear that the exemption would be lost only in case there is a transaction after 30.12.2017 by which, a property having a larger extent is fragmented to make the individual parcels of land of an extent of less than 25 cents. The contention that any property purchased after December, 2017 would lose the exemption even when the said property was less than 25 cents in extent even prior to such transaction cannot be accepted in view of the specific language of the Act, the Rule and the Schedule. In the above view of the matter, I am of the opinion that the contentions raised in the

statement are completely untenable. The communications issued, which do not have the force of law, cannot stand in the way of consideration of applications in accordance with law.

These writ petitions are, accordingly, ordered directing the RDO to pass appropriate orders on the Form 6 applications submitted by the petitioners without insisting on the payment of fee. Appropriate orders shall be passed within a period of two months from the date of receipt of a copy of this judgment.

**Sd/-
ANU SIVARAMAN
JUDGE**

APPENDIX OF WP(C) 3538/2023

PETITIONER EXHIBITS

- Exhibit-P1 A TRUE COPY OF THE REGISTERED SALE DEED NO.1878/2020 OF THE SRO, KODUVAYUR DATED 30.11.2020.
- Exhibit-P2 A TRUE COPY OF THE REGISTERED SALE DEED NO.2555/2010 OF THE SRO, KODUVAYUR DATED 04.09.2010.
- Exhibit-P3 A TRUE COPY OF THE REGISTERED SALE DEED NO.1418/1990 OF THE SRO, KODUVAYUR DATED 22.11.1990.
- Exhibit-P4 A TRUE COPY OF THE REGISTERED SALE DEED NO.1501/1991 OF THE SRO, KODUVAYUR DATED 29.11.1991.
- Exhibit-P5 A TRUE COPY OF THE JUDGMENT DATED 03.08.2020 IN W.P.(C) NO.14860/2020 OF THIS HONOURABLE COURT.
- Exhibit-P6 A TRUE COPY OF THE ORDER DATED 06.02.2021 ISSUED BY THE FIRST RESPONDENT.
- Exhibit-P7 A TRUE COPY OF THE APPLICATION IN FORM 6 SUBMITTED BY THE PETITIONERS DATED 09.02.2022.
- Exhibit-P8 A TRUE COPY OF THE PAY- IN- SLIP DATED 10.01.2023 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT.

APPENDIX OF WP(C) 4450/2023

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE SALE DEED NO. 1026/2021 OF SRO TRIPRAYAR DATED 12.10.2021.
- Exhibit P2 A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 09.12.2021 ISSUED BY THE 4TH RESPONDENT.
- Exhibit P3 A TRUE COPY OF THE BUILDING PERMIT NO. A2-82/9-10 DATED 05.09.2009 ISSUED BY SECRETARY, NATTIKA GRAMA PANCHAYAT.
- Exhibit P4 A TRUE COPY OF THE FINAL DATA BANK DATED 17.08.2022 OF THE 5TH RESPONDENT.
- Exhibit P5 A TRUE COPY OF THE CHALLAN RECEIPT DATED 12.01.2022 ISSUED FROM THE TREASURY, TRIPRAYAR.
- Exhibit P6 A TRUE COPY OF THE NOTICE DATED 3.11.2022 ISSUED BY THE 3RD RESPONDENT AGAINST THE PETITIONERS.

RESPONDENT ANNEXURES

- ANNEXURE R3(a) A TRUE COPY OF THE GOVERNMENT ORDER NO.1166/2021/REV DATED 25.02.2021
- ANNEXURE R3(b) TRUE COPY OF THE LETTER NO.REVP1/69/2022/REV DATED 07.05.2022 OF THE ADDITIONAL CHIEF SECRETARY, REVENUE(P) DEPT.
- ANNEXURE R3(c) TRUE COPY OF THE CIRCULAR NO.REV-P1/117/2021/REV DATED 23.07.2021 OF REVENUE (P) DEPT.
- ANNEXURE R3(d) A TRUE COPY OF THE LETTER NO.REV-P1/206/2022-REV DATED 01.08.2022 OF ADDITIONAL CHIEF SECRETARY, REVENUE DEPT.