

**(2022) 02 KL CK 0001**

**High Court Of Kerala**

**Case No:** Writ Appeal No. 1539 Of 2021, 37 Of 2022

Shymon.M.P

APPELLANT

Vs

T. G. Sunil

RESPONDENT

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**Date of Decision:** Feb. 1, 2022

**Acts Referred:**

- Kerala Conservation of Paddy Land and Wetland Act, 2008 - Section 2(xii), 3(1)

**Hon'ble Judges:** S. Manikumar, CJ; Shaji P. Chaly, J

**Bench:** Division Bench

**Advocate:** C.S.Ajith Prakash, T.K.Devarajan, Paul C Thomas, Franklin Arackal, Babu M., Adesh Joshi, P. Chandralekha, S. Ranjith, C.G. Bindu

**Final Decision:** Dismissed

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### **Judgement**

Shaji P. Chaly, J.

1. The captioned writ appeals are materially connected, filed by a respondent, and he himself a third person respectively, challenging the common

judgment dated 14.09.2021 rendered by the learned single Judge in W.P.(C) Nos. 27200 of 2020 and 6685 of 2021.

2. W.A. No. 1539 of 2021 is filed by the 7th<sup>th</sup> respondent in W.P. (C) No. 27200 of 2020; whereas, W. A. No. 37 of 2022 is filed by the very same

appellant after securing leave from this Court as per order dated 6th January, 2022 in I.A. No.1 of 2021. The writ petitions were filed by respondents

1 and 2, and the first respondent respectively in the appeals, who are close relatives .

3. The subject matter arises under the Kerala Conservation of Paddy Land and Wetland Act, 2008 ('Act, 2008' for short), and basically the writ

petitions are filed challenging Ext. P18 order dated 10.02.2021 passed by the Local Level Monitoring Committee in Udayamperoor Grama Panchayat,

Ernakulam District, constituted as per the provisions of the Act, 2008, as per which it is held that, in the report dated 26.07.2007 submitted by the

Additional Tahsildar, Kanayannur Taluk to the Revenue Divisional Officer, it is stated that the land was kept ideal without any cultivation for the last

25 years and 70% of the land was filled up and remaining as dry land, but the rest of the properties lying marshy has some vegetation/trees as

mentioned in the report of the Village Officer, Manakunnam, and further it is mentioned that the Additional Tahsildar, Kanayannur inspected the site

and reported that though a good portion of the land remaining as dry land, rest of the land is marshy with certain trees.

4. It is further discernible from the impugned order that the Agricultural officer has reported that the property is not suitable for paddy cultivation and it

was lying as marshy land for 12 years and no paddy cultivation was conducted therein; that there are many properties in the very same Grama

panchayat lying marshy for 25 years and more, but after suitably developing the said properties, paddy cultivation was successfully carried out; and

therefore from the facts, it is assumed by the Committee that prior to July, 2007, the whole portion of the property was not filled up completely; and

accordingly, it was found by the committee that even though a large portion of the land has been filled up and converted as dry land in the year 2008,

even at present, the portion of land remaining as marshy is ideal for paddy cultivation; and therefore the committee finally concluded that measuring

the land is a precondition for quantifying the area of the land that has to be removed from the data bank or to be included in the data bank; and for that

purpose the help of a surveyor is a must for the committee; and accordingly, the Local Level Monitoring Committee decided to write a letter to the

Tahsildar, Kanayannur Taluk for the services of the Taluk Surveyor.

5. Since the issues are common in nature and the challenge made is against the common judgment, the facts and figures available in W.A. No. 1539 of

2021 are referred to for the disposal of the appeals.

6. Brief material facts for the disposal of the appeals are as follows:

The writ petitioners are co-owners in possession of the 1.4239 Hectares of land in survey No. 801/1 of Manakunnam Village, Kanayannur Taluk.

According to them, the said land had not been cultivated with paddy from the year 1965 onwards and they along with 1st petitioner's mother (1st

respondent in the other appeal), who is having 1.429 Hectares of land in the very same survey number lying as a single plot, having a total extent of

2.8478 Hectares, applied for conversion of the entire land for other agricultural purposes i.e., for planting coconut seedlings, before the District

Collector, Ernakulam under the provisions of Kerala Land Utilisation Order 1967, and the District Collector after obtaining reports from the Village

Officer, Tahsildar and the Revenue Divisional Officer concerned passed an order that the Kerala Land Utilisation Order is not applicable to the land in

question, and no permission is necessary under the Kerala Land Utilisation Order, 1967.

7. Matters being so, the Local Level Monitoring Committee, Udayamperoor Grama Panchayat, published a draft data bank as per the provisions of the

Act, 2008 showing the entire extent of the properties specified above as converted land for more than 30 years prior to the commencement of the Act,

2008. However, when the final data bank was published, 72 Ares of land belonging to the mother, and 70 Ares of land belonging to the writ petitioners

in the aforesaid survey number are shown as paddy land.

8. The writ petitioners, accordingly, filed separate applications dated 22.08.2017 to remove the property from the data bank, before the Local Level

Monitoring Committee in contemplation of the provisions of the Act, 2008. Thereafter, the mother filed W.P.(C) No. 8687 of 2017 before this Court

seeking a direction to delete 72 Ares of property from the data bank. It seems, based on the directions issued by this Court, the Agricultural Officer,

Udayamperoor, obtained a report from the Kerala State Remote Sensing and Environment Centre (KSREC).

9. According to the writ petitioners, as per the report of the KSREC, the land in survey number in question is lying as a fallow land with mixed

vegetation prior to the commencement of the Act, 2008 and that no paddy cultivation is seen after 1967. Anyhow, this Court directed the Local Level

Monitoring Committee concerned to take a decision based on the report of the KSREC. While so, the first writ petitioner's mother filed an application before the Tahsildar, Kanayannur for the assessment of the basic tax in respect of the property measuring 70 Ares in the aforesaid survey, lying as a garden land, to which the KLU Order did not apply.

10. This Court, again, in W.P.(C) No. 35548 of 2018 directed the Tahsildar, Kanayannur to consider and finalize the said application. However, the Tahsildar rejected the application stating that permission under KLU Order had not been obtained by the mother. Thereafter, the mother and the son filed W.P.(C) No. 22021 of 2019, which was disposed of by a learned single Judge as per judgment dated 17.11.2020, quashing the order passed by the Tahsildar, and permitted the mother to use 70 Ares of land as converted land and directed the Tahsildar to identify the said land with notice to Local Level Monitoring Committee, and re-assess the basic tax under the Kerala Land Tax Act treating the said land as converted/garden land. The Local Level Monitoring Committee was also directed to pass orders on the application dated 22.08.2017 within three months from the date of receipt of a copy of the judgment in the light of the report of the KSREC.

11. It is also pointed out that the direction issued by this Court in W.P.(C) No. 22021 of 2019 is squarely applicable to the land of the other writ petitioners also, since the report of the KSREC is in respect of the entire land in survey number 801/1 of Manakunnam Village. It is also contended that the District Collector has already held a portion of the land in question as converted land and that the KLU Order, 1967 is not applicable to the said land.

12. Thereafter, application was filed by the other writ petitioners for the re-assessment of the land tax in the basic tax register and other revenue records. It is further submitted that the Tahsildar (Land Records), Kanayannur has a duty to consider the said application to identify the land remaining as a garden land and to re-assess the land of the writ petitioners having an extent of 72 Ares as garden land/converted land as directed in the judgment in W.P.(C) No. 22021 of 2019. Therefore, it was contended that the delay in considering the applications dated 22.08.2017 and 20.11.2020

by the Local Level Monitoring Committee and the Tahsildar, Kanayannur respectively, is causing irreparable injury and loss to the writ petitioner. It

was in the said background that the writ petition was filed, seeking a direction to the Local Level Monitoring Committee to consider and pass

appropriate orders on Exts. P10 application dated 22.08.2017 to remove the property from the data bank taking into account Ext. P12 report of the

KSREC, and also to quash Ext. P18 decision of the Local Level Monitoring Committee dated 10.02.2021, and for other related and consequential

reliefs. Apart from the same, disposal of Ext. P16 application dated 20.11.2020 for reassessing the land tax pending before the Tahsildar was also

sought for.

13. In so far as W.P.(C) No. 6685 of 2021 leading to W.A. No. 37 of 2022 is concerned, the petitioner/first respondent sought basically for the very

same relief of removing the property from the data bank, and also sought to quash Ext. P21 decision. (Ext. P18 decision in the other connected writ

petition).

14. The Revenue Divisional Officer has filed a statement narrating the facts and events that have taken place consequent to various reports and also

explaining the nature of property, the coconut trees standing in the property etc.

15. The learned single Judge, after considering the rival submissions made across the Bar and taking into account the judgments

rendered by this Court in regard to the removal of the properties included in the data bank, and also taking into account various reports made by the

statutory authorities and the KSREC, has arrived at the following conclusions:

17. The Principal Agricultural Officer in his Ext.P4 letter informed that the 2.8445 Hectares land in Survey No.801/1 is not cultivated with paddy and has been lying

fallow for about the last 12 years. There is a specific finding in Ext.P4 that the land is not suitable for paddy cultivation and that in future with infrastructure

development, it can be made cultivable. The Additional Tahsildar gave Ext.P5 report to the effect that the land is not cultivated for last 25 years; that there are large

number of coconut trees 40 years old; that a good portion of the land is dry land; that there is no adjoining cultivated land; that there is a building in the land; that

conversion of the land will not adversely affect cultivation in the nearby areas and that there is no likelihood of water logging. Based on the reports, the RDO issued

Ext.P6 letter to the District Collector recommending that conversion can be permitted under KLU Order on condition that water channels should be retained for free

flow of water.

18. The District Collector, however, passed Ext.P7 order holding that the 2.8445 Hectares of land would not come under the KLU Order, 1967 and hence KLU Order is

not necessary in the case. The said decision was presumably for the reason that the land was not cultivated with any food crop for a continuous period of three years

after the commencement of KLU Order, 1967. But, later, in 2008, when the Draft Data Bank was published, the land was included in the Draft Data Bank indicating that

it is a converted land planted with coconut trees, 30 year old by then. To the predicament of the petitioners, in the final Data Bank, 70 Ares of land of the mother was

shown as converted land and 72 Ares as paddy land. In the case of petitioners in WP(C) No.27200/2020, 72 Ares of the land was shown as converted land and 72

Ares as paddy land. The petitioners in both the writ petitions therefore submitted applications to remove the land from Data Bank.

19. Thereafter, pursuant to Ext.P11 interim order of this Court in WP(C) No.8637/2017, Ext.P12 report was obtained from KSREC which certified that the plot was

predominantly under mixed vegetation/plantation with water logged areas and fallow land in some parts, as on 22.08.2008 and the same trend continued in 2011, 2013

and 2016. Thereafter, the petitioners submitted applications for reassessment of Basic Tax. The Tahsildar rejected the applications holding that there is no order under the KLU in favour of the petitioners and hence application should be filed before the RDO under the Act, 2008.

20. The said order of the Tahsildar was in conflict with Ext.P7 order of the District Collector. In WP(C) No.22021/2019, this Court held that the Tahsildar is bound to reassess the land found to be converted land. The boundaries of converted land should be identified. As regards the remaining land which is included in the Data

Bank as paddy land, the LLMC was directed to consider the request for removal of said land from Data Bank. Thereupon, the LLMC as per Ext.P18 rejected the

application for removal of land included as paddy land, from the Data Bank.

21. The reasons for rejection as contained in Ext.P18 are that a portion of the Kayal is protruding inside the property; that there is a Thodu in the property with water flow; that some portion of the land is marshy and waterlogged, which is suitable for Pokkali cultivation and that small types of trees growing on water, bush trees and grass were seen. These findings and reasons have to be compared with earlier conclusions arrived at by various statutory authorities and have to be assessed for their sustainability based on the provisions contained in the Kerala Conservation of Paddy Land and Wetland Act, 2008 and the Rules made thereunder and the law laid down by this Court in various judgments having presidential value.

22. In Ext.P4 report dated 15.06.2007 of the Principal Agricultural Officer made on the basis of an inspection by Agricultural Assistant Director, it has been stated that the land is lying fallow without paddy cultivation for the last 12 years. The further finding is that the land is not suitable for paddy cultivation at present (in 2007).

The Additional Tahsildar submitted Ext P5 report after a site inspection to the effect that for last 25 years there was no paddy cultivation; that there are a large number of coconut trees and that substantial portion of the land is dry land. Two sides of the property are bound by roads. There is a building and the land is not suitable for paddy cultivation. It was further reported that the land can be permitted to be converted and there is no likelihood of water logging due to conversion.

23. The Revenue Divisional Officer in Ext.P6 report made after his inspection also reported that the land is substantially converted, and is not cultivated with paddy for long years. The land is not suitable for paddy cultivation and the land can be permitted to be converted retaining the water chals. The District Collector in Ext.P7 stated that no KLU Order for conversion is warranted in respect of the land. In spite of the afore findings, when Draft Data Bank was prepared, the land of the petitioners were included in the Draft Data Bank with the remark that the land is converted and is having 30 years old coconut trees. When Data Bank was finally published, 70 Ares of land of the petitioners in WP(C) No.27200/2020 and 72 Ares of the petitioner in WP(C) No.6685/2021 were included as paddy land.

24. Subsequently, the KSREC submitted Ext.P12 report. The Observations and Conclusions in the report read as follows:

“The analysis has been carried out from all available data sets of toposheet (1967) and different satellite data sets of 2008, 2011, 2013 and 2016 for the survey

plot. In 1967 data,

the plot was observed under paddy land. The satellite imageries of survey number 801/1 was observed predominantly under mixed vegetation/plantation with a water logged area

towards the southern region and agricultural fallow land in the imagery of 2008. The same trend of land use has been continued in the imageries of 2011, 2013 and 2016.

It is obvious from Ext.P12 KSREC Report that the land in question is predominantly under mixed vegetation/plantation with some waterlogged area and fallow land.

25. This Court in Ext.P15 judgment in WP(C) No.22021/2019 directed the LLMC to consider the request for removal of the land from Data Bank in the light of the

KSREC report. The LLMC has given a go by to the KSREC report as also the earlier findings of various statutory authorities made after site inspections, including

one made by the Principal Agricultural Officer. The LLMC held that some portion of the property is waterlogged, some portion is marshy land and hence a survey is

to be conducted before removing any portion of the land from Data Bank.

26. The findings and conclusions arrived at by the LLMC cannot stand legal scrutiny. The unequivocal finding of authorities as contained in Exts.P4 to P7 is that the

land is converted with coconut tree planted and a constructed building and that it is not cultivated for the last 30 years. The observation that the land can be used for

Pokkali cultivation when infrastructure is developed in future, cannot be a reason not to delete the land from Data Bank since the applications will have to be

considered on the basis of the nature of the land as is existing.

27. In these cases, the LLMC appears to be bent upon to thwart the attempt of the petitioners to use the land for other agricultural purposes. This is because, after

holding site inspections, the Principal Agricultural Officer (in 2007), the Additional Tahsildar (in 2007), the Agricultural Assistant Director (in 2007) and the Revenue

Divisional Officer held that the land is not suitable for paddy cultivation. None of the respondents have a case that there is change in the present condition due to

infrastructure development, making the land suitable for paddy cultivation now. The KSREC report is also in tune with the afore findings. While the facts being so,

the finding of the Local Level Monitoring Committee as to the cultivability of the land with paddy, is abstruse. It has to be noted that the LLMC does not consist of



any expert in the field of agriculture above the status of Principal Agricultural Officer.

28. Even ignoring all the earlier reports of the statutory authorities contained in Exts.P4 to P7, the LLMC could not have arrived at such conclusions. The LLMC has strained itself to reject the scientific data in the form of KSREC report, but the findings of the LLMC are not convincing. The clear finding in KSREC report is that the land is predominantly of mixed vegetation and plantation, with some portion being waterlogged and some fallow land. A Division Bench of this Court has held in *Mather Nagar Residents Association and another v. District Collector* [2020 (2) KLT 192] that merely because property is lying fallow and water gets logged during rainy season or otherwise due to the low lying nature of the land, it cannot be termed as wet land or fallow land under the Act, 2008.

29. In the case of the land of the petitioners, the land is near a Kayal and that can be a reason for water logging or marshy land. For the said reason alone, there cannot be a conclusion that the land is paddy land. This finding has to be juxtaposed with the categoric findings of the agricultural and revenue authorities that the land is not suitable for paddy cultivation. This Court has held in the judgment in *Lalu P.S. v. State of Kerala* [2020 (5) KHC 490] that Data Bank to be prepared under the Kerala Conservation of Paddy Land and Wetland Act, 2008 is the Data Bank of cultivable paddy lands existing as on the date of coming into force of the Rules. This Court in *Joy K.K. v. Revenue Divisional Officer* [2021 (1) KLT 433] has held that it is not the capability of using the land that matters and it is only the character and fitness of land as available on 12.08.2008 that matters to include or exclude.

30. As per Section 2(xii) of the Act, 2008, "paddy land" means 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. It is evident that for a fallow

land to fall under the definition, such fallow land should be suitable for paddy cultivation. In the afore circumstances, in view of the categoric findings made in Exts.P4 to P7 and in the light of the conclusions of the KSREC, this Court is of the firm opinion that Ext.P18 proceedings of the LLMC cannot be sustained. Ext.P18 is therefore set aside. It is declared that the entire land of the petitioners in these writ petitions, in Survey No.801/1 in Manakunnam Village, Kanayannur Taluk is liable

to be excluded from the Data Bank.

31. The petitioners purchased the property in the year 1993. The petitioners have been striving to convert the land for other purposes. The applications filed by the petitioners on 11.12.2006 under Clause 6 of the KLU Order was disposed of by the District Collector holding that no order under KLU is required for converting the land. Yet the land was erroneously included in the Data Bank despite the fact that it was not cultivated with paddy for long years and it was not cultivable with paddy either in the year 2008 when the Act, 2008 came into force, as found in Exts.P4 to P7. The petitioners have been struggling for long to get the land removed from Data Bank.

In the circumstances, the writ petitions are disposed of directing the 4th respondent-LLMC to reconsider the applications of the petitioners strictly in the light of

Exts.P4 to P8, Ext.P12 KSREC report and the findings of this Court contained hereinabove and take decision afresh within a period of one month.â€

It is thus, challenging the legality and correctness of the judgment, the appeals are preferred.

16. The paramount contentions advanced in the appeals are that the definition of â€paddy landâ€™ contained under Section 2(xii) of the Act, 2008

includes the land suitable for paddy cultivation but uncultivated and left fallow and includes its allied constructions like bunds, drainage, channels,

pounds and canals as paddy land; that some portion of the land in question is reported as agricultural fallow land as on 2008, that for that reason, an

extent of land remaining as agricultural fallow land ought to be treated as paddy land as per the Act, 2008; and that the entry of land as paddy in the

data bank under the Act, 2008 is to be determined on the basis of the ground reality with the help of scientific aid and therefore, the findings of the

Local Level Monitoring Committee after assessing the ground reality with the aid of KSREC report ought not to have been interfered by the learned

single Judge.

17. It is also contended that the conclusion of KSREC report is that the land in question is predominantly under mixed vegetation with water logged

area towards south region and agricultural fallow land in 2008 imagery and therefore, the extent of land reported as agricultural fallow land in the

southern region is to be inferred as paddy land by the definition of paddy land in the Act, 2008; however, the learned single Judge failed to take note of

the above vital points while deciding the case and that the declaration made by the learned single Judge that the entire land of the writ petitioners

situated in survey No. 801/1 of Manakunnam village is liable to be excluded from the data bank is incorrect in law. It is further contended that the

Local Level Monitoring Committee, Udayamperoor Grama Panchayat, categorically found that certain extent of land is suitable for pokkali cultivation;

however, the learned single Judge opined that there are no experts in the Local Level Monitoring Committee to come to such a conclusion. Further,

Act, 2008 has given the power to the Local Level Monitoring Committee to assess the ground reality and take appropriate decision for the inclusion of

land in the data bank in the absence of any scientific data to conclude that the land is not suitable for pokkali cultivation and the learned single Judge

ought not to have reached the conclusion that the land is uncultivable.

18. It is also pointed out that the learned single Judge ought not to have given much weightage to the documents produced as Exts.P4 to P7, in view of

the fact that the aforesaid documents are the one issued prior to the appointed day of Act, 2008 and moreover, those documents are the one issued or

obtained by the writ petitioners for the purpose of exclusion of the land from the KLU Order, 1967. That apart, it is submitted that the land in question

is an ecologically sensitive area, and to a certain extent of land which is identified as paddy land, there is a natural water channel flowing and the

properties are lying contiguous to the Vembanad lake. Various other contentions are also raised to make an attempt to substantiate the contention that

the judgment rendered by the learned single Judge is erroneous and therefore, interference is required.

19. We have heard, Ad. Sri. C. S Ajith Prakash for the appellants, Adv. Sri. P. Chandrasekhar for the writ petitioners/party respondents, Adv. Smt.

C.G. Bindu, who has addressed arguments on behalf of the 6th respondent committee, and Sri.S. Ranjith for the official respondents, and perused the

pleadings and materials on record.

20. The subject issue revolves around the order dated 10.02.2021 passed by the Local Level Monitoring Committee produced as Ext. P18 in W.A.

No. 1539 of 2021, whereby the Committee has decided to measure out the properties in question, in order to find out the agricultural fallow land, so as to take a decision in the application submitted before the Local Level Monitoring Committee by the writ petitioners for the removal of the property from the data bank.

21. The learned single Judge has declared that no such finding can be entered into taking into account Exts P4 to P7 reports of the Principal

Agricultural Officer, Ernakulam, Additional Tahsildar, Kanayannur Taluk, Revenue Divisional Officer, Fort Kochi and the District Collector,

Ernakulam.

22. The foundation of the appeals is basically relying upon the definition of the term "paddy land" as contained under Section 2(xii) of the Act,

2008, which reads thus:

"paddy land" means 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;

23. Therefore, the contention is that it is not only the paddy field situated within the State where paddy is cultivated at least once in a year, but the

paddy fields which are suitable for paddy cultivation but uncultivated and left fallow are also treated as paddy lands. However, the contra contention

made by the counsel for the writ petitioners/party respondents is that the reports clearly show that the portion of the properties in question can only be

cultivated by providing infrastructure to the existing condition of the properties in question, and it was in that background only, the Officers have

reported so, and for that matter, even the Local Level Monitoring Committee has decided to conduct measurement in order to identify the properties

which are shown as agricultural fallow.

24. It is also submitted by the learned counsel for the writ petitioners that the removal is sought for and the writ petitioners have approached the

Revenue Divisional Officer as per the KLU Order, 1967 to grant permission to carry out other agricultural operations other than the paddy cultivation,

and not for any other purposes prescribed in the Land Utilisation Order, 1967. Therefore, the sum and substance of the contentions advanced by the

learned counsel for the writ petitioners is that, what is to be taken into consideration by the Local Level Monitoring Committee is the lie and nature of

the property as it exists on the date of commencement of Act 2008 in order to find out whether it is fit for cultivation of paddy. It is, therefore,

contended that nowhere in the report of the concerned officers, there is no such findings, which alone was relied upon by the learned single Judge to

arrive at the conclusions and to declare that the properties in question are not paddy fields which are cultivable in nature.

25. Therefore, our endeavour is to find out the nature of findings rendered by the concerned authorities which are relied upon by the learned single

Judge to arrive at the findings, declare the law and then direct the Local Level Monitoring Committee to take a final decision in the applications

submitted by the writ petitioners. In Ext. P4 letter dated 15.06.2007 addressed by the Principal Agricultural Officer, Ernakulam to the Additional

Tahsildar, Kanayannur, it is stated that at present there is no paddy cultivation in the property in question and the land is remaining barren for

approximately 12 years and the land is not suitable for paddy cultivation. However, it is stated that if the basic infrastructure developments are done,

the land can be used for paddy cultivation, though it is reported that if the lands are filled up there are chances for environmental issues.

26. Ext. P5 is a communication dated 26.07.2007 forwarded by the Additional Tahsildar, Kanayannoor to the Revenue Divisional Officer, Fort Kochi

wherein it is stated that the property in question was directly inspected and it was found that there is no paddy cultivation and on enquiry, it was

understood that there was no farming for the last 25 years. It was also reported that a lot of coconut trees are standing in the property and a sufficient

portion is lying as dry land; however, in the portion remaining as a marshy area, ferns are grown and the northern side of the property is a road and

eastern side is a small stream. On the northern side, there is kalathode- a stream, with an area of backwaters and on the western border of the

property, a portion is a road and on the northern side of the property leading to the western boundary, there is a dry land and on the western side,

kalathode is flowing.

27. That apart, it was reported that on the southern side of the property, there is empty unused building; that as per the report of the Agricultural

Department the property is unfit for farming, and that giving permission for conversion of cultivation will not cause any damages or loss to the property

lying adjacent and there are no chances for water logging or damages to the adjacent properties. In the proforma submitted along with the said report,

it is stated that from 1969 onwards, paddy cultivation is not done since it is not profitable, and on enquiry it is realized that the property has been

transferred many times.

28. That apart, it is clear from the said proforma that the Additional Tahsildar has inspected the property directly. Ext. P6 is the order dated

29.09.2007 passed by the Revenue Divisional Officer, Fort Kochi and wherein after referring to the reports of the Additional Tahsildar, Principal

Agricultural Officer and the Secretary, Udayamperoor Grama Panchayat dated 19.09.2007, 15.06.2007 and 11.07.2007 respectively, it is stated that at

present the land is not suitable for paddy cultivation and therefore, by adopting necessary precautions for avoiding environmental issues, and by

retaining trenches without obstructing natural water flow, permission can be granted for other agricultural operations.

29. Ext. P7 is the letter dated 15.02.2008 issued by the District Collector, Ernakulam to Smt. Mythili C.R, the respondent/ writ petitioner in W.A. No.

37 of 2022 conveying that 7.01 acres of (2.8445 hectares) of property in block No. 19 comprising in re-survey No.801/1 (Old survey No.7/1) of

Manakunnam Village, Kanayannur Taluk does not come under the purview of the Kerala Land Utilisation Order, 1967 and the application dated

11.12.2006 is disposed of with an observation that the proceedings under the KLU Order, 1967 is not necessary in the case.

30. Therefore, on a clear understanding of the reports of the competent officers, it is evident that the property in question is not remaining as a

cultivable land. What is stated in the report of the Principal Agricultural Officer is only that if the portion of land is suitably altered, it can be used for

paddy cultivation. It was on the basis of the same, the Local Level Monitoring Committee has passed Ext. P18 order dated 10.02.2021, whereby a

decision was taken to measure out the properties and identify the portion of the property that can be cultivated with paddy. It was taking into account

the reports and the background facts, the learned single Judge declared that the Local Level Monitoring Committee is not vested with powers to go

behind the reports and identify as to whether a portion of the property can be suitably altered and then conduct paddy cultivation.

31. Even though the learned counsel for the appellant submitted that the learned Single Judge was not right in declaring that the entire land of the writ

petitioners situated in survey No. 801/1 in Manakunnam village, Kanayannur Taluk is liable to be excluded from the data bank, we are not prepared to

accept the said contention for the foundational reason that, it was a specific case raised by the writ petitioners on the basis of the reports referred to

above, and the lie and nature of the property.

32. Therefore, the learned single Judge had to identify the said issue and take a decision, and it was accordingly that the declaration was made, which,

in our considered opinion, was required to sort out the issues raised by the writ petitioners and the contentions raised by the respondents. We are also

of the view that the Act, 2008 was brought into force to conserve the paddy land and wetland and to restrict the conversion or reclamation thereof, in

order to promote growth in the agricultural sector and to sustain the ecological system in the State of Kerala. It is clear from the reports discussed

above that, reports adverse to paddy cultivation were submitted by the competent officers, and it was thereupon that the findings were rendered by the

Revenue Divisional Officer and the District Collector prior to the coming into force of the Act, 2008.

33. We are also of the considered opinion that from the report of the KSREC and the toposheet provided thereto, it is clear that analysis was done

using high resolution ortho-rectified Indian Remote sensing satellite for geo-referencing the cadastral maps pertaining to the survey plot and to change

detection in land use and land cover of the site and it was found that in 1967 data, a plot was observed under paddy land; that the satellite imageries of

survey No.801/1 was observed predominantly under mixed vegetation/plantation with a water logged area towards the southern region and agricultural

fallow land in the imagery of the 2008, and that the same trend of land use has been continued in the imageries of 2011, 2013 and 2016.

34. It is also quite clear and evident from Ext. P8 draft data bank that the properties in question belonging to the writ petitioners are entered as serial

numbers 818 and 819 and the observation is that "filled up by reclamation, appears to be 30 years coconut trees planted". Anyhow, when the final

data bank was prepared, the property was included in the data bank.

35. After having considered the above said aspects, we are of the clear opinion that the appellant has not made out any case to interfere with the

findings of the learned single Judge. This we say because, as per Section 3(1) of Act, 2008, dealing with prohibition on conversion or reclamation of

paddy land, it is specified that on and with effect from the date of commencement of the Act, the owner, occupier or the person in custody of any

paddy land shall not undertake any activity for the conversion or reclamation of such paddy land except in accordance with the provisions of the Act,

2008. The said provision also unequivocally makes it clear that what is prohibited under the Act, 2008 is filling up of a paddy field on and with effect

from the coming into force of the Act, 2008 alone. However, the appellant has no case that the properties in question were converted or filled up after

the commencement of the Act, 2008. Moreover, the report of the Agricultural Officer only shows that, by suitable alteration the properties can be

utilised for paddy cultivation whereas the requirement of the Act is the prevailing condition suitable for paddy cultivation.

36. So much so, analysing the situations, the pros and cons, and the law involved in the subject matter, we have no hesitation to hold that the appellant

has not made out any case to establish that the learned single Judge was not right in making a declaration and issuing the directions.

Needless to say, writ appeals fail and accordingly, they are dismissed. However since the time period granted by the learned Single Judge has already

expired, for compliance of the directions time is extended for a period of three weeks from today.