

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WA.No. 2286 of 2015 () IN WP(C).31561/2014

AGAINST THE JUDGMENT IN WP(C) 31561/2014 DATED 03-07-2015

APPELLANT(S)/PETITIONER :

MR. PAULOSE AGED 37 YEARS
S/O.THOMMEN, THEKKEKUNNATH,
MANGALATH PUTHENPARAMBIL
EAST GATE, VAIKOM, KOTTAYAM DISTRICT.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.ADARSH KUMAR

RESPONDENT(S)/RESPONDENTS:

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1. THE VAIKOM MUNICIPALITY
VAIKOM, KOTTAYAM, REPRESENTED BY ITS SECRETARY
PIN: 686 141.
 2. THE SECRETARY
VAIKOM MUNICIPALITY, VAIKOM, KOTTAYAM
PIN: 686 141.
 3. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT
TRIVANDRUM 695 001.
 4. AGRICULTURAL OFFICER
KRISHI BHAVAN, VAIKOM, KOTTAYAM DISTRICT
PIN: 686 141.

R1-2 BY ADV. SMT.A.SREEKALA
R3 & 4 BY SR. GOVERNMENT PLEADER SRI. C.R. SYAMKUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sou.

ASHOK BHUSHAN, CJ & A.M.SHAFFIQUE, J

W.A. No. 2286 of 2015

Dated this the 2nd day of December, 2015

JUDGMENT

Shaffique, J

The appellant has approached this Court challenging the judgment dated 3.7.2015 in WP(C) No.31561 of 2014. In fact the said case has been decided along with a batch of writ petitions. According to the appellant, his case stands on a different set of facts in relation to the cases considered in the said batch.

2. The appellant submits that he is in possession of six cents of land in Sy. No.157/5E2 in Naduvila Village. According to him, as per the report submitted by the Agricultural Officer as Ext.P4, the property is not treated as paddy land or wetland, hence the Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as '2008 Act') has no application. Reference is also made to Ext.P6, which indicates a different survey number. It is submitted that so far as land has been reclaimed long back, there is no reason why the application for building permit should not be considered by the respondent Municipality. The writ petition was therefore filed for a

direction to the Municipality to grant building permit to the petitioner based on Ext.P4 and P6 reports.

3. Learned Single Judge having considered the matter along with a batch of cases, issued certain guidelines, which reads as under :

“134. In the final analysis, especially going by the ratio in *Jalaja Dileep* and *Mariumma*, this Court disposes of the batch of writ petitions with the following declarations and directions:

1. Both KLUO and Wetland Act, 2008 do survive and continue to operate in their respective spheres.
2. If the land has been converted, without due process, subsequent to 12.8.2008, the Civic Authorities shall be guided by section 14 of the Wetland Act, and unless there is proper conversion of the land in terms of the provisions of the said Act, the authorities shall not grant building permits, etc.
3. If the conversion, without due process, had been effected prior to 12.8.2008, the provisions of KLUO should apply, and the civic authorities cannot entertain applications for building permits, etc., unless the authorities under KLUO certify to the said effect.
4. If any landholder has raised any structures or has been raising any structures under any valid building permit, either on the basis of any judicial directive issued prior to the rendering of *Jalaja Dileep* (supra) by the Hon'ble Supreme Court, or based on the building permit issued by the authorities essentially going by the ratio of the judgments of this Court holding the field prior to *Jalaja Dileep*, those structures shall not be disturbed.”

4. The question is whether based on the facts and circumstances, the property of the petitioner falls under any of the category as mentioned. Admittedly, in the Basic Tax Register the property of the petitioner is described as 'Nilam'.

According to the petitioner, it is converted into garden land long back. In Ext.P4 there is an indication that the property is described as paddy land in the Data Bank particulars.

5. Under such circumstances, the option available to the petitioner is to approach the Local Level Monitoring Committee for correction of Data Bank particulars. That apart, the judgment in **Revenue Divisional Officer and Others v. Jalaja Dileep** [2015 (1) KLT 984 (SC)] squarely applies to the facts of the case. Hence no error is committed by the learned Single Judge while issuing such directions.

6. In the said circumstances, no direction can be issued to the Municipality to grant building permit in favour of the petitioner, unless the petitioner seeks correction of appropriate entries in terms with the 2008 Act as well as permission under the Kerala Land Utilization Order.

With the above observation, the writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M.SHAFIQUE,
JUDGE