

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 2477 of 2015 (H)

PETITIONER:

M.K.ABDUL KAREEM,
S/O.HASSANKUTTY, AGED 50 YEARS,
MANCHERIKURIKAL HOUSE,
WANDOOR VILLAGE, MALAPPURAM-679 328.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.ARUN KUMAR.P

RESPONDENT(S):

1. THE SECRETARY,
WANDOOR GRAMA PANCHAYATH,
WANDOOR, MALAPPURAM -679 328.
2. VILLAGE OFFICER,
WANDOOR, MALAPPURAM -679 328.
3. AGRICULTURAL OFFICER,
KRISHI BHAVAN, MALAPPURAM -679 328.

R1 BY ADV. SRI.SAJU.S.A
R2 & R 3 BY SENIOR GOVT. PLEADER SMT.ANITHA RAVINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT P1: PHOTOGRAPHS REVELAING THE NATURE AND LIE OF THE PETITIONER'S PROPERTY DATED NIL.
- EXT P2: TRUE COPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT BEARING NO.WDR.34/2014-15 DATED 28.11.2014.
- EXT P2(A): TRUE COPY OF THE ENGLISH TRANSLATION BY EXT.P2 DATED 28.11.2014.
- EXT P3: TRUE COPY OF 'STOP MEMO' ISSUED BY THE 2ND RESPONDENT BEARING NO.572/2014 DATED 27.11.2014.
- EXT P3(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT. P3 DATED 27.11.2014.
- EXT P4: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 22.12.2014.
- EXT P5: TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 09.01.2015.
- EXT P5(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P5. DATED 09.01.2015.
- EXT P6: TRUE COPY OF THE RELEVANT EXTRACT OF THEFAIR VALUE REGISTER UNDER SECTION 28 OF THE KERALA STAMP ACT DATED NIL.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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K. HARILAL, J.

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W.P. (C) No.2477 of 2015

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Dated this the 8th day of December, 2015

J U D G M E N T

The petitioner is the absolute owner in possession of 0.0555 Hectares (13.7 cents) of land comprised in Sy. No.78-312/4 of Wandoor village, by virtue of Assignment Deed No.2286/2004 of S.R.O., Wandoor. According to the petitioner, the said property is a pucca garden land and the same is situated abutting the Wandoor by-pass road on the south. It is neither wet land nor paddy field covered under the Kerala Conservation of Paddy Fields and Wet Lands Act, 2008 (*hereinafter referred to as 'the Act'*). There are several commercial and residential buildings situated on all the three sides of the property. But, unfortunately, in the revenue records the said property is described as 'nilam', as the entry was made

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years back, without noticing the subsequent developments in the actual lie of the property. According to Ext.P2(a), issued by the Agricultural Officer also, the said property is lying, as partially converted garden land and thereby, the said property will not come under the bar provided under Section 14 of the Act.

2. While so, in November, 2014, the petitioner tried to level up his land, by filling up with some earth. Immediately, the 2nd respondent issued Ext.P3, Stop Memo, directing the petitioner not to fill up the land on the reason that the said land is shown as 'nilam' in the revenue records. According to the petitioner, Ext.P3 Stop Memo is arbitrary, illegal and unsustainable under law. Thereafter, the petitioner filed Ext.P4 application, seeking permission to develop the land, so as to construct a building in the said property. But, the 1st respondent rejected the said application, by Ext. P5, stating that in the revenue records, the property is shown as 'nilam' and thereby no

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permission can be granted for development of the property. This is the grievance projected through the pleadings in this Writ Petition.

3. Heard the learned counsel for the petitioner and learned Standing Counsel appearing for the respondent.

4. Learned counsel for the petitioner advanced arguments highlighting the present lie of the land and drew my attention to various decisions rendered by this Court on the issue involved in this Writ Petition.

5. It was held in ***Shahanaz Shukkoor v. Chelannur Grama Panchayat*** [2009 (3) KLT 899] as follows:

"The Kerala Conservation of Paddy Land and Wetland Act, 2008, deals with the conversion of lands which are wetland or paddy fields, on the basis of actual fact situation and not depending on the description of the property in the revenue records. The definition of the terms 'paddy field' and 'wetland' in the said Act is sufficient material to hold that the said statute operates on the basis of the facts as they exist on ground realities and not

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on any quality or type of land, depending on its description in the title document."

6. In **Praveen v. Land Revenue Commissioner** [2010 (2) KLT 617 (DB)], this Court held that mere description of the property in the revenue records by itself may not be conclusive and may not estop a party from producing materials to show otherwise.

7. The question that arises for consideration is, whether the respondent can be justified in rejecting the application for development permit on the reason that the said property is shown as 'nilam' in the revenue records. Ext.P2 certificate, issued by the Agricultural Officer shows that the property is a partially converted garden land and lying as such since the last more than 12 years. The genuineness of Ext.P1 photographs is not challenged in this Writ Petition. Obviously, the photographs show that the property is lying, as a garden land, on the side of a

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tarred public road, and huge buildings are situated on both sides of the said land.

8. In view of Exts.P1 and P2, obviously, it is discernible that Ext.P5 order had been passed, without conducting a site inspection. This Court in various decisions held that permit cannot be rejected on the mere reason that the entries in the revenue records show that the property is lying as 'nilam'.

9. Consequently, Exts.P3 and P5 will stand quashed. The 1st respondent is directed to conduct a site inspection to ascertain the actual lie of the land, and pass orders afresh on Ext.P4, within a period of two months from the date of receipt of a copy of this judgment, on the basis of the actual lie of the land to be found in the inspection notwithstanding the entries in the revenue records. It is made clear that if the land was converted before the commencement of the Act, certainly the bar under Section 14 of the said Act will not come into play;

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but conversely,if otherwise.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

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//True copy//

P.A. To Judge