

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No.3025 of 2015 (C)

PETITIONER:

**RAMLA BEEVI,D/O.ABDUL KAREEM,
DARUSALAM HOUSE,VENJARAMOODU P.O.
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.ANOOP.V.NAIR

RESPONDENTS:

- 1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM,PIN:695 001.**
- 2. THE DISTRICT COLLECTOR,COLLECTORATE,
KAKKANAD,ERNAKULAM,PIN:682030.**
- 3. THE THAHSILDAR,KANAYANNUR TALUK,
ERNAKULAM DISTRICT,PIN-681011.**
- 4. THE VILLAGE OFFICER,MANAKUNNAM VILLAGE,
ERNAKULAM DISTRICT,PIN-682307.**
- 5. THE UDAYAMPEROOR GRAMA PANCHAYAT,
UDAYAMPEROOR,ERNAKULAM DISTRICT,
REP. BY ITS SECRETARY,PIN-682307.**
- 6. THE SECRETARY,UDAYAMPEROOR GRAMA PANCHAYAT,
UDAYAMPEROOR,ERNAKULAM DISTRICT,PIN-682307.**
- 7. THE LOCAL LEVEL MONITORING COMMITTEE,
REP: BY ITS CHAIRMAN/CONVENOR,AGRICULTURAL OFFICER,
UDAYAMPEROOR GRAMA PANCHAYAT,
ERNAKULAM DISTRICT,PIN-682307.**

***ADDITIONAL 8TH RESPONDENT IMPEADED**

**ADDL.R8:DISTRICT LEVEL AUTHORISED COMMITTEE,
COLLECTORATE,ERNAKULAM,REPRESENTED BY
REVENUE DIVISIONAL OFFICER/CONVENER,
FORT KOCHI,ERNAKULAM DISTRICT.**

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***ADDITIONAL 8TH RESPONDENT IMPEADED AS PER ORDER
DATED 23.02.2015 IN I.A.NO.1526/2015 IN W.P(C) NO.3025/2015.
R1 TO R4 & ADDL.R8 BY GOVT. PLEADER SRI.JOSEPH GEORGE.
R5 & R6 BY ADVS.SRI.P.N.SUKUMARAN
SRI.K.A.ANAS**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.3025 of 2015 (C)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE COPY OF TAX RECEIPT.

**EXHIBIT P2:TRUE COPY OF PHOTOGRAPHS WHICH SHOWS THE LIE AND
LOCATION OF THE PROPERTY.**

**EXHIBIT P3:TRUE COPY OF CERTIFICATE ISSUED BY THE VILLAGE OFFICER,
NELLANAD.**

**EXHIBIT P4:TRUE COPY OF DECISION ISSUED TO THE PETITIONER BY THE 6TH
RESPONDENT DATED 7.10.2014.**

**EXHIBIT P5:TRUE COPY OF ORDER ISSUED BY THE 7TH RESPONDENT TO THE
PETITIONER DATED 14.11.2014.**

**EXHIBIT P6:TRUE COPY OF DRAFT DATA BANK DETAILS SHOWING THE
PROPERTIES NATURA AS PADDY LAND.**

**EXHIBIT P7:TRUE COPY OF APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE 7TH RESPONDENT DATED 21.1.2015.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.3025 OF 2015
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Dated this the 23rd February, 2015

J U D G M E N T

Petitioner is the owner of the property having an extent of 2.25 Ares comprised in Sy.No.272/9 of Manakunnam Village which was obtained as per sale deed No.1359/I/14 of SRO, Tripunithura. Petitioner is enjoying the said property also remitting the basic tax in terms of Kerala Land Tax Act, as evident from Ext.P1.

2. With intent to construct a residential building, the petitioner submitted an application before the 6th respondent/Panchayat, when the same was forwarded to the 7th respondent/Local Level Monitoring Committee, stating that the property was described as 'Nilam' in revenue records and also in the Data Bank Register. The case of the petitioner is that the petitioner does not have any other land to construct a residential building and that by virtue of mandate under Act 28 of 2008, the petitioner's land is liable to be exempted for enabling the petitioner to construct a residential building. But, without considering the matter in the proper perspective and to cause the matter to be considered by the Addl.8th respondent /District Level Authorised Committee, who is the competent authority, the

application was simply turned down by the 7th respondent as per Ext.P5, which is per se wrong and illegal in all respects and hence the challenge.

3. The learned Counsel for the petitioner submits that the application preferred by the petitioner has not been rejected by the Panchayat so far. It is also pointed out that the matter ought to have been forwarded by the 7th respondent to the Addl.8th respondent and it is for the Addl. 8th respondent to consider the matter in accordance with the relevant provisions of law.

4. Heard the learned Government Pleader as well as the learned Counsel for the respondent Panchayat.

5. The learned Counsel for the 6th respondent /Panchayat points out that the competent authority to consider the matter is 7th respondent/Local Level Monitoring Committee,, in view of the law declared by a Division Bench of this Court in **2015(1)KLT**

651. [Adani Infrastructure & Developers Pvt. Ltd. Mumbai and others vs. State of Kerala and others.] The law

declared by the Division Bench to the extent it is relevant for the present case is only to the effect that if the property has been wrongly included in the Data Bank Register, the competent

authority to have it considered for deletion is the Local Level Monitoring Committee, i.e. 7th respondent. But the grievance of the petitioner is with regard to the right to construct a residential building in the property, which is stated as a paddy land by virtue of enabling provision under Section 9(1) of the Act. In the said circumstances the matter has to be considered by the Local Level Monitoring Committee and recommendation/remark has to be forwarded to the District Level Authorised Committee, ie.. Addl. 8th respondent . It is for the Addl.8th respondent to have the matter considered accordingly. The statute also contemplates a further remedy, if at all the order to be passed by the District Level Authorised Committee comes to be detrimental to the rights and interest of the parties concerned, they can move the District Collector, by way of appeal. This Court does not require any second thought to hold that Ext.P5 order, passed by the 7th respondent is not correct or proper and necessary remarks/recommendation ought to have been forwarded to the 8th respondent for taking appropriate decision.

6. In the said circumstance, Ext.P5 is set aside and the 7th respondent is directed to forward the proceeding with

recommendation/remarks to the Addl.8th respondent forthwith, at any rate, within two weeks from the date of receipt of a copy of this judgment. On receipt of the proceedings, the matter shall be considered by the Addl.8th respondent in accordance with law, after affording an opportunity of hearing to the petitioner and necessary orders shall be passed, at the earliest , at any rate, within one month thereafter. Based on the outcome of the order to be passed by the Addl.8th respondent, the application preferred before the 6th respondent/Panchayat for issuance of building permit shall be considered and appropriate orders shall be passed without further delay, at any rate, within one month thereafter. The other issues are left open.

The writ petition is disposed of. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the 7th respondent/Local Level Monitoring Committee for further steps.

P.R.RAMACHANDRA MENON
JUDGE