

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WP(C).No. 7375 of 2014 (V)

PETITIONER/PETITIONER:

**GEORGE MOOTHEDAN,
AGED 28 YEARS,
S/O PAUL, MOOTHEDAN HOUSE, CHURCH ROAD,
PARIYARAM, THRISSUR DISTRICT.**

**BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA**

RESPONDENT(S)/RESPONDENTS:

- 1. KODASSERY GRAMAPANCHAYATH
REPRESENTED BY ITS SECRETARY, KODASSERY P.O.
ELINJAPRA, THRISSUR, PIN - 680 725.**
- 2. SECRETARY,
KODASSERY GRAMAPANCHAYATH, KODASSERY P.O., THRISSUR
PIN - 680 725.**
- 3. AGRICULTURAL OFFICER,
KODASSERY KRISHI BHAVAN, KODASSERY, THRISSUR DISTRICT
PIN - 680 721.**

**R1 & R2 BY ADVS. SMT.I.SHEELA DEVI
SRI.BINESH.K.N.**

R3 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

vmr.

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE SETTLEMENT DEED NO.6429/2008 DATED 10.10.2008.

EXHIBIT P2 : PHOTOGRAPHS SHOWING THE PROPERTY OF THE PETITIONER.

EXHIBIT P3 : TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 19.02.2014.

EXHIBIT P3(A) : TRUE COPY OF THE ACKNOWLEDGMENT DATED 19.02.2014 ISSUED BY THE PANCHAYATH.

EXHIBIT P4 : TRUE COPY OF THE DATA BANK PREPARED BY THE 3RD RESPONDENT ON BEHALF OF THE LOCAL LEVEL MONITORING COMMITTEE.

EXHIBIT P5 : TRUE COPY OF THE DECISION REPORTED IN 2009(3) KLT 899.

EXHIBIT P6 : TRUE COPY OF THE JUDGMENT IN WP(C) NO.27988/2012 DATED 19.06.2013.

EXHIBIT P7 : TRUE COPY OF THE JUDGMENT IN WP(C) NO.1592/2013 DATED 06.02.2013.

EXHIBIT P8 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.22319/2011 DATED 17.08.2011.

RESPONDENT(S)' EXHIBITS : NIL.

/TRUE COPY/

P.S.TO JUDGE

vmr.

A.V.RAMAKRISHNA PILLAI, J

WPC No.7375 of 2014

Dated this the 8th day of July, 2015

JUDGMENT

The petitioner has come up before this Court for a direction to the respondent to correct the nomenclature of the petitioner's property in the data bank and also for a direction to the respondent Panchayat to issue building permit to the petitioner on the basis of the same.

2. The petitioner is the owner in possession of a total extent of 26.56 Ares of land comprised in Sy.No.159 of Elinjipra Village. The petitioner alleges that the aforesaid land was a pucca garden land having full of usufructs including coconut trees about 30 years of age as well as arecanut trees, nutmeg etc. The petitioner had intended to construct a residential building cum shop room in the said property. For that purpose, the petitioner has filed an application for permit before the first respondent on 19.2.2014. The 2nd respondent who is the Secretary of the Panchayat

told the petitioner that since in the revenue records and in the data bank prepared by the third respondent the land is shown as paddy land, no sanction can be granted. The petitioner came to know that the third respondent Local Level Monitoring Committee at Kodassery Panchayat has prepared Ext.P4 draft data bank. As can be seen from Ext.P4, Sl.No.222 is entry regarding the petitioner's land. As can be seen from Ext.P4 draft data bank, the petitioner's land is shown as paddy land. This is an obvious mistake. Immediately on realising this mistake, the petitioner had enquired with the office of the convenor of the Local Level Monitoring Committee. The petitioner came to understand that the entries in the revenue records are mechanically transferred into the draft data bank without any enquiry as contemplated under Sec.5(iv) (i) of the Kerala Conservation of Paddy and Wetland Act without even site verification. The refusal to grant building permit on the ground that in the revenue records as well as in the data bank, the land is shown as paddy is

absolutely illegal. It is with this background the petitioner has come up before this court.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent Panchayat.

4. The learned counsel for the respondent Panchayat would submit that originally the petitioner's land was a paddy field.

5. The learned Senior Counsel for the petitioner inviting my attention to Ext.P2 photographs would submit that aged trees are there in the petitioner's property and this ground reality has not been taken into consideration by the respondents. It was submitted that the third respondent has not conducted any site inspection in the petitioner's property before entering the petitioner's land as paddy land to the draft data bank.

6. The decision of this Court in ***Mohammed Abdul Basheer C.P. v State of Kerala and another*** (2012(3) KLT 86) lays down the principle that

the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted to construct a house.

7. It is settled position that the applicant can choose the best land suited for construction of his house (***Sunil v Killimangalam-Panjai 5th Ward Nellulpadaka Samootham*** 2012(4) KLT 511). Only if there is cultivation presently then it will be considered as cultivating paddy land so as to attract the provisions of the Kerala Conservation of Paddy Land and Wetland Act and Rules.

8. In ***Jalaja Dileep v Revenue Divisional Officer*** (2012(3) KLT 333) this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

9. This Court has an occasion to consider the similar situation in ***Adani Infrastructure &***

Developers Pvt. Ltd., Mumbai v. State of Kerala and Others [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

10. It is crucial to note that the petitioner has not given any notice before making an entry relating to the character of the petitioner's land, which has great consequences as regards the usage of the land of the petitioner in future.

Therefore, this Court is of the view that the petitioner is entitled to get the relief as prayed for. The second respondent is directed to make a site inspection of the petitioner's property with notice to the petitioner and being satisfied that the land is not a

paddy land and not fit for paddy cultivation, the nature in Ext.P4 data bank shall be corrected accordingly. This shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

On production of the corrected copy of the data bank before the second respondent, the second respondent shall issue positive orders granting building permit as applied for in Ext.P3 within a period of two weeks thereafter.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE