

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 8583 of 2014 (W)

PETITIONERS :

- 1. MUHAMMADALI
S/O.KUNHAHAMMED HAJI, PALAPRA KOTTOTH HOUSE,
PANGU P.O, MALAPPURAM DISTRICT**
- 2. SIDHIQUE
S/O.KUNHAHAMMED HAJI, PALAPRA KOTTOTH HOUSE, PANGU P.O.,
MALAPPURAM(PETITIONERS 1 & 2 ARE REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER SINUDHEEN P.K.
S/O.KUNHAMMED, PALAPURA KUTTOTH HOUSE, PANGU P.O.,
MALAPPURAM**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.D.S.THUSHARA
SRI.H.PRAVEEN (KOTTARAKARA)**

RESPONDENTS :

- 1. KURUVA GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, PADAPPARAMBU P.O.,
MALAPPURAM 676 123**
- 2. VILLAGE OFFICER,KURUVA PADAPPARAMBU,
MALAPPURAM - 676 123**

**R1 BY ADV. SRI.K.RAMACHANDRAN
R2 BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE ANTERIOR TITLE DEED OF THE PETITIONERS PROPERTY WHICH IS DATED 11/4/1984 OF SRO PERINTHALMANNA.
- EXHIBIT P2: TRUE COPY OF THE SALE DEED NO 378/2007 DATED 30-01-2007 OF SRO PERINTHALMANNA.
- EXHIBIT P3: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P4: TRUE COPY OF THE COMMUNICATION SENT BY THE 1ST RESPONDENT DATED 2-4-2013.
- EXHIBIT P5: TRUE COPY OF THE COMMUNICATION SENT BY THE 1ST RESPONDENT DATED 2-3-2013.
- EXHIBIT P6: TRUE COPY OF THE CIRCULAR DATED 22-1-2011 NO 4545/RAI/11/LSGD.
- EXHIBIT P7: TRUE COPY OF THE JUDGMENT DATED 14-01-2013 IN WPC 24235/12.
- EXHIBIT P8: TRUE COPY OF THE LETTER DATED 10-08-2012 ALONG WITH LIST.
- EXHIBIT P9: TRUE COPY OF THE PHOTOGRAPHS TO SHOW THE NATURE OF THE PROPERTY.
- EXHIBIT P10: TRUE COPY OF THE JUDGMENT DATED 9/10/2013 IN WPC NO 13526/2013.
- EXHIBIT P11: TRUE COPY OF THE NOTICE DATED 10-03-2014 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P12: TRUE COPY OF THE REPRESENTATION DATED 15/3/2014 BY THE PETITIONER BEFORE THE PANCHAYATH.
- EXHIBIT P13: TRUE COPY OF THE COVERING LETTER DATED 5/10/2012 WITH ORDER NO B246/2014 DATED 15/3/2013

RESPONDENT(S)' EXHIBITS

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- EXT.R1(A): COPY OF THE REQUEST LETTER DT 4/3/2014 FROM THE SECRETARY, KURUVA GRAMA PANCHAYAT TO THE VILLAGE OFFICER, KURUVA VILLAGE.
- EXT.R1(B): COPY OF THE PORT DT 10.3.2010 FROM THE VILLAGE OFFICER, KURUVA SENT TO THE SECRETARY KURUVA PANCHAYAT.

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**EXT.R1(C): COPY OF THE BASIC TAX ADANGAL EXTRACT SIGNED BY THE
VILLAGE OFFICER KURUVA VILLAGE.**

**EXT.R1(D): COPY OF THE SKETCH OF THE AREA IN QUESTION PREPARED BYU
THE VILLAGE OFFICER, KURUVA VILLAGE**

**ENGLISH TRANSLATIONOF EXHIBIT R1(b):- TRUE COPY OF THE COMMUNICATION
FROM THE VILLAGE OFFICER KURUVA TO THE SECRETARY, KURUVA
GRAMA PANCHAYAT, DT 10/3/2014.**

//TRUE COPY//

P.A. TO JUDGE

bp

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 8583 of 2014

Dated this the 29th day of January, 2015

JUDGMENT

Briefly stated, the petitioners are said to have purchased 20 cents of land in Kuruva Village, Pang Desom, through Exhibit P1 sale deed. When the petitioners applied for building permission, it was rejected on the ground that it was paddy land by classification and that no permission should be granted. Aggrieved thereby, the petitioners filed W.P. (C) No. 13256/2013 and invited Exhibit P10 judgment. This Court, in fact, directed the first respondent to inspect the land afresh and take a decision whether it is a paddy land presently, instead of determining the issue based on the entries in the revenue record.

2. In compliance with the direction of this Court in Exhibit P10 judgment, the Secretary of the first respondent having inspected the property issued Exhibit P13 order of refusal once again reiterating that part of the land still remains unconverted. Aggrieved thereby, the petitioners

filed the present writ petition.

3. The learned counsel for the petitioners has submitted that the vendor of the petitioners himself approached this Court under identical circumstances and invited Exhibit P7 judgment, wherein this Court emphatically declared that the entire land ceased to be paddy land. According to him, once again the first respondent cannot re-agitate the issue repeating the self same assertion that the property is paddy land. He has further submitted that even going by Exhibit P5 Data Bank, 50 cents of land belonging to his Predecessor-in-title stood converted and that the petitioners purchased 20 cents out of that 50 cents of land. Finally, the learned counsel has submitted that even in Exhibit P13 there is no categorical finding on the part of the Secretary of the first respondent Grama Panchayat that the land is still used as paddy land for the purpose of raising paddy, inasmuch as the observation is to the effect that a portion of the property is still remains unfilled. Under these circumstances, the learned counsel for the petitioners has urged this Court to set aside Exhibit P13 and further direct the respondent Grama Panchayat to re-consider the

petitioners' application, without reference to the issue of the land having been classified as paddy land. In support of his submissions, the learned counsel has placed reliance on **Aishabeevi v. Superintendent of Police** [2014 (3) KLT 1078].

4. The learned counsel for the respondent Grama Panchayat has vehemently opposed the claims and contentions of the petitioners. In tune with the averments made in the counter affidavit, the learned counsel would contend that in the light of Exhibit P10 judgment, the petitioners could not fall back on Exhibit P7 judgment rendered in favour of his predecessor by this Court. According to him, in compliance with the directions issued by this Court in Exhibit P10 judgment, the officials of the first respondent Grama Panchayat visited the property of the petitioners and came to a conclusion that still a portion of land in question remains unfilled. In other words, the land cannot entirely be said to be used for purposes other than agriculture, according to the learned counsel for the Grama Panchayat. In that regard the learned counsel for the first respondent has drawn my attention to Exhibit R1(d), a

rough sketch, where the petitioners property is shown unfilled in half.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondent, as well as the learned Government Pleader, apart from perusing the record.

6. Indeed, in Exhibit P7 judgment rendered at the behest of the petitioners Predecessor-in-title, this Court has categorically observed that the conversion has taken place at least fifteen years prior to the date of inspection. Further, Exhibit P5 Data Bank reveals that 50 cents of land out of 1.5 acres belonging to the petitioners Predecessor stood converted 12 years prior to 2013.

7. As could be seen from Exhibit P10 judgment, this Court entertained a doubt whether the petitioners property is part of that 50 cents, which stood converted prior to the enforcement of Kerala Conservation of Paddy Land and Wetland Act, 2008. In that context, this Court has issued a direction to the first respondent Grama Panchayat to subject the property of the petitioners to physical inspection and then take an appropriate decision concerning the grant of

building permit. Under those circumstances, Exhibit P13 came to be issued.

8. As could be seen from Exhibit P13, the Secretary of the first respondent Grama Panchayat, having physically inspected the property, has recorded that most of the area is seen converted, but not in full. At any rate, the permission seems to have been rejected based on the Village Officers report.

9. At this juncture, it is relevant to refer to the ratio laid down by the learned Division Bench of this Court in **Aishabeevi** (supra). On the issue of validity of rejection of building permit based on revenue entries, the learned Division Bench has held as follows:

"19. Going by the definition it could be seen that two conditions must be satisfied to bring a land under Paddy Land defined under S.2(xii) it must be a land where paddy is cultivated at least once in a year or (2) suitable for paddy cultivation but uncultivated and left fallow. Therefore, a land which does not satisfy either of these conditions will not come under the definition of paddy land and whereby under the application of the new Act. We are also in agreement with the decisions cited above, which held that question, whether a land in

question would come under paddy land defined in Conservation of Paddy Land and Wet Land Act, 2008, is to be determined on the basis of facts as they exist on ground and not on the basis of description in the revenue records or in the deeds. But here, the respondents 4 and 5 have no specific case that at present, the land in question is lying as a paddy land on ground, and the elements constituting the paddy land under the Conservation of Paddy Land and Wet Land Act, 2008 is present in the case of land in question. Going by the pleadings, they themselves admit that at present it is a land illegally converted in contravention of the Conservation of Paddy Land and Wet Land Act, 2008.

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24. In view of the legal proposition quoted above, we made a survey in the Land Utilisation Order, 1967 and Kerala Conservation of Paddy Land and Wet Land Act, 2008. There is no provision either in the above said Order or Act prescribing a legal presumption that in the absence of an order granting conservation (sic conversion) of paddy land under Land Utilisation Order, 1967, the paddy land, which stood converted after the commencement of Land Utilisation Order, 1967, without specific order permitting conversion, shall be presumed to be an illegally converted land, for which no permit for construction of a building can be granted and such land cannot be used for any

purpose other than agricultural operations. Similarly, the Conservation of Paddy Land and Wet Land Act does not say anything about the legal status of the paddy land which stood converted to garden land before the commencement of the above Act, without permission under Land Utilisation Order. But S.14 of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 imposes a bar against granting of licence or permit to carry out any activity or construction in paddy land converted after the commencement of this new Act. Therefore, it could be reasonably presumed that such a bar is not made applicable to the paddy land which stood converted before the commencement of the above said Act.”

10. In the light of the above ratio, if we examine Exhibit P13, there is no categoric finding or observation by the Secretary of the first respondent Grama Panchayat, the competent authority, that the land still remains paddy land and that any cultivation has been carried on, on an annual basis. Given the judicial dictum both in Exhibits P7 and P10, coupled with Exhibit P5 Data Bank, especially in the light of the ratio of **Aishabeevi** (supra), I am of the considered opinion that in the absence of any categoric finding that the property still remains unconverted, especially that it is being

used for agricultural purpose, repeated denial of building permit cannot be countenanced. Even Exhibit P9 photographs filed by the petitioners amply reveal the nature of land as far from being paddy land. At any rate, Exhibit P9 photographs have not been disputed by the respondent Grama Panchayat.

11. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioners and the learned counsel for the respondent, as well as the learned Government Pleader, Exhibit P13 is set aside with a consequential direction to the first respondent to re-consider petitioners application and issue building permit, provided the petitioners fulfill all other statutory parameters, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-