

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 18107 of 2012 (K)

PETITIONER:

**ABDUL MANAF T.A., AGED 37 YEARS,
S/O.T.A.ABBASS, SAKKURA HOUSE,
THERUVATHU, KASARAGOD DISTRICT.**

**BY SRI.S.SREEKUMAR, SENIOR ADVOCATE.
ADVS. SRI.M.T.SURESHKUMAR,
SRI.V.VRAJA.**

RESPONDENT(S):

- 1. CHEMNAD GRAMA PANCHAYATH,
CHEMNAD GRAMA PANCHAYATH OFFICE, CHEMNAD,
KASARAGOD DISTRICT, REP.BY ITS SECRETARY, PIN-673 121.**
- 2. THE SECRETARY, CHEMNAD GRAMA PANCHAYATH,
CHEMN GRAMA PANCHAYATH OFFICE,
CHEMNAD, KASARAGOD DISTRICT-673 121.**
- 3. DISTRICT COLLECTOR, KASARAGOD,
COLLECTORATE, KANJANGADE, KASARAGOD DISTRICT-673 001.**
- 4. SUB DIVISIONAL MAGISTRATE,
KANJAGADE, KASARAGODE-673 001.**
- 5. THE REVENUE SUB DIVISIONAL OFFICER, KASARAGOD-673 001.**
- 6. VILLAGE OFFICER,
KALANADU VILLAGE, KASARAGOD-673 121.**
- 7. AGRICULTURAL OFFICER,
KRISHIBHAVAN, CHEMNAD, PERUMBALA P.O.,
KASARAGOD DISTRICT-673 121.**

**R1 & R2 BY ADVS. SRI.KODOTH SREEDHARAN,
SRI.RAHUL SASI.
R3 TO R7 BY GOVT. PLEADER SRI.NOUSHAD THOTTATHIL.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE RECEIPT DATED 10/11/2011 ISSUED BY THE 1ST RESPONDENT PANCHAYATH.
- EXT.P2 COPY OF THE NOTICE DATED 22/03/2012 ISSUED BY THE 2ND RESPONDENT.
- EXT.P3 COPY OF THE ORDER DATED 22/03/2012.
- EXT.P4 COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO EXT.P2 AND P3 DATED 27/03/2012.
- EXT.P5 COPY OF THE JUDGMENT DATED 03/04/2012 IN WP(C).NO.8430/2012.
- EXT.P6 COPY OF THE REPORT ISSUED BY THE AGRICULTURE OFFICER TO THE PETITIONER AS DIRECTED TO STOP ALL CONSTRUCTION ACTIVITIES DATED 28/05/2012.
- EXT.P7 COPY OF THE REPORT OF THE 7TH RESPONDENT DATED 21/06/2012 GIVEN TO THE 2ND RESPONDENT ALONG WITH THE MINUTES OF THE LOCAL LEVEL MONITORING COMMITTEE 21/06/2012.
- EXT.P8 COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER 23/06/2012.
- EXT.P9 COPY OF THE LAND IDENTIFICATION DETAILS.
- EXT.P10 COPY OF THE NOTICE DATED 30/06/2012.
- EXT.P11 COPY OF THE ORDER ISSUED BY THE SUB DIVISIONAL MAGISTRATE, KANHANGAD BANNING THE PETITIONER FROM ALTERING THE NATURE OF THE LAND DATED 30/06/2012.
- EXT.P12 COPY OF THE RELEVANT PERSON NOTIFICATION DATED 14/12/2009.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.18107 of 2012

Dated this the 10th day of April, 2015

JUDGMENT

Ext.P8 order, by which the second respondent rejected the petitioner's application for permission to construct a residential building was rejected, is under challenge in this writ petition.

2. The petitioner is the absolute owner in possession of 10 cents of property comprised in Re-sy.No.107/4 of Chemnad Village in Kasargode Taluk within the local limits of the first respondent Panchayat.

3. According to the petitioner, in order to construct a residential building, the petitioner submitted an application on 10.11.2011 and the said application was received vide receipt No.9964/2011. Earlier, the petitioner was issued with Exts.P2 and P3 which were challenged before this Court by filing WPC No.8430/2012. By Ext.P5 judgment, this Court directed the first and second respondents to consider Ext.P4 reply of the petitioner.

While so, the petitioner received Ext.P6 order from the second respondent stating that it is necessary to have a report from the 7th respondent Agricultural Officer to pass any orders as per the directions of this Court in Ext.P5 judgment. The petitioner was further directed in Ext.P6 to stop all construction activities. Thereafter the matter has been referred to the 7th respondent, who in turn, had convened a local level monitoring committee which had passed Ext.P7 report dated 21.6.2012 stating that the petitioner had started constructions without obtaining consent from the District level committee and that he is constructing a commercial building.

4. On the basis of Ext.P7, the 2nd respondent issued Ext.P8 order rejecting the petitioner's application for building permit. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by the Secretary of the Panchayat, it was contended as follows:-

The petitioner had submitted an application to construct a residential building on 10.11.2011. The

petitioner had approached this Court by filing WPC No.8430/2012 challenging Ext.P2 notice issued by the Panchayat to the petitioner and Ext.P3 order issued by the Secretary, Chemmanad Panchayath. This Court directed the first and second respondents to consider Ext.P4 reply of the petitioner. As per the judgment of this Court, it was also necessary to have a report from the 7th respondent, the Agricultural Officer. The Panchayat had received the report dated 21.6.2012 from the Agricultural Officer that is marked as Ext.P7 in which the Agricultural Officer had submitted that the local level monitoring committee had inspected the said property on 13.6.2012. The copy of the minutes was also submitted by him [marked as Ext.P7(2)], in which the local level monitoring committee stated that the petitioner was constructing a commercial building under the guise of residential building without obtaining consent from the District level monitoring committee. In the said report, it was recommended that the application can be rejected on the said basis.

6. In the statement filed by the 4th respondent, it was contended as follows:

The Secretary, Chemnad Grama Panchayat has informed that the petitioner had filed an application to grant permission for the construction of the building in the above said land and the permission for the construction of the building could not be granted as the land come under paddy field. It was also informed that the petitioner started the construction prior to granting permission. Hence, a notice was issued to stop the construction in the land. It was also requested to take appropriate action against the party to stop construction in the paddy land at the earliest. Moreover, the Local Level Monitoring Committee has rejected the application filed by the petitioner on 13.6.2012 on the ground that though the application was filed for the construction of the residential building, it was found that the petitioner has started the construction of a commercial building in the paddy land. It is stated that WPC No.8430/2012 filed by the writ petitioner against the Secretary, Chemnad Grama

Panchayat was disposed of by this Court with a finding that the issue raised in that writ petition was highly premature. Therefore, the Secretary was directed to consider the representation filed by the writ petitioner and to pass appropriate orders as contemplated under Section 235W of the Kerala Panchayat Raj Act, 1994. As the land is paddy field, the Secretary had referred the matter to the Agricultural Officer and Revenue Divisional officer as per the provisions of Wet Land Act, 2008.

As the construction is in violation of Kerala Paddy and Wet Land Act 2008, the 4th respondent had issued a stop memo to the writ petitioner as per the reference G 5565/12 (2) dated 30.6.2012 based on the report of the Agricultural Officer, Krishi Bhavan, Chemnad and Village Officer, Kalanad.

In the meantime, the Convenor, Kunnu Vayal Samrakshana Samithi, Kasargod District had filed a petition stating that there occurred illegal conversion of paddy land and unauthorised construction of a building in the above said land violating the provisions of the Kerala

Construction of Paddy Land and Wet Land Act, 2008.

7. I have heard the learned senior counsel for the petitioner, the learned senior Government Pleader and the learned counsel for the respondent Panchayat.

8. On a specific query put by this Court to the learned Senior Government Pleader as to whether the property was included in the data bank, the learned senior Government Pleader, after getting instructions, submitted that the property of the petitioner is not included in the data bank.

9. 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 for construction.

10. 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.

11. 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.

On a consideration of the entire materials now placed on record, this writ petition is disposed of directing the first respondent to make a local inspection of the property and if it is found that it is not suitable for paddy cultivation, formal orders granting permission to the petitioner to construct the building as requested for shall be issued within a period of one month from the date of receipt of a copy of this judgment.

Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE