

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 15022 of 2015 (C)

PETITIONER(S):

**JOBEES MATHEW, AGED 39 YEARS,
S/O.MATHEW CHACKO, PANTHALATTIYIL HOUSE, CHAKKAPADY,
THIRUMARADY PO, ERNAKULAM-686 662.**

BY ADV. SRI.GIGIMON ISSAC

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THIRUMARADY GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, THIRUMARADY,
ERNAKULAM-686 662.**
- 3. SABU E.K., AGED 40 YEARS,
S/O.KUNJAPPAN, ERAMATH HOUSE, THIRUMARADY PO,
ERNAKULAM-686 662.**

R1 BY GOVERNMENT PLEADER SMT.ANITHI RAVEENDRAN

R2 BY ADVS.SRI.MATHAI VARKEY MUTHIRENTHY

SRI.P.V.SANTHOSH,SC

R3 BY ADV. SRI.GEORGE SEBASTIAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : TRUE COPY OF THE LAND TAX RECEIPT ISSUED IN THE NAME OF PETITIONER DATED 26-4-2014.**
- P2 : TRUE COPY OF THE EXTRAORDINARY GAZETTE NOTIFICATION DATED 14-12-2009.**
- P3 : TRUE COPY OF THE RECEIPT EVIDENCING THE RECEIPT OF APPLICATION FOR CHANGE OF OWNERSHIP OF BUILDING ISSUED FROM THE 2ND RESPONDENT PANCHAYATH DATE 1-1-2015.**
- P4 : TRUE COPY OF THE REPLY DENYING THE CHANGE OF BUILDING OWNERSHIP FOR 10 YEARS ON THE GROUND OF PROPERTY AS NILAM ISSUED FROM THE 2ND RESPONDENT PANCHAYATH DATED 21-1-2015.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.15022 of 2015

Dated this the 14th day of July, 2015

JUDGMENT

The petitioner has approached this Court aggrieved by the inaction on the part of the respondent Panchayat in changing the ownership of a building from the third respondent to the petitioner.

2. The petitioner has purchased an extent of 4.86 Ares of property in Sy.No.132/8 of Thirumarady Village with the residential house as per Sale Deed No.305/2014 of Koothattukulam Sub Registry Office from the third respondent and is paying property tax in his name as its pattadar under Thandaper No.15356. The property is Pandaravaka pattom Purayidam. As per Government notification, the property is classified as residential plot. The petitioner alleges that who he approached the second respondent to change the ownership of the building

constructed in the property in the name of the petitioner, the same was rejected on the ground that the property where the building was constructed is paddy field. It is with this background, the petitioner has come up before this Court.

3. Though notice has been served on the respondents, only the third respondent entered appearance.

4. The learned counsel for the third respondent would submit that the third respondent has executed sale deed in the name of the petitioner and he has no objection in effecting mutation as prayed for.

5. The learned counsel for the petitioner would submit that the rejection of the petitioner's application for change of ownership of building is on the ground that originally it was a wet land.

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. The learned counsel for the petitioner invited my attention also to the decision of this Court 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 was also pointed out by the learned counsel for the petitioner that the second respondent is convinced that the ownership of the land is mutated in the name of the petitioner in village records and as per Ext.P1 notification, the property is a residential property. Under such circumstances, the denial of the petitioner's request by the respondent Panchayat is untenable.

In the result, this writ petition is allowed. The second respondent is directed to change the ownership of the Building No.7/59A which is now in the name of the third respondent to the petitioner within a period of two weeks from the date of receipt of a copy of this judgment.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE