

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 18237 of 2015 (D)

PETITIONER(S):

ALEX PAUL
S/O.THAYYIL PAUL,
THAYYIL HOUSE, KOTHAMANGALAM.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S):

1. THE VARAPPATTY GRAMA PANCHAYAT
KOTHAMANGALAM - 686 691.
2. THE LOCAL LEVEL MONITORING COMMITTEE
REPRESENTED BY THE
CONVENER AND AGRICULTURAL OFFICER
VARAPETTY VILLAGE - 686 691.
3. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA - 686 661.

R1 BY ADV. SRI.PEEYUS A.KOTTAM

R3 BY ADV. SMT.ANITHA RAVEENDRAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 - TRUE COPY OF THE SALE DEED DATED 6.12.2011

P2 - TRUE COPY OF THE POSSESSION CERTIFICATE DATED 28.2.2015

P3 - TRUE COPY OF THE PERMIT DATED 10.4.2015 ISSUED BY THE FIRST
RESPONDENT

P4 - TRUE COPY OF THE NOTICE NO.A6.1289/2015 DATED 9.6.2015 ISSUED BY
THE FIRST RESPONDENT.

P5 SERIES - PHOTOGRAPHS

P6 - TRUE COPY OF THE DRAFT PREPARED IN TERMS OF THE ACT AND RULES.

RESPONDENT(S) ' EXHIBITS

EXT.R1-A : TRUE COPY OF THE LETTER NO.195/15 DATED 5.6.2015 ISSUED BY
THE VILLAGE OFFICER, VARAPETTY, TO THE SECRETARY, VARAPETTY GRAMA
PANCHAYAT.

EXT.R1-B : TRUE COPY OF THE SHOW CAUSE NOTICE NO.A6/1269/2015 DATED
17.6.2015 ISSUED BY THE VARAPETTY GRAMA PANCHAYAT TO THE PETITIONER.

//TRUE COPY//

P.A.TO JUDGE

ami/

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.18237 of 2015

Dated this the 19th day of August, 2015.

J U D G M E N T

Ext.P4 notice issued by the 1st respondent Panchayat is under challenge in this writ petition.

2. The petitioner was given permission for the construction of the building by the panchayat. According to the petitioner, the permission so given was on the basis of the possession certificate issued by the village Office showing the land as dry land. He alleges that Ext.P4 is issued on the ground that the possession certificate issued is based on a mistake. Ext.P5 would show that the land in question is no more a paddy land. It is alleged that the inclusion of the land as paddy land is without following the procedure provided under Section 5(4) of the Act. It is in this backdrop, the petitioner has approached this Court.

3. In the counter affidavit filed by the respondents, they would contend that the property of the petitioner is

shown as 'land' in the published draft data bank and if the property is included in the data bank register as 'nilam', it is for the Local Level Monitoring Committee, which is the competent authority, and the revenue authorities to correct that entry if it is mistakenly incorporated. The petitioner is bound to follow the entry in data bank register. It was pointed out that concealing the said facts, the building permit was obtained by the petitioner as a result of fraud played on the panchayat and hence Ext.P3 building permit is liable to be recalled as per the provisions of the Kerala Panchayat Raj Building Rules 1999.

4. Arguments have been heard.

5. The learned counsel for the petitioner, inviting my attention to Ext.P5 photographs, submitted that the land in question would show that the same is not fit for paddy cultivation at present. It was pointed out that the petitioner's property was developed much prior to the coming into force of Act 28 of 2008. Ext.P5 photos show the present nature of

the land of the petitioner. The respondents failed to note that as per the Village records, the land in question is shown as dry land and the Secretary of the panchayat on the basis of the records issued the building permit.

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 can be seen from Ext.P5 that the property is not a paddy land and it is having full of aged trees. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjali 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.

Considering the nature of submissions and the reliefs sought for, this writ petition is disposed of quashing Ext.P4, and permitting the petitioner to approach the 3rd respondent within 2 weeks of receipt of copy of this judgment and in the event of submitting a representation, the same shall be considered by the 3rd respondent within one month thereafter in the light of what has been stated above. The existing state of affairs as on today on the basis of the interim order shall continue till the exercise is completed.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge