

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 19425 of 2015 (C)

PETITIONER(S):

**SHINY, AGED 44 YEARS,
W/O.SIBI PAUL, MANAVALAN HOUSE, ALANGAD P.O.,
MALIKAMPEEDIKA, PARAVUR TALUK, ERNAKULAM DISTRICT,
PIN - 683 511.**

BY ADV. SRI.M.C.JOHN

RESPONDENT(S):

- 1. THE ALANGAD GRAMA PANCHAYAT,
REPRESENTED BY SECRETARY,
OFFICE OF THE ALANGAD GRAMA PANCHAYAT, NEERIKODE P.O.,
ALUVA, PIN - 683 511.**
- 2. THE VILLAGE OFFICER,
ALANGAD VILLAGE, PARAVUR TALUK, PIN - 683 511.**
- 3. THE LOCAL LEVEL MONITORING COMMITTEE,
REPRESENTED BY THE AGRICULTURAL OFFICER,
KRISHI BHAVAN, ALANGAD, PIN - 683 511,
ERNAKULAM DISTRICT.**

**R1 BY ADV. SRI.DINESH MATHEW J.MURICKEN
R2 & R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 19425 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. TRUE COPY OF THE BASIC TAX RECEIPT NO.4855255 DATED 23.06.2015
ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

EXHIBIT P2. TRUE COPY OF THE SKETCH SHOWING THE LIE OF THE PROPERTY.

**EXHIBIT P3. TRUE COPY OF RELEVANT PAGES OF THE LAND IDENTIFICATION
REGISTER NO.234/2015 KEPT BY THE 3RD RESPONDENT.**

**EXHIBIT P4. TRUE COPY OF THE BUILDING PERMIT NO.A2-07/12-13 (P)
DATED 28.05.2012 ISSUED BY THE 1ST RESPONDENT.**

EXHIBIT P4(A). TRUE COPY OF THE FEE RECEIPT NO.89 DATED 28.05.2012.

**EXHIBIT P5. TRUE COPY OF APPLICATION DATED 08.05.2015 SUBMITTED BY THE
PETITIONER TO THE 1ST RESPONDENT.**

**EXHIBIT P6. TRUE COPY OF THE FEE RECEIPT DATED 23.05.2015 ISSUED BY THE
1ST RESPONDENT.**

**EXHIBIT P7. TRUE COPY OF COMMUNICATION NO.A4-3251/15 DATED 04.06.2015
ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.19425 of 2015

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Dated this the 13th day of July, 2015

JUDGMENT

The petitioner is the absolute owner in possession of 74.66 cents of land comprised in Sy. No.496/8 of Alangad village which is within the limits of respondent panchayat. The petitioner alleges that the first respondent has issued Ext.P4 building permit to her for construction of a building in her property. However, she could not complete the construction within the period prescribed in the permit. Therefore, she submitted Ext.P5 application for renewal. She was directed to remit the fee for the renewal and the fee was emitted; it is alleged. The first respondent by Ext.P7 informed the petitioner that the renewal is not possible because as per the records, the land is paddy land and it is included in the data bank. The petitioner further alleges that the land identification details kept by the local monitoring committee show that the land is converted land. It is with this background, the petitioner has come up before this Court.

2. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayat.

3. The learned counsel for the petitioner would submit that as per Ext.P7 the application was rejected stating that in the village records, the property is paddy field. It was pointed out by the learned counsel for the petitioner that in the light of Ext.P3 which is the copy of the data bank, the petitioner's property is a converted land. Item No.2 in Ext.P3 is the petitioner's property.

4. 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.

5. It is settled position that the applicant can choose the best land suited for construction of his house [**Sunil v. Killimangalam-Panjal 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.

6. 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.

7. 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.

Therefore, this writ petition is disposed of directing the respondent panchayat to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioner and surrounding properties. The respondent

panchayat is also directed to re-consider the application and to grant permission if they are satisfied that the property is not cultivable at present. The petitioner shall be given an opportunity of being heard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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