

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937**

**WP(C).No. 19901 of 2015 (K)**  
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**PETITIONER(S) :**  
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**JASEELA, AGED 36 YEARS,  
D/O.UMMERKUTTY, PUTHIYA VEETIL HOUSE, ORUMANOOR P.O.,  
THRISSUR DISTRICT- 680 512.**

**BY ADV. SRI.P.RAMACHANDRAN**

**RESPONDENT(S) :**  
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- 1. KANDANASSERY GRAMA PANCHAYATH,  
REPRESENTED BY ITS SECRETARY, MATTOM P.O.,  
THRISSUR DISTRICT- 680 602.**
- 2. THE SECRETARY,  
KANDANASSERY GRAMA PANCHAYATH, MATTOM P.O.,  
THRISSUR DISTRICT- 680 602.**

**BY ADVS. SRI.M.ANIL KUMAR  
SMT.PREETHI K.PURUSHOTHAMAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

Msd.

**APPENDIX**

**PETITIONER(S)' EXHIBITS :**  
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- P1: TRUE COPY OF ORDER BEARING NO.B4 2235/2014 DATED 26.09.2014 BY THE SECOND RESPONDENT.**
- P2: PHOTOGRAPHS SHOWING LIE AND NATURE OF THE PROPERTY OF THE PETITIONER.**
- P3: TRUE COPY OF THE CERTIFICATE DATED 05.12.2014 ISSUED BY THE VILLAGE OFFICER, KANDANASSERY CERTIFYING THE NATIVE OF THE PROPERTY.**
- P4: TRUE COPY OF THE RELEVANT EXTRACT OF DATA BANK OF LANDS ISSUED BY VILLAGE OFFICER, KANDANASSERY VILLAGE ON 23.07.2014.**

**RESPONDENT(S)' EXHIBITS :**  
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**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd.

**A.V. RAMAKRISHNA PILLAI, J.**

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W.P.(C) No. 19901 of 2015  
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Dated this the 30<sup>th</sup> day of July, 2015

**J U D G M E N T**

The petitioner is aggrieved by Ext.P1 order, by which the petitioner's application for building permit was rejected by the respondents.

2. The petitioner had submitted an application for building permit before the 2<sup>nd</sup> respondent for the construction of a house in her property having an extent of 2.52 ares comprised in Sy.Nos. 164 & 163 of Kandanassery Village within the local limits of the respondent panchayath. The 2<sup>nd</sup> respondent, as per Ext.P1, rejected the application. One of the grounds for rejection is that the property of the petitioner is 'nilam'. It is pointed out that the respondents insisted on an undertaking to the effect that the petitioner would not alienate the land for 10 years. This, according to the petitioner, is illegal, improper, unjust, violative of rights guaranteed under Constitution of India and also against

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provisions of the Transfer of Property Act. According to her, the said property is not 'nilam'. To substantiate the said contention, she produced Ext.P2 series of photograph and Ext-P3 certificate. According to the petitioner, the Kerala Conservation of Paddy Land and Wet Land Act is not applicable to the said property; and when the Act is not applicable, any rule, order or circular under the Act is also not applicable; and even provisions of Kerala Conservation of Paddy Land and Wet Land Act does not prohibit alienation of properties. Hence, this writ petition for quashing Ext.P1 so far as it relates to the direction by the 2<sup>nd</sup> respondent to submit the undertaking to the effect that she will not alienate her property for 10 years.

3. Arguments have been heard.

4. The learned counsel for the petitioner is mainly aggrieved by the Condition No.4 in Ext.P1, which imposes a restriction pertaining to the transfer of property for a period of 10 years. Condition No.4 would certainly cast an embargo on the right of enjoyment over the petitioner's

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property, which takes the right to dispose of the same. Though the right to property has been taken away from Part III of the Constitution by the 44<sup>th</sup> amendment of the Constitution, the same is retained in the Constitution as a legal right under Article 300 A. Therefore, any restriction on the enjoyment of the property can only be in accordance with law.

5. 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.

6. 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.

7. 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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

8. 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, the writ petition is allowed.

Ext.P1 is quashed. The respondent panchayath is directed 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 respondents are also directed to reconsider the application and pass positive orders granting building permit de hors condition No.4, after affording the petitioner an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation. 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**

bka/-