

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 19952 of 2015 (T)

PETITIONER(S):

**SHAHNA MUJEEB REHMAN, AGED 30 YEARS,
W/O.MUJEEB REHMAN, VALIYAKATH PUTHENPALLY HOUSE,
PUNNAYOORKKULAM P.O, 679 561, THRISSUR DISTRICT,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER SUBAIDA BACKER,
W/O.BACKER, AGED 50 YEARS, PANTHALAYANITHARAYIL HOUSE,
PUNNAYOORKKULAM P.O, 679 561, THRISSUR DISTRICT.**

BY ADV. SRI.P.RAMACHANDRAN

RESPONDENT(S):

- 1. KANDANASSERY GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, MATTOM P.O,
THRISSUR DISTRICT. 680 602.**
- 2. THE SECRETARY,
KANDANASSERY GRAMA PANCHAYATH, MATTOM P.O,
THRISSUR DISTRICT. 680 602.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE POWER OF ATTORNEY DATED 18.1.15 EXECUTED BY THE PETITIONER IN FAVOUR OF THE MOTHER SUBAIDA BACKER.**
- EXHIBIT P2. COPY OF THE ORDER BEARING NO.B4 2236/2014 DATED 26.09.14 BY THE 2ND RESPONDENT.**
- EXHIBIT P3. COPY OF THE PHOTOGRAPHS SHOWING LIE AND NATURE OF THE PROPERTY OF THE PETITIONER.**
- EXHIBIT P4. COPY OF THE CERTIFICATE DATED 5.12.14 ISSUED BY THE VILLAGE OFFICER, KANDANASSERY CERTIFYING THE NATIVE OF THE PROPERTY.**
- EXHIBIT P5. COPY OF THE RELEVANT EXTRACT OF DATA BANK OF LANDS ISSUED BY THE VILLAGE OFFICER, KANDANASSERY VILLAGE ON 23.7.14.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19952 of 2015

Dated this the 13th day of August, 2015.

JUDGMENT

The petitioner is aggrieved by the rejection of the petitioner's application for the building permit by the respondent on the ground that the petitioner has failed to submit an undertaking to the effect that petitioner would not alienate the land for 10 years since the property is a Nilam.

2. The petitioner alleges that she had submitted an application for building permit for the construction of a house in her property of 1.95 ares in Sy.167/2 of Kandanaserry Village before the second respondent. Second respondent as per Ext.P2 rejected the application. One of the grounds is that since the property is 'nilam' she has to submit an undertaking to the effect that she will not alienate the land for 10 years. Such direction is illegal, improper and unjust; it is alleged. The petitioner further alleged that this direction is also violative of rights guaranteed under Constitution of India and also against

provisions of Transfer of Property Act. The property of petitioner is not Nilam. It is also alleged that Ext.P3 photographs and Ext.P4 certificate shows that it is a praramba and the Kerala Conservation of Paddy land and Wet Land Act is not applicable to the property of the petitioner. Even provisions of Kerala Conservation of Paddy Land and Wet Land Act does not prohibit alienation of property; it is alleged. Hence this writ petition to quash Ext.P2 so far as it relates to the direction by the second respondent to submit an undertaking to the effect that she would not alienate her property for 10 years.

3. Though notice has been served on the respondents, they did not turn up.

4. The learned counsel for the petitioner is mainly aggrieved by the Condition No.4 in Ext.P2, 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 property, which includes the right to dispose of the same. Though the

right to property has been taken away from Part III of the Constitution by the 44th 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.P2 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

Scl.