

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 22003 of 2015 (A)

PETITIONER(S):

**KARIPPOOR KUNHIMOOSA,
S/O.MOIDEEN, MADAVOOR P.O., KOZHIKODE DISTRICT-673 001.**

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S):

**MUKKAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
KOZHIKKODE DISTRICT-673 001.**

**BY ADVS. SRI.P.J.MATHEW
SRI.EBIN MATHEW**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-08-2015, THE COURT ON 28-09-2015, DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 22003 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1 : TRUE COPY OF THE POSSESSION CERTIFICATE DTD.4-10-2014 ISSUED BY
THE VILLAGE OFFICER, NEELESWARAM.**

**EXT.P2 : TRUE COPY OF THE DATA BANK PREPARED UNDER THE PADDY LAND ACT
ON 13-9-2012.**

**EXT.P3 : TRUE COPY OF THE ORDER NO.A4-11119/14 DT.1-11-2014 ISSUED BY THE
RESPONDENT.**

**EXT.P4 : TRUE COPY OF THE ORDER DTD.27-5-2015 IN APPEAL 1317/14 PASSED BY
THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.**

RESPONDENT(S)' EXHIBITS:

EXT.R1(a): TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER DTD.14.10.2014.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J

WPC No.22003 of 2015

Dated this the 28th day of September, 2015

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit by the respondent Panchayat, the petitioner has come up before this Court.

2. The petitioner is the absolute owner in possession of the property comprised in Re.sy.No.20/1 of Neeleswaram Village having an extent of 40.7938 Ares. The application submitted by the petitioner for the construction of the school building was rejected by the Panchayat on the ground that the property is Nanja. According to the petitioner, in Ext.P2 Data Bank, the property was shown as reclaimed land which was converted 7 years back from 2012. Thus, according to the petitioner, the reason found by the Panchayat for rejecting the building permit application is highly illegal. It is with this background the petitioner has come up before this

Court.

3. In the counter affidavit filed by the respondent, it was contended as follows:

Against Ext.P3 order passed by the Panchayat, the petitioner approached the Tribunal for Local Self Government Institutions and the Tribunal had passed Ext.P4 order upholding the order of the Panchayat. In the writ petition, no illegality, procedural impropriety or irrationality is attributed to Ext.P4 order. It is contended that there is no circumstances warranting interference with Ext.P4 order passed by the Tribunal under Article 226 of the Constitution of India.

In Ext.P4 order, the entire factual aspects as well as the case law up to date has been analysed and an elaborate order is passed after hearing both sides.

The Panchayat is bound to refuse permission to construct a building in the site applied for by virtue of Section 235L(i) of the Kerala Panchayat Raj Act and Section 14 of the Kerala Conservation of Paddy land and Wet Land Act, 2008.

It is contended that the Village Officer, Neeleswaram inspected the site for the proposed construction and filed a report dated 14.10.2014 in which it is stated that 1 acre land comprised in Re.sy.No.201 of Neeleswaram village, Vennakode Desom is nilam and the cultivation in the land is tapioca, plantain etc. A true copy of the report of the Village Officer dated 14.10.2014 is produced and marked as Ext.R1(a).

According to the respondents, from Ext.R1(a) it can be seen that the reclamation of the land is made after the commencement of the Kerala Conservation of Paddy Land & Wetland Act, 2008.

It is further contended that the land is reclaimed without obtaining permission from the competent authority. Even if the claim of the petitioner that he had reclaimed the land prior to the commencement of the Paddy and Wetland Act 2008, he has to obtain permission from the District Collector under clause 6 of the Land Utilisation Order, 1967 so far as all in revenue records, the

land in question is shown as Nancha (paddy field) without obtaining an order from the District Collector for the use of the land for non-agricultural purpose, the respondent Panchayat is competent to grant permit to construct building in the site; it was contended.

4. Arguments have been heard.

5. The writ petition is mainly opposed by the learned standing counsel for the respondent Panchayat for the reason that the property of the petitioner is lying as nilam and the petitioner has reclaimed his property without any permission from the authorities concerned under clause 6 of the Kerala Land Utilisation Order or under Section 14 of the Kerala Conservation of Paddy and Wet Land Act, 2008. In answer to the said submission, the learned counsel for the petitioner would submit that as per Ext.P2 data bank, the property was shown as reclaimed land converted 7 years back from 2012.

6. In answer to the said submission, the learned counsel for the petitioner also invited my attention to the decision of a Division Bench decision of this Court in

Aishabeevi and another v Superintendent of Police, Ernakulam and others (2014(3) KHC 678(DB) wherein it was observed that the bar under Section 14 of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 cannot be made applicable to the land which stood converted prior to the commencement of the conversion of Paddy and Wet Land Act, 2008, even if such conversion was made in violation of the Kerala Land Utilisation Order, 1967.

7. 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.

8. 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.

9. 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.

10. 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 allowed. Exts.P3 and 4 are quashed.

The respondent Panchayat 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 respondent is also directed to re-consider the application and pass orders granting permit, if he is satisfied that the land in the present form is unfit for paddy cultivation. 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

css/

true copy

P.S.TO JUDGE