

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 22722 of 2015 (M)

PETITIONER(S):

**SANTHOSH, AGED 43 YEARS,
S/O.BASKARAN, THIRUKULAM HOUSE, ALOOR P.O.,
KALLETUMKARA VIA, THRISSUR DISTRICT-680 683.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHPAURAM-695 001.**
- 2. THE KODAKARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, KODAKARA P.O.
PIN-680 684.**

**R1 BY GOVERNMENT PLEADER
R2 BY ADVS. SRI.M.R.ANISON
SMT.P.A.RINUSA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE DOCUMENT BEARING NO.638/2012 DATED 8/2/2012 OF THE KALLETUMKARA SRO.**
- EXT.P2. TRUE COPY OF THE CERTIFICATE ISSUED BY THE AGRICULTURAL OFFICER DATED 1/12/2011.**
- EXT.P3. TRUE COPY OF THE NOC GRANTED BY THE 2ND RESPONDENT DATED 7/3/2013.**
- EXT.P4. TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, KODAKARA DATED 7/4/2015.**
- EXT.P5. TRUE COPY OF THE COMMUNICATION OF THE DEPARTMENT OF INDUSTRIES, GOVERNMENT OF KERALA DATED 20/5/2013.**
- EXT.P6. TRUE COPY OF THE CERTIFICATE ISSUED BY THE DISTRICT INDUSTRIES CENTRE DATED 6/3/2014.**
- EXT.P7. TRUE COPY OF THE DEMAND NOTICE ISSUED TO THE PETITIONER DATED 4/12/2013.**
- EXT.P8. TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 6/6/2015.**
- EXT.P9. TRUE COPY OF THE LETTER OF THE SBT DATED 19/2/2014.**

RESPONDENT(S)' EXHIBITS

- EXT.R2(A): TRUE COPY OF THE CIRCULAR BEARING NO.1663/R.A1/2013/LSGD DATED 5/2/13.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.22722 of 2015

Dated this the 21st day of August, 2015.

J U D G M E N T

Under challenge in this writ petition is Ext.P8, by which the petitioner's application for changing occupancy was turned out by the respondent panchayat in the light of the Circular No.1663 RA1/2013 LSGD dated 5.2.2013.

2. The petitioner herein owns 0.0598 and 0.0456 ares of land, in Re-sy.No.124/SC of the Kodakara village. He wants to construct a commercial building in the property for which all the formalities have been complied with. The 2nd respondent has passed an order stating that in the revenue register it is 'nancha' properties and therefore for commercial purposes building permit cannot be issued. It is with this backdrop, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner, the learned Standing counsel for the respondent panchayat and the learned Government Pleader in the matter.

4. The learned standing counsel for the respondent panchayat would submit that as per the Circular referred to above, which is produced as Ext.R2(a) along with memo, the Government has placed a ban on the transfer of converted lands. The learned counsel for the petitioner submitted that the respondent panchayat is incompetent to impose a restriction as contained in Ext.R2(a) which in all probabilities unreasonable, unfair and unwarranted. According to the learned counsel, the same is a clear deprivation of the petitioner's valuable rights and does not in any manner stand the test of reasonableness.

7. It is crucial to note that neither the Panchayat Raj Act nor the Building Rules or any other law for the time being in force confers such a power on the respondent panchayat to impose restrictions on the transfer of property. 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.

8. Ext.R2(a) imposes total restriction on the right transfer of the petitioner over the property for a period of ten years which is against the principles that has been re-iterated by the Apex Court in **India Handicrafts Emporium** v. **Union of India** (AIR 2003 SC 3240), **Raju S. Jethmalani** v. **State of Maharashtra** [2000 (6) SCC 222] and AIR 2012 SC 573.

9. Ext.R2(a) is a clear infringement of the petitioner's right guaranteed by the Constitution of India and therefore the rejection of the petitioner's application for building permit is incompetent. 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.

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

11. 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.

12. 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.

In the result, the writ petition is allowed. Ext.P8 is quashed. It is hereby declared that the imposition of restriction of on alienation or transfer of sale for ten years is without any authority of law. 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 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.

ami/

//True copy//

P.A. to Judge