

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. 23407 of 2015 (A)

PETITIONER :

**SAMASTHA KERALA SUNNI YUVAJANA SANGAM,
REPRESENTED BY ITS SECRETARY,
HARIPAD P.O, ALAPPUZHA.**

**BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR**

RESPONDENT(S):

- 1. CHINGOLI GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
CHINGOLI GRAMA PANCHAYAT OFFICE ,
CHINGOLI P.O., ALAPPUZHA- 690 532**
- 2. THE SECRETARY,
CHINGOLI GRAMA PANCHAYAT,
CHINGOLI GRAMA PANCHAYAT OFFICE, CHINGOLI P.O,
ALAPPUZHA -690 532**

**R1 & R2 BY ADV. SRI.ARUN CHANDRAN
SRI.MANU.G.RAJAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 23407 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	TRUE COPY OF THE POSSESSION CERTIFICATE DATED 07-04-2015
EXT.P2	TRUE COPY OF THE CERTIFICATE DATED 01-08-2015 ISSUED BY THE VILLAGE OFFICER
EXT.P3	TRUE COPY OF THE APPLICATION FOR REGULARIZATION OF THE BUILDING DATED 04-06-2015
EXT.P4	TRUE COPY OF THE REJECTION LETTER DATED 30-07-2015 ISSUED BY THE 2ND RESPONDENT

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

/TRUE COPY/

P.A.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.23407 of 2015

Dated this the 13th day of August, 2015.

J U D G M E N T

The petitioner is aggrieved by the inaction on the part of the respondent in considering Ext.P3 regularisation application and Ext.P4 letter by which the petitioners request to number the building was rejected.

2. The petitioner is the owner in possession of 4.05 Ares of land comprising in Resurvey No.115/5-2 of Chingoli Village office. It is submitted by the petitioner that the land covered by Ext.P1 possession certificate is described as "Nilam" in revenue records and the Data Bank prepared by the Local Level Monitoring Committee in Chingoli grama panchayat. According to him, the above land is reclaimed many years before the enactment of the Kerala Conservation of Paddy land and Wet Land Act 2008 and the land in its present form is a dry land. He points out that the

surrounding properties also are dry lands. The petitioner constructed a building for Library and office, and filed Ext.P3 application for regularisation of the building and also to number the building. However, the 2nd respondent issued Ext.P4 letter rejecting the request to number the building on the ground that the land is paddy land ; it is alleged

3. Though notice has been served on the respondents, they have not turned up.

4. The learned counsel for the petitioner invited my attention to 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-Panjai 5th Ward Nellulpadaka**

Samooham 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 allowed. Ext.P4 rejection letter is quashed.

As the learned counsel for the petitioner confined his argument for a direction to the respondent to consider Ext.P3 application for regularisation of the building, this writ petition is disposed of directing the respondent to consider and pass positive orders on Ext.P3 application for regularisation in the light of what has been stated above in the decisions cited supra. If the application for regularisation is allowed, the petitioner's building shall be numbered on the basis of the regularisation order.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge