

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 26302 of 2013 (K)

PETITIONER :

**BHARGAVAN NAIR,
S/O. CHANDRASEKHARA PILLAI, SANNIDI GRAMAM,
JENARDHANAPURAM, VARKALA, THIRUVANANTHAPURAM.**

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS :

- 1. THE DISTRICT COLLECTOR,
COLLECTORATE, KUDAPANAKUNNU,
THIRUVANANTHAPURAM-695 005.**
- 2. THE COMMISSIONER, LAND REVENUE,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 3. TAHSILDAR,
TALUK OFFICE, CHIRAYINKEEZHU,
THIRUVANANTHAPURAM-695 304.**
- 4. VILLAGE OFFICER,VARKALA VILLAGE,
VARKALA, THIRUVANANTHAPURAM-695 141.**
- 5. VARKALA MUNICIPALITY,
VARKALA, THIRUVANANTHAPURAM-695 141,
REPRESENTED BY ITS SECRETARY.**
- 6. THE AGRICULTURAL FIELD OFFICER,
KRISHI BHAVAN, VARKALA, THIRUVANANTHAPURAM-695 141.**

**R1 TO R4,R6 BY GOVERNMENT PLEADER SRI.MOHAMMED SHAFI
R5 BY ADV. SRI.G.S.REGHUNATH
SRI.M.R.RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF SALE DEED NO.2189/94 OF THE SUB REGISTRY OFFICE, VARKALA, DTD. 15.3.1994.
- P2 : COPY OF THE SALE DEED NO.1216/2008 OF THE SUB REGISTRY OFFICE, VARKALA, DTD. 20.10.2008.
- P3 : COPY OF THE SALE DEED NO.2157/2008 OF THE SUB REGISTRY OFFICE, VARKALA, DTD. 21.2.2008.
- P4 : COPY OF THE REPORT DTD. 28.9.2007.
- P5 : COPY OF THE 4TH RESPONDENT SUBMITTED A REPORT TO THE 3RD RESPONDENT DTD. 23.11.2007.
- P6 : COPY OF THE REPORT DTD. 5.1.2008.
- P7 : COPY OF THE JUDGMENT DTD. 25.10.2011 IN WPC NO.38153/2010.
- P8 : COPY OF THE REPLY DTD. 21.2.2012.
- P9 : COPY OF THE ORDER OF THE DISTRICT COLLECTOR DTD. 13.6.2011.
- P10: COPY OF THE ORDER DTD. 31.1.2013.
- P11(A): COPY OF THE RELEVANT PAGES OF THE DATA BANK
- P11(B): COPY OF THE REPORT OF THE VILLAGE OFFICER DATED 7/10/2014
- P12: COPY OF THE REPORT DATED 20/8/2014.
- P13: COPY OF THE CERTIFICATE DATED 10/10/2014 ISSUED BY THE TALUK OFFICER.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO.JUDGE

P.R.RAMACHANDRA MENON, J.
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W.P.(C) No.26302 of 2013
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Dated this the 2nd day of March, 2015

JUDGMENT

The petitioner has approached this Court seeking the following prayers:

- a) To issue writ in the nature of the Mandamus or any other appropriate writ, order or direction compelling and commanding the respondents 1 and 2 to give land development permit to the landed properties which is mentioned as Item No.1 with immediate effect.
- c) To declare that the land mentioned as Item No.1 are garden lands and similar in all respects as that of Item No.2 properties and there is no impediments in giving land development permit to it.
- d) To grant such other reliefs in the interest of justice.

2. The learned counsel for the petitioner points out that the property is not a paddy land or wet land as defined under Section 2(xii) or 2(xviii) of Paddy Land And Wet Land Act, 2008 having effected the reclamation years back. However, simply stating that the property is a paddy land, development permit is not being issued to the petitioner, by virtue of which, irreparable loss and

injury is being caused to him and hence, the writ petition.

3. The learned counsel for the petitioner points out that the physical nature of the property is to be verified. The prayer is to cause the matter to be considered by the 2nd respondent after causing a spot inspection to be conducted, also ascertaining the other relevant facts, if any. The learned counsel also points out that the Municipality has been impleaded in the party array only as a formal party and no relief is sought against the Municipality for the time being.

4. After hearing both the sides, the writ petition is disposed of, directing the 2nd respondent to cause an inspection to be arranged with notice to the parties concerned including the Municipality and ascertain the physical nature of the property, whether it was lying as a paddy land or wet land as on the date of commencement of the Paddy Land And Wet Land Act, 2008. If a finding is arrived at that the property was not a paddy land or wet land as per the date of commencement of the Paddy Land And Wet Land Act, 2008, provisions of Act 28 of Paddy Land And Wet Land Act, 2008 are not attracted in view of the law declared by this Court as per the decision reported in **Jafarkhan v K.A**

Kochumarakkar and Others (2012(1) KLT 491). On such an event, the petitioner is entitled to have the development permit and appropriate direction may be issued to the 1st respondent in this regard, submits the learned counsel.

4. In the said circumstance, the writ petition is disposed of, directing the 1st and second respondents to do the needful in accordance with law including a factual verification with notice to the petitioner so as to issue land development permit to the petitioner at the earliest, at any rate, within 'two months' from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

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//True Copy//

P.A to Judge