

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 25890 of 2014 (I)

PETITIONER:

HUSSAIN, S/O. MUHAMMED @ KUNHIPPA HAJI,
AGED 62 YEARS, PALLIKKATTIL HOUSE,
PARAVANNOOR, KALPAKANCHERY, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

1. THE KALPAKANCHERY GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
KALPAKANCHERY, MALAPPURAM DISTRICT - 676 551.
2. THE SECRETARY,
KALPAKANCHERY GRAMA PANCHAYATH,
KALPAKANCHERY, MALAPPURAM DISTRICT - 676 551.

R-R1 BY ADV. SRI.S.MOHAMMED AL RAFI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE PHOTOGRAPHS OF THE BUILDING AND THE PROPERTIES OF THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE CIRCULAR OF THE L.S.G.D DEPARTMENT DATED 22.01.2011 AS NO.4545/RAI/11/LSGD.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 25890 of 2014 (I)

Dated this the 27th day of January, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Grama Panchayath, apart from perusing the record.

2. Briefly stated, the petitioner, after constructing a commercial building within the territorial limits of the first respondent Grama Panchayath, having initially not obtained the necessary building permit, applied for regularisation. It seems that the petitioner's request was not considered on the ground that the property is classified as 'nilam' in the revenue records. Today, across the Bar, the learned counsel for the respondent Grama Panchayath has handed over what is said to be the proceedings of Grama Panchayath dated 29.09.2014, in vernacular, rejecting the application No. A 24885 of the petitioner on the said ground. Under those circumstances, questioning the rejection of regularisation, the petitioner has

filed the present writ petition.

3. The learned counsel for the petitioner, placing reliance on circular No. 4545/RA1/11/LSGD, dated 22.01.2011, issued by the Government of Kerala, has strenuously contended that either for granting permit or for regularising any unauthorised construction, the provisions of the Paddy and Wet Land Act, 2008 (for short 'the Act') would not come in the way, since the land stood converted prior to the enforcement of the Act. According to him, there is no iota of doubt even in the minds of the Grama Panchayath authorities that the petitioner's land had been converted much prior to the said date. The learned counsel has also submitted that in the circular, no distinction has been made between a residential building and a commercial building and that unless the Grama Panchayath has any other grounds than that the land has been recorded as 'nilam' in the revenue records, there ought not to have been any objection concerning regularisation.

4. The learned counsel for the respondent Grama

Panchayath, on the other hand, has submitted that the circular under reference would only apply to the constructions which is yet to take place and that once a building has been unauthorisedly constructed, no person can take advantage of that. He has further submitted that assuming, without conceding, that the circular has any application to the case of the petitioner, it would be confined only to residential buildings, but not to the commercial buildings.

5. I am afraid, the contentions of the learned counsel for the Grama Panchayath cannot be accepted, for nothing could be gathered from the circular dated 22.01.2011 to uphold the contention of the Grama Panchayath that the issue of the land having been converted prior to the enforcement of the Act would not extend to the constructions that had already been made. For that matter I do not even see any distinction having been made between the commercial buildings on one hand and the residential buildings on the other.

In the facts and circumstances, it is made clear that unless

the respondent Grama Panchayath has any other objection than the fact that the land was once reflected in the revenue records as 'nilam', it ought to process the petitioner's application subject to his compliance with other statutory parameters, and pass appropriate orders thereon, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. Needless to observe that in the light of the above findings by this Court, the proceedings dated 29.09.2014 through which the petitioner's application was rejected, stand set aside.

This writ petition is disposed of as above.

sd/- DAMA SESHADRI NAIDU, JUDGE.

