

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. 26124 of 2015 (M)

PETITIONER(S) :

**SAIDALI P.P., AGED 45 YEARS,
S/O.ABOOBAKER, PALENPADIYAN KADUKKOOR (H),
PARADI, KOOTILANGADI P.O., MALAPPURAM DISTRICT, PIN- 676 506.**

BY ADV. SRI.K.DILIP

RESPONDENT(S) :

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE KOOTILANGADI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, P.O.PADINJATUMURI,
MALAPPURAM DISTRICT.**
- 3. THE AGRICULTURAL OFFICER,
KRISHI BHAVAN, KOOTILANGADI, PADINJATTUMMURI,
MALAPPURAM DISTRICT.**

R1 & R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

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

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: A TRUE COPY OF THE DOCUMENT BEARING NO.1146/2008
DATED 25.03.2008.**

**EXHIBIT P2: A TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED TO
THE PETITIONER IN RESPECT OF THE PROPERTY BY
THE VILLAGE OFFICER, KOOTILANGADI DATED 12.07.2012.**

EXHIBIT P3: A TRUE COPY OF THE LOCATION SKETCH DATED NIL.

**EXHIBIT P4: A TRUE COPY OF THE PHOTOGRAPHS SHOWING ACTUAL FACT
SITUATION OF THE LAND IN QUESTION DATED NIL.**

**EXHIBIT P5: A TRUE COPY OF THE DATA BANK REGISTER WITH RESPECT TO
THE LAND IN QUESTION DATED NIL.**

**EXHIBIT P6: A TRUE COPY OF THE CERTIFICATE ISSUED BY
THE 3RD RESPONDENT DATED 12.03.2012.**

**EXHIBIT P7: A TRUE COPY OF THE APPLICATION SUBMITTED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT
DATED 29.07.2015.**

**EXHIBIT P8: A TRUE COPY OF THE RECEIPT ISSUED BY
THE 2ND RESPONDENT DATED 29.07.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

W.P(C) No.26124 of 2015

Dated this the 21st day of August, 2015

JUDGMENT

The petitioner is aggrieved by the non-consideration of Ext.P7 application submitted by the petitioner for the building permit for the reason that it is a reclaimed land.

2. The petitioner is the owner of 20 cents of land comprised in Sy.No.92/12 which is a garden land even though it is shown as Nilam in the revenue records. The petitioner alleges that the actual fact situation does not suggest any characteristics of nilam. The petitioner points out that the said property is not included as a cultivable land in the data bank prepared and the same is described as converted land for more than 10 years in the data bank register. The petitioner's application for a commercial building permit was rejected earlier. Even though the petitioner approached this Court

several times and got orders to reconsider the same, the 2nd respondent with some selfish motive rejected the same at times. Now, it is understood that the property on the rear side of the land in question got building permit and he started construction. Then the petitioner on 29.7.2015 submitted a fresh application before the second respondent in prescribed form and order and the same is pending consideration. There is considerable delay in processing the application and the delay is fatal. The authorities are not taking steps to process his application. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner and the learned senior Government Pleader.

4. As the learned counsel for the petitioner confined his argument to the limited prayer for a direction to the respondent for a time bound disposal of Ext.P7 application, this Court is of the view that

this writ petition can be disposed of even without issuing notice to the Panchayat.

5. 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.

6. It can be seen from the photograph that the property is not a paddy land. 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.

7. 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.

8. 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 light of what has been stated above, this writ petition is disposed of directing the second

respondent to consider Ext.P7 application and grant permit, after inspecting the petitioner's property, if they were satisfied that the petitioner's property is not fit for paddy cultivation at present. The petitioner also shall be given an opportunity of being heard. The entire exercise shall be completed within a period of three weeks from the date of receipt of a copy of this judgment.

sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE