

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No.28427 of 2014 (C)

PETITIONER :

**HARIDASAN, AGED 45 YEARS
S/O.RAMAN, KANHIRANI HOUSE, KARIMBA,
KALLADIKODE POST, PALAKKAD DISTRICT PIN : 679 596.**

BY ADV. SRI.R.SREEHARI

RESPONDENT :

- 1. THE DISTRICT COLLECTOR
CIVIL STATION, PALAKKAD 679 001.**
- 2. THE TAHSILDAR
TALUK OFFICE, MANNARKKAD - 678 582.**
- 3. VILLAGE OFFICER
KARIMBA II VILLAGE, KARIMBA POST, PIN : 678 597.**
- 4. THE AGRICULTURAL OFFICER
KRISHI BHAVAN, KARIMBA, KARIMBA POST 678 597.**
- 5. THE SECRETARY
KARIMBA GRAMA PANCHAYATH, KARIMBA POST 678 597.**
- 6. KARIMBA GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, KARIMBA POST
PIN 678 597.**

**GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN (SR)
R5 BY ADV. SRI.U.BALAGANGADHARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 28427 of 2014 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1 : PHOTOCOPY OF DOCUMENT NO.37/2013 OF SRO, MANNARKKAD.**
- EXT.P-2 : PHOTOCOPY OF POSSESSION CERTIFICATE DDT.2.2.2013 ISSUED BY
THE THIRD RESPONDENT**
- EXT.P-3 : PHOTOCOPY OF THE ORDER DATED 15.5.2013 OF THE WET LAND
JOINT COMMITTEE.**
- EXT.P-4 : PHOTOCOPY OF THE PLAN SUBMITTED BEFORE THE 6TH
RESPONDENT FOR APPROVAL FOR THE CONSTRUCTION OF THE
BUILDING.**
- EXT.P-5 : PHOTOCOPY OF THE NO OBJECTION CERTIFICATE DT.12.6.2013
ISSUED BY THE 6TH RESPONDENT PANCHAYATH.**
- EXT.P-6 : PHOTOGRAPH SHOWING THE CONSTRUCTION OF FOUNDATION FOR
THE RESIDENTIAL BUILDING IN THE PETITIONER'S PROPERTY.**
- EXT.P-7 : PHOTOCOPY OF THE CERTIFICATE DATED 24.9.2014 ISSUED BY
KERALA STATE FINANCIAL ENTERPRISES LTD, KALLADIKODE
BRANCH.**
- EXT.P-8 : PHOTOCOPY OF THE ORDER DATED 13TH MARCH 2013 ISSUED BY
THE THIRD RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

K.HARILAL, J

W.P.C.No.28427 of 2014

Dated this the 12th day of February, 2015

JUDGMENT

The petitioner is the owner in possession and enjoyment of 0.0365 Hectares of land in Sy.No.101/3 of Karimba II Village by virtue of Ext.P1 document. Even though, the property is a dry land in the revenue records it is shown as Nilam. In order to construct a residential building in the said land, the petitioner obtained building permit from the Panchayat by Ext.P5. Ext.P5 was issued after considering the report of the local level monitoring committee constituted under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter called 'the Act'). Thereafter, the petitioner obtained a loan of Rs.5,00,000/- from the Kerala State Financial Enterprises for the construction of the residential building. At that time, the third respondent issued Ext.P8 order under Section 12(2)(b) of the Act, directing the petitioner to stop the construction of the residential building, despite the

fact that, the petitioner has obtained Ext.P5 permission. This is the grievance projected by the petitioner in this writ petition.

2. The learned Counsel for the petitioner submits that, the third respondent has initiated the proceedings under the Act, in contravention of the report prepared and filed by the local level monitoring committee constituted under the Act. It is also submitted that, in Ext.P3 report prepared by the local level monitoring committee consists of Secretary, Grama Panchayat, Village Officer and Agricultural Officer. It is specifically reported that, the petitioner's property is one which was reclaimed more than 20 years ago, and the same is situated in a residential area. It is also specifically reported that, there is no paddy land near the petitioner's property. If permission is granted to construct building in the said property, the same will not affect the drainage system of that area. The said property is seen surrounded by the rubber plantations, where rubber trees having aged more than 23 years are standing. Thirdly the learned

Counsel submits that, if the property was reclaimed before 20 years, as reported by the local level monitoring committee, no proceedings can be initiated against the petitioner for the violation of the provisions under the Act, as the said Act has prospective operations only.

3. The learned Government Pleader advanced the arguments to justify the order passed by the third respondent interdicting the petitioner from making construction in the above property alleging violation of provisions under the Act.

4. The short question that arises for consideration is, whether Ext.P8 order passed by the third respondent is sustainable in view of the Act. Going by the said Act, it could be seen that the said Act has come into force on 12.8.2008, and the Act has prospective operations only. The local level monitoring committee, a statutory authority constituted under the Act, in Ext.P3 specifically reported that the petitioner's property is one which was reclaimed more than 20 years back, and laying in a residential area and there is no other paddy land near

this property. It is also reported that the property is surrounded by rubber plantations, having rubber trees aged more than 23 years. This court in the decisions reported in **Shahanaz Shukkoor v. Chelannur Grama Panchayat [2009 (3) KLT 899]**, **Jafarkhan v. K.A.Kochumakkar and Others [2012 (1) KLT 491]**, **Pareed Salim v. State of Kerala and Others [2012 (4) KHC 79]** and **Aishabeevi v. Superintendent of Police [2014 (3) KLT 1078]** held that the question whether the land is suitable for paddy cultivation is a matter to be determined on the basis of the existing ground reality, notwithstanding the description of the land in the revenue records. The fact revealed from Ext.P3 report is that the said property is not a paddy land, suitable for paddy cultivation and the same was converted more than 20 years ago. I find no reason to disbelieve Ext.P3 report, which was prepared by the competent officers who are empowered under law.

5. If that be so, I am of the opinion that, Ext.P8 order interdicting the petitioner alleging the violation of

the provision under the Act, is illegal, unsustainable and liable to be quashed *in limine* and I do so.

This writ petition will stand allowed.

Sd/-
K.HARILAL
JUDGE

/TRUE COPY/

PA TO JUDGE

VS