

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 31025 of 2014 (C)

PETITIONER:

SILVERSTER.C., S/O.CHINNAPPA NADAR,
AGED 50 YEARS, 4/329, NILA NAGAR,
KINASSERI PANCHAYAT, KINASSERI.P.O.,
PALAKKAD-678 707.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:

1. THE KANNADI GRAMA PANCHAYAT
REP. BY ITS SECRETARY, KANNADI,
PALAKKAD DISTRICT. PIN-678 701.
2. THE SECRETARY,
KANNADI GRAMA PANCHAYATH, KANNADI
PALAKKAD DISTRICT. PIN-678 701.

BY ADV. SRI.P.R.VENKETESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 31025 of 2014 (C)

PETITIONER'S EXHIBITS:

EXT. P1- A TRUE COPY OF THE POSSESSION CERTIFICATE RELATING TO THE PLOT.

EXT. P2- A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENTS IN WRIT PETITION (CIVIL) NUMBER 21426 OF 2013 OF THIS HONOURABLE COURT.

EXT. P3- A TRUE COPY OF THE JUDGMENT DATED 21 OCTOBER 2013 IN WRIT PETITION (CIVIL) NUMBER 21426 OF 2013 OF THIS HONOURABLE COURT.

EXT. P4- A TRUE COPY OF THE LETTER DATED 1 NOVEMBER 2014 ISSUED BY THE SECOND RESPONDENT.

EXT. P5- A TRUE COPY OF THE REPLY DATED NOVEMBER 10, 2014 EITHER PETITIONER IN RESPONSE TO EXHIBIT P4.

EXT. P6- A TRUE COPY OF THE ORDER DATED NOVEMBER 7, 2014 OF THE SECOND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.31025 of 2014 C

Dated this the 21st day of January, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, being the owner of a residential plot in Kannadi II Village, Palakkad Taluk and District, initially applied for building permit, but could not secure it. Aggrieved thereby, he filed W.P.(C)No. 21426/2013 and invited Exhibit P3 judgment. This Court disposed of the writ petition with the following direction:

“Heard. In view of the admission in the counter affidavit that the petitioner's property has undergone a transformation

from a paddy field, there is no justification for not having considered his application for building permit. If the petitioner's property was converted prior to the coming into force of Act 28 of 2008, the provisions of the said enactment do not have any application to the land owned by him. The circular relied upon in the counter affidavit has been issued by the Government to mitigate the rigor of the provisions of Act 28 of 2008, by permitting construction of residential houses in the circumstances made mention of therein. The said circular also can have no application to the petitioner's application if the same was not a paddy field at the time of coming into force of Act 28 of 2008. Therefore, it is for the second respondent to consider the petitioner's application for building permit, to address the above question, if necessary by conducting an inspection of the petitioner's property and to pass appropriate orders thereon without further delay.

.....”

3. Purportedly in compliance with Exhibit P3 judgment, the second respondent issued Exhibit P6 proceedings once again rejecting the claim of the petitioner for building permit. Thus, for the second time the petitioner has approached this Court.

4. The learned counsel for the petitioner has submitted that this Court through Exhibit P3 judgment has made a threadbare discussion of the issue and directed the second respondent to consider the petitioner's application for building permit. According to him, the second respondent reiterated the same reasons which already stood concluded through Exhibit P3 judgment and rendered Exhibit P6 proceedings, which, in the view of the learned counsel for the petitioner, are entirely unsustainable.

5. The learned counsel has submitted that Section 235L(i) of the Kerala Panchayat Raj Act is the only provision that speaks of any statutory interdiction against granting building permit. He has further submitted that Rule 13 of the Kerala Panchayat Raj Building Rules reiterates the same position. Since Section 235L(i) of the Act mandates that building permit cannot be granted in violation of law being in force, it is requisite to refer to Section 14 of the Kerala

Conservation of Paddy Land and Wetland Act, 2008 ('Wetland Act'). The learned counsel has strenuously contended that even going by Section 14 of the Wetland Act, it is not mandatory that the petitioner should obtain a certificate from the Revenue Divisional Officer with regard to the nature of the land. In support of his submissions, the learned counsel has placed reliance on **Aishabeevi and Another v. Superintendent of Police, Ernakulam and Others** (2014 (3) KHC 678 (DB)).

6. The learned counsel has also submitted that the nature of the land has been correctly observed in Exhibit P6, but rejection was made on mere technicalities. In furtherance of his submissions, the learned counsel has drawn my attention to Exhibit P2 counter affidavit filed by the respondents in the earlier writ petition filed by the petitioner, to contend that the land was not included in the data bank.

7. Per contra, the learned Standing Counsel for the respondents has strenuously contended that Section 14 of the Wetland Act imposes an embargo on the local authorities to grant any permit without proper clearance and necessary certificate. The factum whether the land stood converted prior to the enforcement of the Act or that it has not been included in the data bank is not within the knowledge of the respondent authorities. Under those circumstances, it is incumbent on the part of the petitioner to obtain the necessary certificate to enable the respondents to process the application further. In support of his submissions, the learned Standing Counsel has brought to my notice an unreported judgment dated 08.12.2014 in W.P.(C)No.32696/2014.

8. Indeed, in Exhibit P6, the impugned proceedings, the second respondent made clear that there are buildings on three sides of the property and that the plot is unfit for

paddy cultivation. The only ground that has weighed with the respondent authorities in refusing to grant building permit is that the petitioner could not produce any document to show that the property underwent transformation prior to the commencement of the Wetland Act or that the land was not included in the data bank. Exhibit P6 proceedings in the end conclude that the petitioner is required to obtain exemption under Kerala Land Utilisation (KLU) Order.

9. The singular issue that falls for consideration is as follows: Whether in the face of the admitted fact that the piece of land sought to be built upon is situated adjacent to the constructed area, that it is not fit for paddy cultivation and that it is not included in the data bank, is it still mandatory that the owner of the property is required to obtain exemption under KLU order?

10. If we peruse Section 235L(i) of the Act, approval of building sites or permission to construct or re-construct a building is required to be refused, if it is to be in contravention of any law or order, rule, declarations, or bye-law made under any law. Section 14 of the Wet Land Act is to the following effect:

“14. Refusal of licence by the Local Authority.- Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or in the Kerala Municipality Act, 1994 (20 of 1994) no Local Authority shall grant any licence or permit under the said Act for carrying out any activity or construction in a paddy land or a wetland converted or reclaimed in contravention of the provisions of this Act.”

11. Further, Section 5(4) of the Wetland Act mandates that the committee under the Act shall prepare the data bank with the details of the cultivable paddy land and wetland within the area of jurisdiction of the committee.

12. Admittedly, going by Exhibit P2 counter affidavit filed by the respondents in the earlier round of litigation, the property in question is not included in the data bank. Coupled with that, if we examine Exhibit P6 proceedings, the very second respondent Secretary has categorically observed that the land has been surrounded on three sides with structures and that it is no longer fit for paddy cultivation.

13. A learned Division Bench of this Court in Aishabeevi (supra), after referring to the preamble of the Act, has held as follows: (para 24 of KHC)

“25. Similarly, the Conservation of Paddy Land and Wet Land Act does not say anything about the legal status of the paddy land which stood converted to garden land before the commencement of the above Act, without permission under Land Utilisation Order. But S. 14 of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 imposes a bar against granting of licence or permit to carry out any activity or construction in paddy land converted after the commencement of this new Act. Therefore, it could be reasonably presumed that such a bar is not made

applicable to the paddy land which stood converted before the commencement of the above said Act.”

14. Going by the ratio laid down by their Lordships in the above extracted portion of the judgment, it is very evident that there shall not be any presumption that merely for the reason that no exemption under KLU order has been passed or produced, no permit shall be granted, once it is established that the land stood converted before the commencement of the above said Act.

15. Though the learned Standing Counsel for the respondents has placed reliance on an unreported judgment of this Court in W.P.(C)No.32696/2014 dated 08.12.2014, the discussion in the said decision, after extracting the judgments of two learned Division Benches rendered earlier, would not definitively indicate that even in the absence of land in question not getting reflected in the data bank, still, the owner of the land is required to obtain

exemption under KLU order. In my considered opinion, the decision relied on by the learned counsel for the respondents has not addressed the said aspect.

16. Thus, I am of the opinion that there is sufficient force in the submission of the learned counsel for the petitioner that Exhibit P6 clearly speaks about the nature of the land. That apart, once we take Exhibit P2 counter affidavit of the respondents into account, there is no doubt that the land has not been included in the data bank. Accordingly, there ought not have been any impediment for the respondents to consider the petitioner's application in positive terms.

17. Initially, I was inclined to dispose of the writ petition with a direction to the second respondent to consider the petitioner's application in accordance with law. At this juncture, the learned counsel has brought to my notice the earlier decision of this Court and the

consequential order passed by the second respondent through Exhibit P6 reiterating the self same reasons, which in my considered view, already stood answered through Exhibit P3 judgment.

18. Under these circumstances, this Court is of the opinion that a positive mandamus is required to be issued to the second respondent to further process the petitioner's application without reference to the issue of Wetland Act, subject to the petitioner complying with all other statutory parameters.

With the above observation, the writ petition stands allowed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv