

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 33507 of 2015 (K)

PETITIONER(S) :

SAFIYA AGED 52 YEARS
W/O.C.A.ALIYAR, CHENNAMPILLY HOUSE, TARIQUE MANZIL
PANAYIKULAM 683 511.

BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR

RESPONDENT(S) :

1. ALANGAD GRAMA PANCHAYATH
ALANGAD, NEERKODE, 683 511
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY
ALANGAD GRAMA PANCHAYATH, ALANGAD, NEERKODE
683 511.

R1,R2 BY ADV. SRI.DINESH MATHEW J.MURICKEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. COPY OF THE SALE DEED NO.350/2004 OF SRO ALANGAD EXECUTED IN FAVOUR OF THE PETITIONER.

EXHIBIT P2. COPY OF THE PHOTOGRAPHS OF THE PROPERTY COVERED BY EXHIBIT P1.

EXHIBIT P3. COPY OF THE PARTITION DEED NO.2780/1985 OF SRO ALUVA.

EXHIBIT P4. COPY OF THE GIFT DEED NO.3453/1992 SRO ALANGAD.

EXHIBIT P5. COPY OF THE RECEIPT DATED 27.4.14 IN RESPECT OF THE PROPERTY COVERED BY EXHIBIT P1.

EXHIBIT P6. COPY OF THE ORDER DATED 11.9.15 ISSUED BY 2ND RESPONDENT.

EXHIBIT P7. COPY OF THE RELEVANT PAGES DATA BANK/LAND IDENTIFICATION DETAILS PREPARED IN RESPECT OF THE PROPERTIES IN THE ARE COMING UNDER THE PROVISIONS OF THE KERALA CONSERVATION OF PADDY LAND AND WET LAND ACT.

EXHIBIT P8. COPY OF THE ANSWER RECEIVED BY THE PETITIONER FROM THE AGRICULTURAL OFFICER, ALANGAD IN RESPECT OF THE PROPERTY IN SURVEY NO.330/7 OF ALANGAD VILLAGE UNDER RIGHT TO INFORMATION ACT.

EXHIBIT P9. COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER, ALANGAD IN RESPECT OF THE PROPERTY COVERED BY EXHIBIT P1.

EXHIBIT P10. COPY OF THE JUDGMENT DATED 10.6.15 IN WPC 15847/15 OF THIS HONOURABLE COURT.

RESPONDENT(S) ' EXHIBITS

ANNEXURE R1(A)-TRUE COPY OF THE CERTIFICATE ISSUED FROM THE VILLAGE OFFICE, ALANGAD DATED 28.7.2015

TRUE COPY

SKS

P.A TO JUDGE

K.HARILAL, J.

W.P(C)NO. 33507 OF 2015

Dated this the 7th day of December, 2015

JUDGMENT

The petitioner is in possession of property having an extent of 21.250 cents in Sy.No.330/7 of Alangad Village situated on the side of Edayar-Panayikkulam PWD road, by virtue of Ext.P1. According to the petitioner, the said property is lying as a garden land and various kinds of trees are planted in the said property and those trees are aged more than 55 years. The petitioner applied for a building permit to the respondents for constructing a godown in the said property covered by Ext.P1. However, her application seeking building permit was not properly considered and rejected by Ext.P6 stating that the records shows it as a paddy field. This is the grievance projected in this writ petition.

2. Heard the learned counsel for the petitioner and learned Standing Counsel for the respondents.

3. It is a case of the petitioner that the property covered by Ext.P1 is not a paddy land converted after the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. The said property was lying as a garden land, since the last more than 50 years and having so many aged trees, which is evidenced by Ext.P2 series of photographs. It is also contended that all the properties surrounding the petitioner's property is lying as garden land and huge residential buildings are situating in around the property in question. At the time of transfer of property, the said property was lying as garden land. Going by Ext.P6 order, rejecting the application for building permit, it is seen that the application was rejected on the sole ground that the survey number shown in the application is covered by paddy land in the revenue records. There is no findings to the effect that the property was a paddy land, which was converted after the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. Ext.P6 does not say anything about the actual lie of the land at

present. This Court in several judgments considered the question whether building permit can be denied on the reason that the entries in the revenue records shows that the property as nilam.

4. It was held in *Shahanaz Shukkoor v. Chelannur Grama Panchayat* [2009 (3) KLT 899] as follows:

“The Kerala Conservation of Paddy Land and Wetland Act, 2008, deals with the conversion of lands which are wetland or paddy fields, on the basis of actual fact situation and not depending on the description of the property in the revenue records. The definition of the terms 'paddy field' and 'wetland' in the said Act is sufficient material to hold that the said statute operates on the basis of the facts as they exist on ground realities and not on any quality or type of land, depending on its description in the title document.”

5. In view of the above decision, if the property is one converted as garden land after the commencement of Kerala Conservation of Paddy Land and Wet Land Act, 2008, certainly it would fall under the prohibition envisaged under

Sec.3 of the said Act and thereby permit cannot be issued under section 14 of the said Act. Certainly it is obligatory on the part of the respondents to conduct a site inspection as to verify the ground reality, that is, the present lie of the land. On site inspection, if the 2nd respondent is satisfied that the disputed property is not a converted or reclaimed one after the commencement of the Conservation of Paddy Land and Wet Land Act, 2008, the respondents are free to issue building permit, if the application is in the order otherwise.

6. In the above view of the matter, Ext.P6 will stand set aside and the second respondent is directed to conduct a site inspection within a period of one month from the date of receipt of a copy of this judgment and pass orders afresh within one month thereafter, in accordance with the ground reality found in the inspection.

The writ petition is disposed of as above.

sks

K.HARILAL, JUDGE

