

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C) .No. 33906 of 2014 (K)

PETITIONER(S) :

P.C.MUHAMMED,
AGED 53 YEARS, S/O.LATE AHAMMEDKUTTY HAJI,
P.C.HOUSE, IRUVETTY,
THOTTILANGADI, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR.

RESPONDENT(S) :

1. KAVANOOR GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, KAVANOOR,
MALAPPURAM DISTRICT, PIN-673 644.

2. THE SECRETARY,
KAVANOOR GRAMA PANCHAYATH, KAVANOOR,
MALAPPURAM DISTRICT, PIN-673 644.

R1 BY ADV. SRI.K.M.SATHYANATHA MENON.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29/07/2015, THE COURT ON 05-08-2015 DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1: COPY OF THE RECEIPT SHOWING THE REMITTANCE OF PROPERTY TAX ISSUED BY THE 2ND RESPONDENT DATED 11.9.2014.

EXT. P2: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED, 11.9.2014 BEFORE THE 2ND RESPONDENT.

EXT. P3: COPY OF THE CONSENT LETTER GIVEN BY THE FORMER OWNER OF THE PROPERTIES.

EXT. P4: COPY OF THE PHOTOGRAPHS OF THE PROPERTIES OF THE PETITIONER WHEREIN A SAWMILL IS FUNCTIONING.

EXT. P5: COPY OF THE CERTIFICATE ISSUED BY THE DEPUTY DIRECTOR OF AGRICULTURE, KRISHI BHAVAN, KAVANOOOR DATED, 12.12.2014.

EXT. P6: COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED, 12.12.2014 AS NO.A2-3918/14.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 33906 of 2014

Dated this the 5th day of August, 2015.

JUDGMENT

The petitioner has approached this Court seeking the following reliefs:

(i) Call for the entire records leading upto Ext.P6 and quash the same by the issuance of a writ of certiorari or any other appropriate writs, orders or directions;

(ii) Issue a writ of mandamus or any other appropriate writs, orders of directions commanding the respondents to change the ownership of Building No.6/409, which is standing in the properties of the petitioner, in the name of the petitioner, forthwith;

(iii) Issue a writ of mandamus or any other appropriate writs, orders of directions commanding the respondents to accept the application for building permit and issue the same in accordance with the Kerala Panchayath Building Rules;

2. The petitioner is conducting a saw-mill in his properties. In the properties of the petitioner, there is a

building being the number 6/409. The petitioner alleges that after the purchase of the properties, the petitioner had remitted property tax in respect of the building as evidenced by Ext.P1 receipt. The building, stands in the name of one Mattada Venugopalan, who is the former owner of the properties. The petitioner wanted to construct another building in the said properties and to get the name of the owner of the building changed in the building tax register. The petitioner had made Ext.P3 application along with the assignment deed for changing the name of the owner of the building in favour of the petitioner. Ext. P4 is the consent letter given by the former owner of the properties. Though the petitioner had submitted an application for building permit in the said properties, the same has not even been accepted for the reason that in the revenue records, one portion of the properties is mentioned as 'nilam'. The petitioner further alleges that the Deputy Director of Agriculture, Krishi Bhavan, Kavanoor, vide Ext.P5, had certified that the properties are not

included in the Data Bank. The second respondent has rejected application, vide Ext.P6 order, for the change of ownership of the building for the reason that the existence of the building is not mentioned in the assignment deed and unless the deed is corrected, the ownership of the building cannot be changed. As far as the application for building permit for constructing an additional building is concerned, the secretary is not even accepting the application for the reason that the description of the properties as 'nilam' in the revenue records. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the respondent, it is contended that as per the records of the panchayath, the building with No.6/409 stands in the name of one Sri. Mattada Venugopalan. Originally the property coming to an extent of 39.78 cents in block No.28 in Kavanoor Village and falling in Re-Sy.No.389/14, 389/18 was owned by Smt. Savitri, W/o. Mattada Venugopalan. From her, the above said property was

purchased by one Kolothum Thodi Shabeerali and two others vide document No.3031/2004. Thereafter, the said property was purchased by Sri. Puthen Peediyekkal Kunjolan Kutty vide document No.4527/2007. Thereafter, it was in the year 2011, that the petitioner had purchased the above said property vide document No.1389/2011. However, in none of the above title deeds there was reference about the transfer of such a building in favour of the subsequent purchasers. Moreover, the owner of the building, Sri. Mattada Venugopalan was also not a party to the above transactions. Hence in the title deed produced by the petitioner along with Exts.P2 and P3, there was no reference of such a transfer of ownership of the building to the subsequent purchasers and at last to the petitioner. According to them, since there was no such reference of transfer of ownership of building in the name of the petitioner in the title deed, the respondent panchayath had directed the petitioner to include the building in the title deed and make the necessary correction in the title deed and to produce the rectification

deed. Till this date, the petitioner has not complied with the said direction. It was further submitted that the petitioner's application for building permit was accepted by the front office and receipt was given. It was further contended that the application was for the construction of the building for industrial occupancy. As per the Panchayath Building Rules for constructing a building for industrial occupancy, approval of the lay out by the District Town Planner is mandated by Rule 59 (2). Moreover, a certificate of approval from the Director of Fire Force or an officer authorised by him in this behalf also shall be obtained. It is also contended that Ext.P5 certificate produced by the petitioner itself shows that only the property comprised in Re-Sy.No.389/18 is not included in the data bank. Therefore, they prayed for the dismissal of the writ petition.

4. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayath in the matter.

5. The rejection of the petitioner's application for change of ownership of the building is on account of the fact that the petitioner's title deed does not refer to the building and therefore he cannot claim absolute right over the building. The learned counsel for petitioner would submit that a mistake had crept in the first document and the same mistake was carried forward in the subsequent documents also. The petitioner has obtained consent letter from the owner of the properties in whose name the ownership of the building stands now. The entire complication arose on account of the fact that the property where the building is situated was in the name of Savitri, who is the wife of Mattada Venugopalan where as, as per the records in the panchayath, the building was in the name of the husband of the owner of the land. It is true that the description of the property in the title deed does not contain the building. However, it is an admitted fact that on the date of execution of the sale deed in the name of the petitioner, the building was there. Therefore, once the

property is transferred, the building which has formed part of the land would also become the subject of the same transfer in the absence of a specific recital in the title deed, reserving the right over the building in favour of the vendor. Had it been the intention of the vendor to exclude the building from the purview of transfer, the same would have found a place in the document. In the absence of the same, a subsequent consent letter from the person whose name is made mention of in the property register of the panchayath is sufficient to indicate that the ownership over the property has been transferred in the name of the petitioner. Therefore, the first contention of the respondent panchayath will not stand.

6. The second allegation of the petitioner is that his application for building permit for constructing an additional building was rejected on the ground that the property is described as 'Nilam' in the revenue records. Though it was strenuously argued by the learned counsel for the respondent panchayath that the petitioner's property comprised in Re-

Sy.No.389/18 only was excluded from the data bank, Ext.P4 photographs would indicate that the petitioner's property is a dry land and the building are come up in his surrounding properties.

7. 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 for construction.

8. 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.

9. 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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

10. 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.

11. Regarding the other arguments raised in the counter affidavit filed by the respondent, such as want of clearance from the other some authorities, this Court is of the

view that it can be cured by the petitioner by obtaining the requisite clearance from the other authority.

Therefore, this writ petition is disposed of

(a) directing the respondent panchayath to change the ownership of the building to the name of the petitioner in the records maintained by the panchayath on the strength of the title deed relied on by the petitioner as well as the consent letter given by the person whose name has been entered in the property register of the panchayath as the owner of the building.

(b) directing the respondent panchayath to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioner and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation.

(c) It shall be open to the petitioner to produce the requisite clearance from the District Town Planner as well as from the Director of Fire Force or other officers as required under law for obtaining the permit for constructing the building for the industrial occupancy.

This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.