

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 33854 of 2015 (F)

PETITIONER:

- 1. REMADEVI, W/O.VIKRAMAN NAIR.A.B.,
AGED 46 YEARS, LEKSHMI NIVAS, NANDOOR,
PALLIPAD.P.O., HARIPAD, ALAPPUZHA DISTRICT.**
- 2. A.B.VIKRAMAN NAIR, AGED 52 YEARS,
NEENDOOR, PALLIPAD.P.O., HARIPAD,
ALAPPUZHA DISTRICT.**

**BY ADVS.SMT.I.VINAYAKUMARI
SMT.P.V.SOBHANA**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
AGRICULTURE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DISTRICT COLLECTOR,
ALAPPUZHA CIVIL STATION, ALAPPUZHA.**
- 3. THE REVENUE DIVISIONAL OFFICER, CHENGANOOR.**
- 4. THE VILLAGE OFFICER, CHINGOLI, ALLEPPY DISTRICT.**
- 5. THE AGRICULTURAL OFFICER, KRISHI BHAVAN,
CHINGOLI, CHINGOLI.P.O, PIN 690 532,
ALAPPUZHA DISTRICT.**
- 6. CHINGOLI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, SURESH PRABHU.R.,
CHINGOLI GRAMA PANCHAYATH OFFICE,
CHINGOLI.P.O.- 690 532, ALAPPUZHA DISTRICT.**

**R1 TO R5 BY SENIOR GOVT. PLEADER SMT.ANITHA RAVINDRAN
R6 BY ADV. SRI.G.BENO**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF THE REGD.PARTITION DEED NO.1076/1989 OF
CHEPAD SRO DATED 1.7.1989.
- EXT. P2 : A TRUE COPY OF THE LAND TAX RECEIPT ISSUED BY THE VILLAGE
OFFICER, CHINGOLI.
- EXT. P3 : A TRUE COPY OF THE LEASE AGREEMENT DATED 10.7.2014.
- EXT. P4 : A TRUE COPY OF THE BUILDING PERMIT APPLICATION
DATED 17.4.2015.
- EXT. P5 : A TRUE COPY OF THE NOTICE OF THE PANCHAYAT DATED 18.4.2015.
- EXT. P6 : A TRUE COPY OF THE CERTIFICATE OF AGRICULTURAL OFFICER
DATED 22.6.2015.
- EXT. P7 : A TRUE COPY OF THE CONSENT LETTER OF VILLAGE OFFICER,
CHINGOLI DATED 27.6.2015.
- EXT. P8 : A TRUE COPY OF THE CERTIFICATE OF RDO CHENGANNOOR,
DATED 3.7.2015.
- EXT. P9 : A TRUE COPY OF THE LETTER NO.A3-960/15 DATED 13.10.2015 OF
CHINGOLI PANCHAYAT.
- EXT. P10 : A TRUE COPY OF THE PHOTOS EVIDENCING THE NATURE OF THE
PROPERTY.
- EXT. P11 : A TRUE COPY OF THE DECISION OF THIS HON'BLE COURT REPORTED
IN 2012(3)KLT 86.
- EXT. P12 : A TRUE COPY OF THE DECISION OF THIS HON'BLE COURT REPORTED
IN 2008(4) KHC 514.
- EXT. P13 : A TRUE COPY OF THE DECISION OF THIS HON'BLE COURT REPORTED
IN 2007(2)KHC 346.
- EXT. P14 : A TRUE COPY OF THE DECISION OF THIS HON'BLE COURT REPORTED
IN 2012(4)KLT 511.
- EXT. P15 : A TRUE COPY OF THE DECISION OF THIS HON'BLE COURT REPORTED
IN 2012(3)KLT 333.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

K.HARILAL, J.

W.P.(C) No.33854 of 2015

Dated this the 1st day of December, 2015.

JUDGMENT

The first petitioner is the owner in possession of 7.40 Ares of land comprised in Re-Sy.No.41/10 of Chingoli Village by virtue of the partition deed. According to the petitioners, even though the said land was originally lying as a paddy land, subsequently, the same was converted to dry land before the commencement of the Conservation of Paddy Land and Wetland Act, 2008. But, unfortunately, the entries in the Revenue Records were stood as paddy land and on the basis of the entries in the Revenue Records permission was denied by Ext.P9 to the petitioner to make construction for the purpose of starting a motor service station. In Ext.P9, it was also stated that the petitioners' land was included in the BTR Register and the Data Bank. According to the

petitioners, Exts.P6, P7, P8 and P10 would show that the land is not a wetland and in fact it is a dry land having more than 35 years old coconut trees therein. Hence the petitioners prayed for issuing a writ of certiorari calling for the records leading to Ext.P9 and quash the same and also for issuing a writ of mandamus directing the 6th respondent to consider the petitioner's application for building permit.

2. Heard The learned counsel for the petitioners and the learned Government Pleader.

3. Going by Ext.P6, obviously, it is seen that the disputed land is not suitable for paddy cultivation. Further, it goes to show that even though the land was shown as paddy land in the Data Bank, the same was not in consonance with the ground reality. This Court has considered the issue, whether building permit can be granted to make construction in the land which was reclaimed before the commencement of the Kerala Conservation of Paddy Land and Wetland Act, 2008 in various decisions of this Court.

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. The principle that can be culled out from the above decision is that if the disputed land was one converted before the commencement of the Conservation of Paddy land and Wetland Act, 2008, the rejection of building permit under Section 14 of the said Act would not come into play. Under such circumstances, it is for the Panchayat to take a decision, after inspecting the property in which the building is proposed to be constructed. Therefore, the

6th respondent Panchayat is directed to conduct a site inspection and if it is satisfied that the property is not converted after the commencement of the Conservation of Paddy Land and Wet Land Act, 2008, the Panchayat is at liberty to issue building permit in accordance with the Kerala Panchayat Buildings Rules. Consequently, Ext.P9 will stand set aside and the 6th respondent Panchayat 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 take a decision thereon within the next one month.

This writ petition is disposed of accordingly.

Sd/—
K. HARILAL, JUDGE

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