

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).NO. 35228 OF 2014 (C)

PETITIONER:

**MOHAMMEDALI, AGED 58 YEARS,
S/O.SAID MOHAMMED, ELLUMPARAMBIL HOUSE, KATHIKKODU
KODUNGALLUR, ERNAKULAM DISTRICT.**

BY ADV. SRLANOOP.VNAIR

RESPONDENTS:

- 1. STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN-695001**
- 2. THE DISTRICT COLLECTOR
COLLECTORATE , KAKKANAD, ERNAKULAM
PIN-682030**
- 3. THE TAHSILDAR
ALUVA TALUK, ERNAKULAM DIST, PIN-683101**
- 4. THE VILLAGE OFFICER
ALUVA WEST VILLAGE, PRESENTLY CHOORNIKKARA VILLAGE
ERNAKULAM DISTRICT-683103.**
- 5. THE LOCAL LEVEL MONITORING COMMITTEE,
REP. BY ITS CHAIRMAN/CONVENER
PRESENTLY CHOORNIKKARA PANCYAYATH,
ERNAKULAM DISTRICT-683118**

**BY SPL.GOVERNMENT PLEADER SMT. SUSHEELA R. BHAT (REVENUE)
BY GOVT. PLEADER SRI. M. MUHAMMED SHAFI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-02-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).NO. 35228 OF 2014 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:-TRUE COPY OF THE TAX RECEIPT

**P2:-TRUE COPY OF THE GAZETTE NOTIFICATION OF DATA BANK IN RESPECT OF
THE PROPERTY**

P3:-TRUE COPY OF THE REPORT DTD 1/12/2014 OF THE 4TH RESPONDENT

P4:-TRUE COPY OF REPORT DTD 8/12/2014 OF THE 3RD RESPONDENT

**P5:-TRUE COPY OF APPLICATION SUBMITTED BY THE PETITIONER TO THE 2ND
RESPONDENT**

RESPONDENT(S)' EXHIBITS : NIL

OKB.

//TRUE COPY//

P.A. TO JUDGE

K.HARILAL, J.

W.P(C). No.35228 of 2014

Dated this the 10th day of February, 2015

JUDGMENT

Petitioner is the owner in possession of 154.413 cents of land situated in Re-Sy. Nos.133/27, 133/9-3, 133/8, 133/16, 133/17 and 133/10-3 of Aluva West Village, Aluva Taluk, Ernakulam. According to the petitioner, the property is lying as 'purayidam' and the land is lying uncultivated for the last 20 years. The said property had been reclaimed years back and the same is now lying as a garden and. So the said land has not been included in the data bank prepared by the village authorities by Ext.P2 gazette notification.

2. Now the petitioner intends to construct an additional building for generating employment projects and the petitioner wants building permit from the Panchayat in order to get started the construction. Therefore, when the petitioner approached the Panchayat for enquiring about the said aspects, the Panchayat authorities informed that the petitioner's property is lying as purayidam in the BTR records and the petitioner will not be able to construct a building in the said property or else the petitioner has to obtain permission from the 2nd respondent to utilise the

property under the Kerala Land Utilisation Order for other purposes. Therefore, the petitioner submitted Ext.P5 application before the 2nd respondent seeking permission to utilise the said property for other purposes under the Kerala Land Utilisation Order as the correction in the BTR records will take time and is not being done at present by the revenue authorities. In the above circumstances, according to the petitioner, he was constrained to approach this Court invoking writ jurisdiction seeking appropriate orders to the respondents so as to redress his grievance.

3. Going by the averments in the petition, it is the specific case of the petitioner that his property has been lying as garden land for the last so many years, though in the BTR the said property was shown as 'nilam'. When the petitioner had approached the Panchayat authorities for getting the building permit, the application was returned with the sole reason that in the BTR the description of the property is shown as 'nilam'. In support of the arguments, the learned counsel for the petitioner drew my attention to Ext.P2 gazette notification wherein the said property is not included in the data bank of 'nilam'. But, the revenue authorities are not taking steps to correct the description in the BTR in accordance with actual lie of the land.

4. On an analysis of the issue involved in this writ petition, I

am of the view that the grievance projected in this writ petition is a common issue, which was considered by this Court 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]**. According to the proposition laid down in the above decisions, the suitability of the paddy land is a factual issue, which requires to be decided on the basis of the ground reality existing and no inference can be drawn on the basis of BTR alone, without considering the actual lie of the land. Therefore, the issue involved in this writ petition requires a factual enquiry, which can be conducted by the 3rd respondent.

5. In the above view of the matter, the 2nd respondent is directed to consider Ext.P5 application filed by the petitioner in the light of the decisions laid down by this Court and referred above, and Ext.P2 gazette notification, after conducting a factual enquiry through the 3rd respondent and pass orders within a period of three months from today.

This writ petition is disposed of as above.

Sd/-
(K.HARILAL, JUDGE)

okb