IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 01ST DAY OF OCTOBER 2020 / 9TH ASWINA, 1942

WP(C).No.20571 OF 2020(V)

PETITIONER/S:

VINCENT VARGHESE,
AGED 50 YEARS,
S/O. LATE E.M.VARKEY,
ILAVUNKAL HOUSE, MANTHONI,
POONCHOLA, POTTASSERY P.O.,
MANNARKAD TALUK, PALAKKAD DISTRICT.

BY ADVS.
SRI.JACOB SEBASTIAN
SRI.K.V.WINSTON

RESPONDENT/S:

1 **THE REVENUE DIVISIONAL OFFICER (RDO)**
OTTAPALAM, OFFICE OF THE REVENUE DIVISIONAL OFFICER,
OTTAPALAM, PALAKKAD DISTRICT, PIN-679 101.

2 **THE LOCAL LEVEL MONITORING COMMITTEE FOR**
KANHIRAPUZHA PANCHAYAT
CONSTITUTED UNDER THE CONSERVATION OF PADDY LAND
WETLAND ACT, REPRESENTED BY ITS CONVENER, THE
AGRICULTURAL OFFICER, KANHIRAPUZHA (POTTASSERY),
PALAKKAD DISTRICT, PIN-678 591.

3 **THE TAHSILDAR,**
MANNARKKAD, TALUK OFFICE,
MANNARKKAD, PALAKKAD DISTRICT, PIN-678 582.

4 **THE VILLAGE OFFICER,**
POTTASSERY I VILLAGE, MANNARKKAD TALUK,
PALAKKAD DISTRICT, PIN-678 591.

OTHER PRESENT:

SRI.K.J MANURAJ, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No.20571 of 2020

JUDGMENT

The petitioner holds an item of land within the limits of Pottassery I Village. The land of the petitioner was one which was lying as a dry land when the Kerala Conservation of Paddy Land and Wetland Act, 2008 (the Act) came into force. Nevertheless, an application preferred by the petitioner for grant of building permit was rejected by the local authority. The order passed by the local authority in this connection was challenged by the petitioner in W.P.(C)No.27145 of 2016 before this court and the said writ petition was disposed of in terms of Ext.P5 judgment granting to the petitioner, among others, a direction that if the petitioner prefers appropriate application before the competent authority under the Land Utilization Order, 1967 (Kerala) for permission to use the land for other purposes, he shall be accorded permission under the said statutory provision. Ext.P7 is the application preferred by the petitioner on the basis of Ext.P5 judgment, before the competent authority under the Land Utilization Order, viz, the

first respondent, on 21.06.2017. It is alleged by the petitioner that the permission sought for by the petitioner has not been granted despite the positive direction contained in Ext.P5 judgment. It is stated by the petitioner that when he sought the reason for the delay in the disposal of Ext.P7 application under the Right to Information Act, he is now given Ext.P11 communication from the office of the first respondent. It is stated in Ext.P11 communication that the request of the petitioner cannot be considered in the light of Act 29 of 2018, in terms of which a provision for grant of permission to make use of lands similar to the land of the petitioner for other purposes on payment of a fee, has been incorporated in the Act. The case set out by the petitioner in the writ petition is that insofar as the petitioner preferred an application seeking permission under the Land Utilization Order to make use of the property for other purposes prior to the commencement of Act 29 of 2018, the provisions therein cannot be pressed into service in relation to the land of the petitioner. The petitioner, therefore, seeks appropriate directions to the first respondent to grant the permission sought for by the petitioner in Ext.P7 application.

2. Heard the learned counsel for the petitioner as also the learned Government Pleader.

3. As pointed out by the petitioner, this Court has categorically found in Ext.P5 judgment that the petitioner is entitled to the permission sought for by him in Ext.P7 application. In the light of the said finding, the only point arises for consideration is as to whether the provisions contained in Act 29 of 2018 could be pressed into service in respect of the land of the petitioner. In **Renji K Paul v. Revenue Divisional Officer,** 2019 (2) KLT 262, this court held that if the holder of a land which is not liable to be included in the data bank prepared under the Act prefers an application for permission to make use of the land for other purposes under the Land Utilization Order before the coming into the force of Act 29 of 2018, the provisions therein cannot be pressed into service against such a land. In the case on hand, it is seen that the petitioner preferred Ext.P7 application for permission under the Land Utilization Order on 21.06.2017 and Act 29 of 2018 was introduced with effect from 30.12.2017. In other words, the provisions of Act 29 of 2018 cannot be pressed into the service in respect of the land of the petitioner. In the light of the said judgment, the reason stated in Ext.P11 communication for not considering Ext.P7 application is unsustainable.

In the result, the writ petition is allowed and the first respondent is directed to grant the permission sought for by the

petitioner in Ext.P7 application without insisting compliance of the provisions contained in Act 29 of 2018. This shall be done within one month from the date of production of a copy of this judgment.

Sd/-
P.B.SURESH KUMAR
JUDGE

rkj

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF THE PROPERTY TAX PAID RECEIPT DATED APRIL 16, 2014 ISSUED BY THE KANHIRAPUZHA PANCHAYAT.**
EXHIBIT P2	**A TRUE COPY OF THE JUDGMENT DATED JUNE 17, 2015 IN WPC NO.8657/2015 OF THIS HONOURABLE COURT.**
EXHIBIT P3	**A TRUE COPY OF THE STATEMENT FILED BY THE GOVERNMENT PLEADER IN WPC NO.27145/2016 OF THIS HONOURABLE COURT.**
EXHIBIT P4	**A TRUE COPY OF THE STATEMENT FILED ON BEHALF OF THE LOCAL AUTHORITY, KANHIRAPUZHA GRAMAPANCHAYATH IN WPC NO.27145/2016 OF THIS HONOURABLE COURT.**
EXHIBIT P5	**A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED JUNE 8, 2017 IN WPC NO.27145/2016.**
EXHIBIT P6	**A TRUE COPY OF THE BUILDING PERMIT DATED JUNE 27, 2017 ISSUED BY THE KANHIRAPUZHA GRAMAPANCHAYAT.**
EXHIBIT P7	**A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER UNDER CLAUSE 6 OF THE KLU ORDER BEFORE THE FIRST RESPONDENT DATED 21.6.2017.**
EXHIBIT P8	**A TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD EVIDENCING SERVICE OF EXHIBIT P7.**
EXHIBIT P9	**A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER IN FORM 5 DATED 17.5.2019.**
EXHIBIT P10	**A TRUE COPY OF THE APPLICATION DATED 31 AUGUST 2020 SUBMITTED BY THE PETITIONER UNDER THE R.T.I ACT BEFORE THE FIRST RESPONDENT.**
EXHIBIT P11	**A TRUE COPY OF THE INFORMATION SUPPLIED FROM THE OFFICE OF THE FIRST RESPONDENT DATED SEPTEMBER 22, 2020.**