

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF SEPTEMBER 2016/8TH ASWINA, 1938

WP(C).No. 20857 of 2016 (F)  
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PETITIONER(S) :  
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ARUN.S.NAIR,  
ARUN NIVAS,  
VELLOOR, KOTTAYAM.

BY ADV. SRI.P.P.JACOB

RESPONDENT(S) :  
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1. VILLAGE OFFICER, MULAKKULAM  
VILLAGE, MULAKKULAM,  
KOTTAYAM - 686 664.
2. THE AGRICULTURAL OFFICER,  
KRISHI BHAVAN, MULAKKULAM,  
PERUVA, KOTTAYAM - 686 664.
3. THE MULAKKULAM GRAMA PANCHAYATH,  
MULAKKULAM, PERUVA, KOTTAYAM - 686 664,  
REPRESENTED BY ITS SECRETARY.
4. THE DISTRICT COLLECTOR,  
COLLECTORATE, CIVIL STATION,  
KOTTAYAM - 686 001.

ADDL.RESPONDENTS\*

R5. THE TAHSILDAR, VAIKOM TALUK, KOTTAYAM - 686 141

R6. THE REVENUE DIVISIONAL OFFICER, PALAI, KOTTAYM-686 575

(ADDL. RESPONDENTS IMPEADED AS PER ORDER DTD. 30.09.2016 IN I.A  
NO.14435/16)

R3 BY ADV. SRI.SAJI KURIACHAN  
R BY GOVERNMENT PLEADER SRI. RENIL ANTO (SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-09-2016,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

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P1 TRUE COPY OF THE SALE DEED NO. 406/2016 DATED 21/03/2016 OF THE  
THALAYOLAPARAMBA SUB REGISTRY

P2 TRUE COPY OF THE RELEVANT PORTION OF THE DATA BANK SHOWING THE  
PROPERTY OF THE PETITIONER

P3 TRUE COPY OF THE LAND TAX RECEIPT DATED 16/04/2016

P4 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 30/04/2016

P5 TRUE COPY OF THE CERTIFICATE ISSUED BY THE AGRICULTURAL  
OFFICER DATED 05/02/2016

P6 TRUE COPY OF THE LETTER ISSUED BY THE BANK MANAGER, SOUTH INDIAN  
BANK LIMITED, TO THE PETITIONER DATED 02/05/20016

P7 TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 3RD RESPONDENT DATED  
12/12/2014 TO ANNAMMA ATHANIKKAL HOUSE

P8 TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE 3RD  
RESPONDENT DATED 08/06/2016

P9 TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED 09/06/2016

P10 TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER AND HIS  
FATHER THE 4TH RESPONDENT DATED 09/06/2016

P11 TRUE PHOTOCOPY OF THE SAID PETITION DTD. 1.9.16 FILED BEFORE THE  
RESPONDENTS AND IMPEADING RESPONDENTS.

RESPONDENT(S) ' EXHIBITS: NIL

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// TRUE COPY //

P.A TO JUDGE

SB

**K. VINOD CHANDRAN, J.**

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**W.P.(C) No.20857 of 2016 - F**

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**Dated this the 30<sup>th</sup> day of September, 2016**

**J U D G M E N T**

The petitioner, a subsequent purchaser of a property having an extent of 3.03 Ares situated in Survey No.244/2B-2 of Mulakkulam Village, is aggrieved with the refusal to transfer the building permit validly issued to the predecessor-in-interest; on the ground that the land purchased is described as 'Nilam' in the Basic Tax Register (B.T.R). The order impugned is of the Panchayath produced at Ext.P9.

2. The petitioner purchased the property by Ext.P1 title deed from the predecessor in interest. The predecessor in interest had already obtained a building permit, which is produced as Ext.P7. The petitioner's property has been included in the data bank but not as a 'nilam' and the possession

certificate issued at Ext.P4 describes the property as 'nilam', obviously since, the B.T.R description is also 'nilam'.

3. On the facts existing, it has to be noticed that Ext.P5 is a certificate issued by the Agricultural Officer. The Agricultural Officer finds that the property has been included in the data bank as a converted land and on a physical inspection, it is found to be existing as a garden land. With respect to the report that the property is included in the data bank as converted land, the decision of the Hon'ble Supreme Court in **Revenue Divisional Officer v. Jalaja Dileep [2015 (1) KLT 984 SC]** is relevant. Paragraphs 17 and 18 of the judgment is extracted hereunder:-

"17. "Paddy land" and "Wetlands" are defined under Sections 2 (xii) and 2 (xviii) of the Act respectively. As per Section 5(4), the Committee shall interalia prepare a data Bank with details of cultivable paddy land within the jurisdiction of the Committee. If the land is not included in the Data Bank or Draft Data Bank prepared under the Kerala Cultivation of Paddy Land and Wetland Act, 2008 and if it is not a "Paddy Land" or "Wetland" as defined under Act 28 of 2008, at the time of commencement of the Act 12 of 2008 and the classification of land is noted as "Nilam" in the revenue records, the provision of Kerala Land

Utilization Order 1967 will be applicable to such land and the Collector as defined in clause 2(a) of KLU Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in clause 2(a) of KLU Order, Collectors shall examine such request for residential purpose, on merits on a case to case basis. However, with a view to prevent indiscriminate filling of Paddy Lands in the State, the Government have also prescribed certain restrictions in the Notification dated 5.2.2002 noted (supra), in which District Collectors have been directed inter alia to ensure that the conversions which are likely to render irrigation investments infructuous and large scale conversion for commercial purpose are not allowed.

18. If a property is included in the Data Bank or the Draft data Bank prepared under the Wet Land Act, 2008 as a "Paddy Land" or "Wetland" and the classification of and is noted as "Nilam" in revenue records, the provisions of the Act 28/2008 would apply. As noticed earlier, there is ample provision within the Act to grant permission for such land for residential purpose or public purpose as defined in the Act. And as elaborated earlier, if the property is not included in the data Bank as "Paddy Land" or "Wetland" as defined under Act 28/2008, it is still governed by the provisions of K.L.U Order, 1967. Thus, State of Kerala has two statutes - K.L.U. Order, 1967 and Kerala Cultivation of Paddy Land and Wetland Act, 2008 each dealing with delineated areas with respect to preservation, management and process of reclamation of agricultural and paddy and for any other legitimate use".

4. Going by the declaration made by the Hon'ble Supreme Court, the mere inclusion of a land in the data bank

would not make it a paddy land or wet land and the description in the data bank has to be as that of paddy land or wet land. The Hon'ble Supreme Court made such a declaration in the context of many of the paddy lands having been filled up prior to the coming into force of the Kerala Conservation of Paddy Land and Wet Land Act in the year 2008. The Hon'ble Supreme Court also held that with respect to such lands, the proper remedy available to an owner is to approach the authority under the Kerala Land Utilisation Order, 1967 to obtain conversion of user as provided under Rule 6(2) of the KLU Order.

5. The said position has also been explained in **Puthan Purakkal Joseph v. Sub Collector - [2015 (3) KLT 182 ]**. The petitioner has filed an application produced as Ext.P10 before the District Collector under Rule 6(2) of the KLU Order. On the conversion being obtained necessarily, the petitioner could also seek for fresh assessment of the land as a garden land as has been held in **Kizhakkambalam Grama Panchayat v. Mariumma [2015(2) KLT 516]**. An application to

that end is also produced at Ext.P11.

6. Considering the fact that the data bank describes the property as a converted land prior to the coming into force of the Paddy Land Act and the certificate of the Agricultural Officer also certifying the existence of the land as a garden land, this Court is of the opinion that the transfer sought for by the petitioner before the Panchayath has to be permitted. The petitioner would be entitled to carry on the construction as per the permit, in accordance with the Building Rules. The 3<sup>rd</sup> respondent Panchayath is directed to transfer the building permit in pursuance to applications produced at ExtP8, subject to the permit and plan being in compliance with the Kerala Panchayath Building Rules, 2011 (for brevity 'the Building Rules). The petitioner shall be given a hearing and transfer shall be effected, within a period of one month from the date of receipt of a certified copy of this judgment and if any objection is raised, the same shall be informed to the petitioner in writing.

7. Though the learned Government Pleader and the learned Counsel for the Panchayath submitted that the transfer may be directed only after Ext.P10 and P11 are considered; this Court is of the opinion that the consideration of Exts.P10 and P11 would have no consequence since necessarily, going by the observations made by this Court herein above the same would have to be allowed. The Panchayath would only have to verify the description of the property in the data bank; which if is described as garden land; both Ext.P10 and P11 would have to be allowed. If otherwise necessarily the Panchayath could wait till Ext.P10 and P11 are considered.

The writ petition would stand allowed with the above observations. No costs.

**Sd/-  
K. VINOD CHANDRAN,  
JUDGE**

SB/01/10/2016

// true copy //

P.A to Judge