

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C). No.582 of 2013 (W)

PETITIONER(S):

**M V JOSE, AGED 47 YEARS,
S/O.VARKEY, AGED 47 YEARS, MUKKANAMCHERY VEEDU,
VENGOLA POST, ERNAKULAM.**

**BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SMT.R.LEELA**

RESPONDENT(S):

- 1. VENGOLA GRAMA PANCHAYATH,
REP. BY SECRETARY, VENGOLA, ERNAKULAM 683 554.**
- 2. THE SECRETARY, VENGOLA GRAMA PANCHAYATH,
ERNAKULAM 683 554.**

R1 & R2 BY ADV. SRI.C.A.NAVAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PETITIONER(S) EXHIBITS:-

- EXT.P-1 THE PERFORMA UNDER RULE 133 OF KERALA PANCHAYATH BUILDING RULES DATED 26/9/11 WITH CONNECTED DOCUMENTS.
- EXT.P-2 A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 12-10-2011 BEFORE THE 2ND RESPONDENT.
- EXT.P-3 THE TRUE COPY OF THE SHOW CAUSE NOTICE DATED 9.2.2012 ISSUED BY THE 2ND RESPONDENT.
- EXT.P-4 THE TRUE COPY OF THE EXPLANATION DATED 16-3-2012 SEND BY THE PETITIONER.
- EXT.P-5 THE TRUE COPY OF THE ORDER DATED 1-6-2012 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS:-

- EXT.R1(A):- PHOTOSTAT COPY OF THE TAX RECEIPT NO.4371850 DATED 29.04.2010
- EXT.R1(B):- PHOTOSTAT COPY OF THE BUILDING PLAN.

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.582 of 2013

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Dated this the 5th day of February, 2015

JUDGMENT

Ext.P5 order rejecting the petitioner's application for numbering the building is under challenge in this writ petition.

2. The petitioner is in possession of 58 acres of property in Block No.20 of Vengola Panchayat by virtue of Doc. No.1517/1999 of SRO Perumbavoor. For agricultural purpose, he decided to construct a motor shed and a store in that property. He informed this to the secretary of the respondent panchayat as per rules and in the required performa by Ext.P1. The second respondent did not object to Ext.P1.

3. Thereafter the petitioner completed the construction and submitted Ext.P2 application for permit. However, the second respondent dismissed the application by Ext.P5 stating that the land is described as paddy field in the revenue records and, therefore, the property cannot be used for construction of buildings. It is with this background, the petitioner has approached this Court.

4. The respondents filed a counter affidavit refuting the allegations contained in the writ petition.

5. Arguments have been heard.

6. The learned counsel for the petitioner submitted that Ext.P5 was passed by the second respondent without considering the real nature of the property. The petitioner alleges that the his property was actually a garden land which is evident from the fair value register.

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 building (**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 position settled by this Court escaped the attention of the panchayat authorities while rejecting the petitioner's application.

Therefore, this writ petition is disposed of quashing Ext.P5. The respondent panchayat is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the petitioner's property and surrounding properties and reconsider the application for numbering the building and for issuing the permit, and pass appropriate orders, after affording the petitioner an opportunity of being heard. This shall be done within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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