

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No. 2766 of 2015 (U)

PETITIONER:

**SUBRAMANIAN, S/O.KELU CHETTIYAR,
AGED 50 YEARS, KALATHIL HOUSE,
POOVATHIKKAL. P.O, OORNGATTIRI,
MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR.,

RESPONDENTS:

- 1. THE OORNGATTIRI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, OORNGATTIRI,
MALAPPURAM DISTRICT, PIN-673 639.**
- 2. THE SECRETARY,
OORNGATTIRI GRAMA PANCHAYATH, OORNGATTIRI,
MALAPPURAM DISTRICT, PIN-673 639.**

R1 & 2 BY ADV. SRI.K.M.JAMALUDHEEN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
DATED 10-12-2014.
- EXT.P1(A) TRUE ENGLISH TRANSLATION OF EXT.P1.
- EXT.P2 TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTIES OF
THE PETITIONER.
- EXT.P3 TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE
OFFICER, OORNGATTIRI VILLAGE DATED 17-07-2014.
- EXT.P3(A) TRUE ENGLISH TRANSLATION OF EXT.P3.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.2766 of 2015

Dated this the 19th day of June, 2015

JUDGMENT

Ext.P1 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of 10 cents of land comprised in Re.Sy.No.263/12 of Oorngattiri Village. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P1 on the ground that the land is classified as nilam as per the revenue records.

3. Arguments have been heard.

4. The learned counsel for the petitioner, inviting my attention to Ext.P2 photographs, submitted that residential buildings have come up in the adjoining properties.

5. 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 to construct a house.

6. It can be seen from the photographs that the property is not a paddy land and it is having full of aged trees. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjal 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.

7. 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 authorities while rejecting the petitioner's application. Therefore, this writ petition is allowed. Ext.P1 is quashed.

The respondent Panchayat is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioner and surrounding properties. The respondents are also directed to reconsider the application and to grant permit if the respondents are satisfied that the property is not cultivable at present. The petitioner shall be given an opportunity of being heard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE