

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 5822 of 2015 (C)

PETITIONER(S) :

- 1. BIJU THOMAS, AGED 48 YEARS,
S/O.THOMAS, ITHITHARA HOUSE, KIZHAKKUMBHAGOM KARA,
ETTUMANOOR P.O, KOTTAYAM DISTRICT.**
- 2. BAIJU.K.N,
S/O.NARAYANAN NAIR (LATE), KURUPPANKUNNEL HOUSE,
KIZHAKKUMBHAGOM KARA, ETTUMANOOR P.O,
KOTTAYAM DISTRICT.**

**BY SRI.C.C.THOMAS (SENIOR ADVOCATE)
ADVS. SRI.NIREESH MATHEW
SRI.M.G.KARTHIKEYAN**

RESPONDENT(S) :

- 1. THE ETTUMANOOR GRAMA PANCHAYATH (SPECIAL GRADE),
REPRESENTED BY ITS SECRETARY, ETTUMANOOR- 686 631M
KOTTAYAM DISTRICT,**
- 2. THE SECRETARY,
ETTUMANOOR GRAMA PANCHAYATH (SPECIAL GRADE),
ETTUMANOOR- 686 631, KOTTAYAM DISTRICT.**

BY ADV. SRI.SIBY CHENAPPADY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: PHOTOCOPY OF THE APPLICATION DATED 22.02.2014 SUBMITTED BEFORE THE RESPONDENTS.**
- P2: PHOTOCOPY OF THE LETTER NO.AI-13453/14 DATED 11.02.2015 ISSUED BY THE 2ND RESPONDENT.**
- P2(A): ENGLISH TRANSLATION OF EXT P2.**
- P3: PHOTOGRAPH SHOWING THE LOCATION OF THE PETITIONER'S PROPERTY.**
- P4: PHOTOCOPY OF THE DATA BANK ISSUED BY THE VILLAGE OFFICER, ETTUMANOOR.**
- P5: PHOTOCOPY OF THE JUDGMENT DATED 09.10.2014 IN W.P.(C).NO.14035/2014 PASSED BY THIS HONOURABLE COURT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 5822 of 2015

Dated this the 24th day of February, 2015

J U D G M E N T

Ext.P2, by which the petitioners' application for building permit was rejected, is under challenge in this writ petition.

2. The petitioners are the joint owners of 7.29 ares of land in Re.Sy.No.2/10/10 in Ettumanoor Village within the limits of the respondent panchayath. The petitioners submitted Ext.P1 application for building permit, which was rejected by the 2nd respondent as per Ext.P2 on the ground that the property is described as 'nilam'/paddy field in the revenue records. According to the petitioners, the entire property is lying as dry land even before the commencement of Act 28 of 2008. The petitioners produced Ext.P3 photographs showing the nature of land. Therefore, according to the petitioners, Ext.P2 is illegal and liable to be quashed.

3. Arguments have been heard.

4. 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.

5. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjali 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.

6. 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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioners'

application.

Therefore, this writ petition is allowed. Ext.P2 is quashed.

The respondent panchayath is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioners and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioners an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation. 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

bka/-