

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 5953 of 2015 (T)

PETITIONER :

**HANEEFA.K, AGED 48 YEARS,
S/O.IBRAHIMKUTTY, KODASSERY HOUSE, PUTHARIKKAL
PARAPPANANGADI, MALAPPURAM DISTRICT.**

BY ADV. SRI.ESM.KABEER

RESPONDENTS :

- 1. THE PARAPPANANGADI GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PARAPPANANGADI,
MALAPPURAM DISTRICT.**
- 2. THE SECRETARY,
PARAPPANANGADI GRAMA PANCHAYATH,
MALAPPURAM DISTRICT.**

R2 BY ADV. SRI.JAMSHEED HAFIZ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.

EXT.P2: TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT.

EXT.P2(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P2.

EXT.P3: TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE 2ND
RESPONDENT DATED 7.2.2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J

WPC No.5953 of 2015

Dated this the 11th day of August, 2015

JUDGMENT

The orders rejecting the petitioner's applications for numbering the building and for regularisation are under challenge in this writ petition.

2. The petitioner is the owner in possession of 4.866 cents of property in Re.Sy.No.229/3 of Neduva Village, Parappanangadi. He has submitted Ext.P1 application for building permit, but the same was not considered since the property was described as 'nanja' in the revenue records. According to the petitioner, the property is not suitable for paddy cultivation and it is reclaimed long back. The adjacent properties are already developed and hence, it is not reasonable to insist the petitioner to cultivate in his small extent of land. It is the only property for the petitioner and his family to construct a residential house.

3. The Division Bench of this Court held that while

issuing building permit, the Secretary has to consider the ground reality/actual lie of the property and building permit cannot be rejected solely on the ground that the description of the property is 'nilam' in the records maintained by the village. There is no bar at all for issuing permit in a land which is reclaimed and the same is unsuitable for paddy cultivation. Since the petitioner has no house for residence, he has constructed a small house for residence and requested for regularisation. But it was not granted. It is with this background, the petitioner has come up before this Court.

4. Arguments have been heard.

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 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.

8. The learned counsel for the petitioner invited my attention also to the decision of this Court in ***Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others*** [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause

(1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands. Therefore, this writ petition is allowed.

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 re-consider the applications for regularisation and for numbering the building and pass orders granting permit, if they are satisfied that the land, where the petitioner has constructed the residential building, in the present form is unfit for paddy cultivation; if the same are otherwise in order. 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