

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 6077 of 2015 (H)

PETITIONER(S) :

- 1. BASHITH
SON OF BASHEER, AGED 32 YEARS.**
- 2. BANOOF
SON OF BASHEER, AGED 35 YEARS
PETITIONERS ARE RESIDING AT 10/520
'SOUDA', KOPPAM, PALAKKAD TALUK AND DISTRICT.**

**BY ADVS.SRI.JACOB SEBASTIAN
SMT.SHAMSEERA C.ASHRAF
SMT.ANU JACOB
SRI.T.U.SUJITH KUMAR**

RESPONDENT(S) :

- 1. THE AMBALAPPARA GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, AMBALAPPARA
PALAKAD DISTRICT, PIN- 679 512.**
- 2. THE SECRETARY,
AMBALAPPARA GRAMA PANCHAYAT, AMBALAPPARA
PALAKKAD DISTRICT, PIN- 678 701.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 6077 of 2015 (H)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1- TRUE COPY OF THE POSSESSION CERTIFICATE RELATING THE PLOT.

**EXHIBIT-P2- TRUE COPY OF THE LETTER DATED 25TH OF SEPTEMBER 2014
ISSUED BY THE VILLAGE OFFICER, AMBALAPPARA II VILLAGE.**

EXHIBIT-P2(a)-TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P2.

**EXHIBIT-P3- TRUE COPY OF THE ORDER DATED FEBRUARY 23, 2015 OF THE 2ND
RESPONDENT.**

EXHIBIT-P3(a)-TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P3.

**EXHIBIT-P4- TRUE COPY OF THE JUDGMENT DATED JANUARY 14, 2015 IN
W.P(C) NO. 27742/2014 OF THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 6077 of 2015

Dated this the 29th day of May, 2015.

JUDGMENT

Ext.P3 proceedings, by which the petitioners' application for building permit was rejected, is under challenge in this writ petition.

2. The petitioners own a plot in Ambalappa-II Village, Ottapalam Taluk, Palakkad District. The petitioners allege that the plot is abutting the main road and bounded by a road and commercial plots on the other two sides. Though the property is a pucca dry land, it is wrongly classified as Nilam in revenue records. It is alleged that by Ext.P2, it is evident that petitioner's property is not even included in the data bank for the area prepared in terms of Sec.5(4) (i) of the Conservation of Paddy Land and Wet Land Act. The petitioners allege that Section 14 of the Conservation of Paddy Land and Wet Land Act is the only provision which enables the second respondent to reject an application for permit on the premise that the plot

is classified as wet land. In the instant case, since the plot is not included in the data bank for the area, the provisions of the Act does not apply at all but by Ext.P3, the second respondent rejected the application for development permit stating that the plot is classified as wet land. The reasoning in Ext.P3 has no statutory support and as such it is beyond the authority of the second respondent. Therefore, according to the petitioners, Ext.P3 is beyond jurisdiction, 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-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.

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 petitioner's application.

Therefore, this writ petition is allowed. Ext.P3 is quashed.

The respondent municipality 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

Scl.