

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 6265 of 2015 (G)

PETITIONER(S):

**ABDUL RASAK, KANICHIRAKAL HOUSE,
THEKKEVAVANOOR. P.O, PIN-679 533.**

**BY ADVS.SRI.DINNY THOMAS,
SRI.JAISHANKAR V.NAIR,
SMT.ROSHNI MANUEL.**

RESPONDENT(S):

**1. NAGALASSERY GRAMA PANCHAYATH,
KOOTANAD. P.O, PALAKKAD-679 533,
REPRESENTED BY ITS SECRETARY.**

**2. THE SECRETARY,
NAGALASSERY GRAMA PANCHAYATH,
KOOTANAD. P.O., PALAKKAD-679 533.**

**BY ADVS. SRI.S.P.ARAVINDAKSHAN PILLAY,
SMT.N.SANTHA,
SRI.K.A.BALAN,
SRI.PETER JOSE ,
SRI.S.A.ANAND,
SMT.L.ANNAPOORNA.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: TRUE COPY OF THE ORDER DATED 20/11/2012 & TRANSLATION.
- EXT.P2: TRUE COPY OF THE PHOTOGRAPHS.
- EXT.P3: TRUE COPY OF THE DATA BANK.
- EXT.P4: TRUE COPY OF JUDGMENT IN WP(C).NO.30496/2012.
- EXT.P5: TRUE COPY OF THE REPORT DATED 24/05/2013 & TRANSLATION.
- EXT.P6: TRUE COPY OF THE ORDER DATED 03/06/2013 & TRANSLATION.
- EXT.P7: TRUE COPY OF THE COMMUNICATION OF PANCHAYATH
COMMITTEE BODY & TRANSLATION.
- EXT.P8. TRUE COPY FO THE ORDER DATED 05/03/2014 & TRANSLATION.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 6265 of 2015

Dated this the 4th day of August, 2015.

JUDGMENT

Exts.P6 & P8 orders, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner alleges that the second respondent illegally issued an order dated 03.06.2013, refusing to reconsider the petitioner's application for building Permit stating that the said land is suitable for cultivation and hence permission can not be granted for commercial buildings. Subsequently, the Panchayath committee informed the petitioner that it is satisfied with the report of the agricultural officer that the petitioner's property is not cultivable and that they have entrusted the 2nd respondent to issue necessary permission to the petitioner. However, in spite of the specific direction, the 2nd respondent did not take any action to issue the building permit to the Petitioner. Thereafter on 05.06.2014, the 2nd respondent rejected the application of the Petitioner saying that the Petitioners property is classified as "Nanja"

(Cultivable Land) in revenue records and hence permission cannot be granted. The petitioner further alleges that he is aggrieved by the rejection of his application for building permit as per Ext.P4 and Ext.P6 which are arbitrary, illegal and in violation of the rights of the petitioner guaranteed under Article 14, 21 and 300A of the Constitution of India, as held in various decisions on the subject rendered by this Court.

3. Arguments have been heard.

4. The application was opposed by the respondent panchayath on the ground that the application of the petitioner is for the construction of the commercial building, it cannot be permitted as the entire land of the petitioner's property is classified as "Nanja".

5. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P2 photographs which was shown as the petitioner's property is not lying as paddy field at present.

6. 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.

7. 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.

8. 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.

9. 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. Exts.P6 and P8 are 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 petitioner and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioner 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.