

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C).No. 6325 of 2015 (M)

PETITIONER(S):

**MOHAMMED ISMAILKUNJU,
THUNDIYIL HOUSE,
MANNAR, ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENT(S):

- 1. VAZHAPPALLY GRAMA PANCHAYATH, KURISUMMOOD P.O.,
CHANGANACHERRY, KOTTAYAM DISTRICT, PIN-686 104,
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY, VAZHAPPALLY GRAMA PANCHAYATH,
KURISUMMOOD P.O., CHANGANACHERRY, KOTTAYAM DISTRICT,
PIN-686 104.**

**BY ADVS. SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE PHOTOCOPY OF THE LOCATION PLAN OF THE PROPERTY.**
- EXT.P2: TRUE PHOTOCOPY OF THE BUILDING PERMIT APPLICATION DATED 18.12.2014.**
- EXT.P3: TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE BEARING NO.2260/14 DATED 03.12.2014 ALONG WITH ITS ENGLISH TRANSLATION.**
- EXT.P4: TRUE PHOTOCOPY OF THE ORDER BEARING NO.C3/9730 DATED 07.01.2015.**
- EXT.P5: A TRUE PHOTOCOPY OF THE JUDGMENT DATED 21.05.2014 IN WP(C) NO.10675/2014.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.6325 of 2015

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Dated this the 25th day of May, 2015

JUDGMENT

Ext.P4 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the absolute owner in possession of 12.14 acres of land in Re-sy. Nos.223/4-1, 223/4-2 of Block No.4 in Vazhappally west village. The petitioner submitted an application to construct a parking building/plaza over his property. The petitioner alleges that instead of conducting a physical inspection of the property in question, the second respondent caused verification of the documents produced by him along with the application through the LSGD Engineer, who is stated to have submitted a report to the effect that the property is described as paddy field in those documents. On the basis of the said report, the second respondent rejected the application submitted by the petitioner for the reason that the same is described as nilam in the revenue records by Ext.P4.

3. Arguments have been heard.

4. The learned counsel for the petitioner points out that the procedure adopted by the second respondent while considering Ext.P2 application is against Rule 11 of the Kerala Panchayat Building Rules, 2011. He further pointed out that the second respondent has not conducted any physical inspection of the property as contemplated under Rule 11. In this connection the learned counsel invited my attention to the decision of this Court in **Mohammed Abdul Basheer C.P. v. State of Kerala and another** [2012 (3) KLT 86] which 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 building (**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 position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

Therefore, this writ petition is disposed of quashing Ext.P4 order. 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. If they are satisfied that if the land is a pukka garden land, they shall reconsider the application and pass appropriate orders, after affording the petitioner 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

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