

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

WP(C).No. 6566 of 2015 (U)

PETITIONER :

**NOUFIYA, AGED 27 YEARS,
W/O.ASHRAF, MANNITHODI HOUSE, OLAVATTU P.O.,
MALAPPURAM DISTRICT.**

BY ADV. SRI.U.K.DEVIDAS

RESPONDENTS :

**1. THE VILLAGE OFFICER
PULIKKAL VILLAGE, MALAPPURAM DISTRICT - 673 637.**

**2. THE PULIKKAL GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, PULIKKAL P.O.
MALAPPURAM DISTRICT - 673 637.**

**3. THE CONVENOR
LOCAL LEVEL MONITORING COMMITTEE,
PULIKKAL GRAMA PANCHAYATH OFFICE, PULIKKAL P.O.,
MALAPPURAM DISTRICT - 673 637.**

R1 BY GOVERNMENT PLEADER SMT. ANITHA RAVEENDRAN

R2 BY ADV. SRI.T.R.RAVI

BY ADV. SRI.P.S.MURALI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE POSSESSION CERTIFICATE DATED 18/12/2014.
WITH ENGLISH TRANSLATION
- EXT.P2: TRUE COPY OF THE RELEVANT PAGE OF THE DATA BANK.
- EXT.P3: TRUE COPY OF THE PHOTOGRAPHS OF THE PROPERTY.
- EXT.P4: TRUE COPY OF THE STOP MEMO DATED 26/04/2014 ISSUED BY THE
FIRST RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P5: TRUE COPY OF THE ORDER DATED 01/11/2014 ISSUED BY THE
SECOND RESPONDENT WITH ENGLISH TRANSLATION.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.6566 of 2015

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Dated this the 6th day of July, 2015

JUDGMENT

Aggrieved by Ext.P4 stop memo and Ext.P5 order rejecting the application of the petitioner for building permit by respondents 2 and 3, she has come up before this Court.

2. The petitioner and her husband are the exclusive owners in possession of 13.80 cents of property comprised in Sy. No.28/3 in Block No.7 within the limits of respondent panchayat as per Ext.P1. The petitioner alleges that the aforesaid property is situated on the site of the panchayat road and is included in the data bank prepared under the Kerala Conservation of Paddy Land and Wetland Act, 2008. Ext.P2 is the copy of the relevant page of the data bank.

3. The petitioner submitted application dated 13.8.2013 for building permit along with the plan for constructing a building in the above property and she has constructed a basement of the residential house after the expiry of statutory period of submission of the application for building permit. Thereafter, the first

respondent issued Ext.P4 stop memo dated 26.4.2014 directing the petitioner to stop the construction.

4. The petitioner approached the second respondent for getting favourable orders. However, the local level monitoring committee of the second respondent has rejected the application of the petitioners without giving her an opportunity of hearing and the rejection order was not communicated to her; it is alleged. It is with this background, the petitioners have approached this Court.

5. The respondent panchayat has filed a counter affidavit stating that the site was inspected by the local level monitoring committee consisting of the Secretary of the respondent panchayat, the Agricultural Officer and the Village Officer who had observed that if the building comes up, the drainage system would be blocked and that this area would be water logged during rainy season. It was further observed that the adjoining lands are not garden lands. It was further stated that the property remained as a paddy land on the date of commencement of the Act and it is included in the Data Bank. Therefore, they justified the stand taken in Ext.P5 order.

6. Arguments have been heard.

7. The learned counsel for the petitioner inviting my attention to Ext.P3 photographs, submitted that the property is surrounded by panchayat road and residential buildings are constructed in the adjacent properties. 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.

8. As per Ext.P3, it can be seen that the property is a dry land and if it having full of aged trees. That itself would show that Ext.P1 is not a cultivating paddy field. 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.

9. 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.

10. 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.

11. The learned counsel for the petitioner would further submit that the impugned order was passed without hearing the petitioner and that the rejection order was not communicated.

As it is evident from record that the impugned order was passed without hearing the petitioner, the writ petition is disposed of directing the respondent panchayat to reconsider the issue in the light of what has been stated above, after affording the petitioner

an opportunity of being heard. The respondent shall 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, and shall grant building permit if they are satisfied that the land is not cultivable at present. The entire exercise shall be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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