

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C) .No. 6980 of 2015 (V)

PETITIONER(S) :

AJAY ASWANI,
AGED 34 YEARS, S/O ASOK ASWANI,
SANTHI NILAYAM, CANARA BANK COLONY,
CHANDRA NAGAR, PALAKKAD-678 007.

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

RESPONDENT(S) :

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1. THE MUTHALAMADA GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, MUTHALAMADA,
PALAKKAD DISTRICT, PIN:678 507.
 2. THE SECRETARY,
MUTHALMADA GRAMA PANCHAYATH, MUTHALAMADA,
PALAKKAD DISTRICT, PIN:678 507.
 3. THE LOCAL LEVEL MONITORING COMMITTEE CONSTITUTED UNDER
THE KERALA CONSERVATION OF PADDY AND WETLAND ACT,
REPRESENTED BY ITS CONVENOR, MUTHALAMADA,
PALAKKAD DISTRICT, PIN:678 507.
 4. THE DISTRICT LEVEL MONITORING COMMITTEE CONSTITUTED
UNDER THE KERALA CONSERVATION OF PADDY AND WETLAND ACT,
REPRESENTED BY ITS CONVENOR, PALAKKAD,
PALAKKAD DISTRICT, PIN:678 001.

R1 & 2 BY ADV. SRI.MURALI PURUSHOTHAMAN,
R1 & 2 BY ADV. SRI.DEEPULAL MOHAN &
BY GOVERNMENT PLEADER SRI.T.R.RAJESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1: A TRUE COPY OF THE POSSESSION CERTIFICATE RELATING TO
 THE PLOT.

EXHIBIT P2: A TRUE COPY OF THE RECEIPT ISSUED FROM THE PANCHAYAT.

EXHIBIT P3: A TRUE COPY OF THE ORDER DATED MARCH 30, 2015 ISSUED
 BY THE FIRST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 6980 of 2015

Dated this the 11th day of June, 2015.

JUDGMENT

The petitioner has approached this Court seeking a direction to consider the petitioner's application for building permit after quashing Ext.P3 decision taken by the first respondent panchayat.

2. The petitioner is the owner of a plot having an extent of 0.809 hectares in Re-Sy.No.387/5, Re-Sy.Block No.18 of Muthalamada Village, Chittur Taluk. The petitioner alleges that the plot is situated in a busy commercial area off the Thrissur - Govindapuram main road and bounded by residential and commercial buildings. Though the plot is a pucca dry land, it is wrongly included in the Data Bank constituted in terms of the Kerala Conservation of Paddy and Wet Land Act, 2008. The petitioner alleges that he submitted an application before the first respondent panchayath seeking permission to construct the residential building in his plot.

Respondents are hesitant to consider the application for building permit and conversion unless they are specifically directed to do so within a time frame.

3. Heard both sides.

4. The petitioner's application was rejected by the respondent panchayat for the reason that the property of the petitioner is classified as Nilam in the Data Bank. Going by the scheme of the Paddy and Wet Land Act, the local authority has to refer the application to the third respondent Committee who shall inspect the plot and submit a report along with its recommendation to the fourth respondent for further orders. Therefore, a decision has been taken by the Local Level Monitoring Committee, the third respondent. 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-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.

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.

In the light of what has been stated above, the writ petition is disposed of quashing Ext.P2 and directing the respondent panchayat to forward the petitioner's application for consideration of the third respondent which shall, after local inspection of the property of the petitioner, pass formal orders

in the light of the what has been stated above, if they are satisfied that the property is not fit for paddy cultivation at present. This exercise shall be completed within a period of two months from the date of receipt of a copy of this judgment. In the event of clearance by the third respondent, the respondent panchayat shall issue the building permit to the petitioner within a period two weeks thereafter.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.