

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 7085 of 2015 (I)

PETITIONER(S):

- 1. ABDUL JAMAL, AGED 42 YEARS,
S/O.AHAMMED, PUTHUVANA HOUSE, KAINAKARA,
MUPPATHADOM.P.O., ALUVA-683 110.**
- 2. FASINA JAMAL, AGED 33 YEARS,
W/O.ABDUL JAMAL, PUTHUVANA HOUSE, KAINAKARA,
MUPPATHADOM.P.O., ALUVA-683 110.**

**BY ADVS.SRI.P.B.SAHASRANAMAN,
SRI.T.S.HARIKUMAR,
SRI.K.JAGADEESH,
SRI.RAAJESH S.SUBRAHMANIAN.**

RESPONDENT(S):

**KADUNGALLUR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, SPECIAL GRADE,
MUPPATHADOM. P.O., ALUVA-683 110.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 7085 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS:-

**P1: COPY OF THE ORDER OF THE RESPONDENT, DATED 23.06.2014
AND ENGLISH TRANSLATION.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.7085 of 2015

Dated this the 19th day of August, 2015.

J U D G M E N T

Ext.P1 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioners are the owners in possession of the land having an extent of 6.07 ares in Sy.No.6601/06 of Kadungallur village. According to the petitioners, for the last 40 years there was no paddy cultivation in their property. Their application for building permit was rejected on the ground that the Village records show that it is 'nilam'. The petitioners submit that it is the settled legal position that the question of granting building permit need be issued taking into consideration of ground reality existing as stated in the decision in (Mohammed Abdul Basheer vs. State of Kerala) [2012(3)KLT 86]. It is also pointed out that for the application of the provisions of Kerala Conservation of Paddy Land and Wetland Act 2008, the land should be

included in the Data Bank as stated in the decision in (Ashraf Vs. Eramala Grama panchayat) 2012(3)KLT 323. It is in this backdrop, the petitioners approached this Court.

3. I have heard the learned counsel for the petitioners and the learned Government Pleader in the matter.

4. The learned Standing counsel opposed the application for building permit on the ground that the petitioners' property is a paddy land as per the revenue records. In answer to said submission, the learned counsel made 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 to construct a house. The learned counsel for the petitioners submit that their property is not a paddy land and

that the property is not included in the data bank. 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.

5. 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.

6. 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. Ext.P1 is quashed.

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 petitioners and surrounding properties. The respondent Panchayat is also directed to re-consider the application and pass orders granting permit, if they are satisfied that the land in the

present form is unfit for paddy cultivation. The petitioners shall be given 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.

ami/

The **“Survey Number “6601/06”** mentioned in the opening sentence in paragraph 2 of the judgment dated 19/08/2015 in W.P.(C)No.7085/2015 is corrected as **“Survey No.176/12A”** as per order dated 15/09/2015 in I.A.13033/2015 in W.P.(C)No.7085/2015.

Sd/-
Registrar (Judicial)

//True copy//

P.A. to Judge