

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 7490 of 2015 (I)

PETITIONER(S) :

**M.O.CHANDRASEKHARAN NAMBIAR, AGED 48 YEARS,
S/O.M.C.KUNHIKRISHNAN NAMBIAR, MANJERI OTHAYOTH,
NEDIYANGA AMSHAM, KAVUMBAYI DESHAM, KOOTTUMUGHAM P.O.,
PIN- 670 631, TALIPARAMBA TALUK, KANNUR DISTRICT.**

**BY ADVS.SRI.SREEKUMAR D.MENON
SMT.M.O.RATHNAMANI**

RESPONDENT(S) :

- 1. LAND REVENUE COMMISSIONER,
OFFICE OF THE LAND REVENUE COMMISSIONER,
THIRUVANANTHAPURAM- 695 001.**
- 2. THE SECRETARY,
SREEKANDAPURAM GRAMA PANCHAYAT, SREEKANDAPURAM,
THALIPARAMBU TALUK, KANNUR DISTRICT, PIN- 670 631.**
- 3. THE VILLAGE OFFICER,
SREEKANDAPURAM, THALIPARAMBU TALUK,
KANNUR DISTRICT, PIN- 670 631.**

**R1 & R3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH
R2 BY ADV. SRI.P.NARAYANAN, S.C**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PROPOSED BUILDING PLAN.

EXHIBIT P2: TRUE COPY OF THE ORDER NO.A2/4557/14 DATED 11-07-2014 ISSUED BY THE SECOND RESPONDENT WITH ITS ENGLISH TRANSACTION.

EXHIBIT P3: TRUE COPY OF THE BASIC TAX REGISTER ISSUED BY THE 3RD RESPONDENT DATED 16-08-2014 WITH ITS ENGLISH TRANSACTION.

EXHIBIT P4: TRUE COPY OF THE REPRESENTATION GIVEN BY THE PETITIONER TO THE SECOND RESPONDENT DATED 18-08-2014 WITH ITS ENGLISH TRANSACTION.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 7490 of 2015

Dated this the 16th day of June, 2015.

JUDGMENT

Ext.P2 order, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is the absolute owner in possession of 9.500 cents of land in Sy. No.1/5 vide document No.1807 of 2008 of SRO Sreekandapuram. He is also the owner in possession of 8.5 cents in Re-Sy.No.1/5. The petitioner alleges that the property is classified as Purayidom in the entire documents kept in the village office including the basic tax register except for the recital in the document wherein it is stated that part of the same is lying as Nilam whereas the actual nature of the land is Purayidom. It is alleged that the property is not included in the data bank also. However, the second respondent rejected the application for building permit by Ext.P2 order. It is with this background, the petitioner has

come up before this Court.

3. Arguments have been heard.

4. 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.

Therefore, this writ petition is allowed. Ext.P2 is quashed.

The respondents are 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.