

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 7598 of 2015 (Y)

PETITIONER'S:

1. **MUHAMMED ALI,S/O.KUNHEEDUTTY HAJI,
AGED 47 YEARS,THATTARATHODI HOUSE,
PONMALA,MALAPPURAM DISTRICT.**
2. **MUHAMMED MUSTAFA,S/O.KUNHEEDUTTY HAJI,
AGED 42 YEARS,THATTARATHODI HOUSE,
PONMALA,MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU**

RESPONDENT'S:

1. **THE PONMALA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
CHAPPANANGADI,MALAPPURAM DISTRICT,
PIN: 676 503.**
2. **THE SECRETARY,PONMALA GRAMA PANCHAYATH,
CHAPPANANGADI,MALAPPURAM DISTRICT,PIN:676 503.**

**R1 & 2 BY ADVS. SRI.ESM.KABEER
SRI.ABDUL MAJEED.N**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No.7598 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS:

**P1: TRUE COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER BY THE
2ND RESPONDENT DATED 1/11/2013.**

P1(a): TRUE ENGLISH TRANSLATION OF EXT.P1.

**P2: TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTIES OF THE
PETITIONER AND THE ADJACENT BUILDINGS.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

SVS

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.7598 of 2015

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Dated this the 17th day of July, 2015

JUDGMENT

Ext.P1 by which the application for building permit submitted by the petitioners was rejected is under challenge in this writ petition.

2. The application for building permit submitted by the petitioners was rejected by the 2nd respondent by Ext.P1 communication stating that since the properties were described as paddy field in the revenue records, their application for building permit cannot be considered. The petitioners allege that their property has never been used for paddy cultivation though the description of the same is mentioned as paddy field in the revenue records. They further allege that the properties have been planted with coconut trees and the property is bounded on three sides by buildings and one side by a public road. It is with this background, the petitioners have come up before this Court.

3. I have heard the learned counsel for the petitioners and the learned standing counsel for the respondent panchayat.

4. The learned standing counsel for the respondent panchayat opposed the petition on the ground that the documents relied on by the petitioners would show that the property of the petitioners is a paddy field. In answer to the said submission, the learned counsel for the petitioners, inviting my attention to Ext.P2 photographs, would submit that the petitioners' properties are pucca dry land and several buildings were constructed in the neighbouring properties.

5. Ext.P2 photos show the present nature of the land of the petitioners and the neighbouring houses. The respondents failed to note that they have already allowed the persons who are residing near the petitioners' properties to construct houses. However, the petitioners were arbitrarily prevented from constructing their houses. 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.

6. As per Ext.P2, it can be seen that the properties are not paddy land. It is having aged trees and one side of the properties is a public

road. 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.

7. 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 petitioners' application.

8. 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 properties regarding the present lie as well as the condition of the properties of the petitioners and surrounding properties. The respondent panchayat is also directed to re-consider the application and to grant permission if they are satisfied that the properties are not cultivable at present. 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

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