

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

WP(C).No. 8657 of 2015 (F)

PETITIONER(S):

**VINCENT VARGHESE, S/O.LATE E.M.VARKEY,
ILAVUNKAL HOUSE, MANTHONI,
POONCHOLA, POTTASSERY P.O.,
MANNARCAUD TALUK, PALAKKAD DISTRICT.**

**BY ADVS.SRI.SAJAN VARGHEESE K.,
SRI.LIJU. M.P.**

RESPONDENT(S):

- 1. THE DIRECTOR OF PANCHAYATS,
THIRUVANANTHAPURAM-695 001.**
- 2. KANJIRAPUZHA GRAMA PANCHAYATH,
POTTASSERY P.O., MANNARKKAD TALUK,
PALAKKAD DISTRICT-678 582, REP. BY THE SECRETARY.**
- 3. THE SECRETARY,
KANJIRAPUZHA GRAMA PANCHAYATH, POTTASSERY P.O.,
MANNARKKAD TALUK, PALAKKAD DISTRICT-678 582.**

**R1 BY GOVT. PLEADER SRI.G. GOPAKUMAR.
R2 & R3 BY ADV. SRI.T.K.SANDEEP.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P-1: TRUE COPY OF THE PHOTOGRAPHS OF THE DISPUTED PROPERTIES WITH THE BUILDING.
- EXT.P-2: TRUE COPY OF THE ELECTRICITY BILL DATED 23.05.2011 ISSUED BY K.S.E.B.
- EXT.P-3: TRUE COPY OF THE ELECTRICITY BILL DATED 06.02.2013 ISSUED BY K.S.E.B.
- EXT.P-4: TRUE COPY OF THE PLAN OF THE PROPOSED BUILDING.
- EXT.P-5: TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE RESPONDENT NO.2, TO HAVE ISSUED WITH THE BUILDING PERMIT.
- EXT.P-6: TRUE COPY OF THE COMMUNICATION DATED 18.02.2015 ISSUED BY THE RESPONDENT NO.3 TO THE PETITIONER.
- EXT.P-6(A): TRUE ENGLISH TRANSLATION OF EXT.P6..

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.8657 of 2015

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Dated this the 17th day of June, 2015

JUDGMENT

Ext.P6 which rejected the petitioner's application for building permit, is under challenge in this writ petition.

2. The petitioner is the owner in possession of 0.0211 hectares of property comprised in Sy. Nos.53/3A and 54/7 in Pottassery I Village in Mannarkkad Taluk. The petitioner alleges that in that property, his predecessor-in-interest and assignors had put up a house and were residing there.

3. The petitioner further alleges that since the property is abutting a public road, he wanted to put up a commercial building. Therefore, he made Ext.P5 application before the 2nd respondent which was rejected by Ext.P6 stating that the building permit cannot be granted for commercial purpose in a reclaimed land. It is with this background, the petitioner has approached this Court

4. Arguments have been heard.

5. The learned counsel for the petitioner, inviting my attention to Ext.P1 photographs, submitted that in the nearby locality residential buildings have come up. The genuineness of the said submission can be understood from Ext.P4 which is the copy of the plan of the area where the petitioners proposed to construct the building in which the details of neighbouring houses are also shown. Ext.P1 photos show the present nature of the land of the petitioners and the neighbouring 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.P1, it can be seen that the property is not a cultivating paddy field. It is well settled that the applicant can choose the best land suited for construction (**Sunil** v.

Killimangalam-Panjali 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 petitioner's application. Therefore, this writ petition is allowed. Ext.P6 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 petitioner and surrounding properties. The respondents are also directed to re-consider Ext.P5 application and to grant permission if they are satisfied that the property is not

cultivable at present. The petitioner 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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