

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 9925 of 2015 (M)

PETITIONER:

**JOSEPH J CHUDUKADU, CHUDUKATTIL HOUSE,
PACHA, CHEKKIDIKADU P.O., EDATHUA,
ALAPPUZHA DISTRICT.**

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. DIRECTOR OF PANCHAYATH,
PANCHAYATH DIRECTORATE, PUBLIC OFFICE BUILDING,
MUSEUM P.O, THIRUVANANTHAPURAM - 695 002.**
- 3. DEPUTY DIRECTOR OF PANCHAYATH,
OFFICE OF THE DEPUTY DIRECTOR, ALAPPUZHA - 686 001.**
- 4. EDATHUA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
EDATHUA GRAMA PANCHAYATH, EDATHUA P.O.,
ALAPPUZHA - 689 573.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR
R4 BY SRI.P.VINOD KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1- TRUE COPY OF THE ORDER UNDER KLU ORDER DATED 06/03/2007 OF THE REVENUE DIVISIONAL OFFICER, ALAPPUZHA (WITH ENGLISH TRANSLATION)
- EXHIBIT-P2- TRUE COPY OF THE BUILDING PERMIT A4-154/2008 DATED 24/12/2008 OF THE 4TH RESPONDENT (WITH ENGLISH TRANSLATION)
- EXHIBIT-P3- TRUE COPY OF THE CERTIFICATE DATED 29/09/2012 ISSUED BY THE VILLAGE OFFICER (WITH ENGLISH TRANSLATION).
- EXHIBIT-P4- TRUE COPY OF THE RECEIPT ISSUED BY THE VILLAGE OFFICER DATED 25/08/2011 (WITH ENGLISH TRANSLATION).
- EXHIBIT-P5- TRUE COPY OF THE JUDGMENT IN W.P(C) 16857/2010 DATED 21/08/2012.
- EXHIBIT-P6- TRUE COPY OF THE LETTER DATED 22/09/2012 (WITH ENGLISH TRANSLATION).
- EXHIBIT-P7- TRUE COPY OF THE REPORT OF THE 4TH RESPONDENT, OBTAINED UNDER THE RIGHT TO INFORMATION ACT (WITH ENGLISH TRANSLATION).

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 9925 of 2015

Dated this the 18th day of June, 2015.

JUDGMENT

Aggrieved by the non-numbering of the petitioner's building which according to the petitioner was constructed on the basis of the approved plan and permit, the petitioner has come up before this Court.

2. The petitioner constructed a building in the year 2009 and made an application to number the building. But the 4th respondent have not numbered the building till date alleging violation of Paddy and Wet Land Act. According to the petitioner, the property of the petitioner is not a Paddy field and the same was reclaimed even prior to the enactment of the Kerala Conservation of Paddy and Wet Land Act. The petitioner relied on Ext.P1 passed under the KLU order, granting permission to the petitioner to convert the paddy and the same was issued by the RDO concerned. The petitioner was permitted to reclaim 5 cents of land and according to the

petitioner, the building was constructed in the 5 cents, which is evidenced by Ext.P7 report. Therefore, the construction is totally legal and the petitioner is entitled to get the building numbered; it is alleged.

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.

4. 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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application. It is evident from Ext.P7 that the petitioner was permitted to reclaim the land.

In the result, the writ petition is disposed of directing the respondents to issue the occupancy certificate and number of the building of the petitioner, within a period of two weeks from the date of receipt of a copy of this judgment. To facilitate an early action, it shall be open to the petitioner to produce a copy of the writ petition as well as the copy of this judgment before the respondent concerned at the earliest.

**Sd-
A.V. RAMAKRISHNA PILLAI
JUDGE**

Scl.