

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 11681 of 2015 (I)

PETITIONER:

**SUNITH RAHMAN, S/O.MOIDU HAJI,
RESIDING AT RAMLA MANZIL,
PAZHAYANNUR PO,
THRISSUR DISTRICT - 680 587.**

**BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.**

RESPONDENT:

**PAZHAYANNUR GRAMA PANCHAYAT,
PAZHAYANNUR, THRISSUR DISTRICT,
REPRESENTED BY ITS SECRETARY, PIN - 680 587.**

BY ADV. SRI.P.N.MOHANAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- P1- TRUE PHOTOGRAPH OF THE OLD BUILDING EXISTED IN THE PROPERTY AT THE TIME OF PURCHASE.
- P2- TRUE COPY OF THE APPLICATION DATED 6.2.2015 BEFORE THE RESPONDENT FOR THE GRANT OF BUILDING PERMIT.
- P3- TRUE PHOTOGRAPH OF THE PROPERTY AFTER DEMOLISH OF THE BUILDING.
- P4- TRUE COPY OF THE PROCEEDINGS PURPORTEDLY MADE ON 30.1.2015 BY THE RESPONDENT ADDRESSED TO THE PETITIONER.
- P5- TRUE COPY OF THE LICENCE NO.152/2006-2007 DATED 21.4.2006 ISSUED BY THE RESPONDENT PANCHAYAT IN THE NAME OF MR.MUHAMMED THE TENANT OF THE BUILDING.
- P6- TRUE COPY OF THE LICENCE NO.133/12-13 DATED 4.12.2013 ISSUED BY THE RESPONDENT PANCHAYAT IN THE NAME OF MR.MUHAMMED THE TENANT OF THE BUILDING.
- P7- TRUE COPY OF THE SCHEDULE ATTACHED TO THE DOCUMENT NO.2057/2014 OF SRO, PAZHAYANNUR EXECUTED IN FAVOUR OF THE PETITIONER ON 16.9.2014.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.11681 of 2015

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Dated this the 30th day of June, 2015

JUDGMENT

The petitioner is aggrieved by the rejection of Ext.P2 application for grant of building permit on the ground that the same was passed without hearing the petitioner and, therefore, to reconsider the same afresh after hearing the petitioner.

2. The petitioner herein has purchased a building comprised in Ward No.XXII in Pazhayannur Panchayat, Thalappilly taluk, Thrissur district having an extent of 7.08 ares in Sy. No.1133/1 of Pazhayannur village as per document no.2057 of 2014 of SRO, Pazhayannur. The said building was purchased by the petitioner with an intention to demolish it and to construct a shopping complex.

3. After the purchase of the property, the petitioner had demolished the building and applied for issue of permit for constructing a new building by application dated 6.2.2015 before the respondent. The application was rejected by the respondent by proceedings purported to have been made on 30.1.2015, making

reference to Ext.P2 application as if it was filed by the petitioner on 21.3.2015. The reason for the rejection was that the land comprised in Sy. No.1133/1 extending to 7.08 ares was classified as a paddy field and as per the provisions of the Kerala Conservation of Paddy Land and Wetland Act, no permit shall be given to the petitioner for the construction of a building in the said property.

4. The grievance of the petitioner was that he was neither heard nor afforded an opportunity of being heard by the respondent before issuing Ext.P4. According to him, Ext.P4 is a pre-fabricated order in view of the false date put on the said order. The petitioner further alleges that the land in question has been used as dry land from time in memorial and property tax was being paid to the respondent for the last so many years.

5. The petitioner further alleges that a person by name Mr. Muhammed was conducting a stationary shop styled as 'M/s. M.A.Stationary Stores' in building No.XXI/459 in question before its demolition and even going by the document executed in his name at the time of execution of the document vide document No.2057/2014 of SRO, Pazhayannur, the classification of the land

was dry land. The four boundaries of the land in question are also dry land. The petitioner is highly aggrieved by the issuance of Ext.P4 proceedings whereby the application for grant of building permit has been rejected by the respondent. It is with this background, the petitioner has come up before this Court.

6. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayat.

7. The learned standing counsel for the respondent on instructions would submit that the permission was rejected as the property where the construction was proposed to be made is paddy field and the intention of the petitioner is to conduct a commercial building. According to the learned standing counsel for the respondent panchayat, permission cannot be granted as per the Kerala Conservation of Paddy Land and Wetland Act.

8. The learned counsel for the petitioner, per contra, would submit that the property in question is a pucca garden land and commercial buildings have come up the adjoining properties. The learned counsel for the petitioner inviting my attention to Ext.P1 photographs in support of the argument.

9. 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.

10. As per Ext.P4, it can be seen that the property is not a paddy land and it is having full of aged trees. That itself would show that Ext.P1 is not a cultivating paddy field. It is settled position that the applicant can choose the best land suited for construction of his house [**Sunil v. Killimangalam-Panjai 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.

11. 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.P4 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 respondent is also directed to re-consider Ext.P2 application and pass appropriate orders, after affording the petitioner an opportunity of being heard. This shall be done within two months from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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