

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

WP(C).No. 14361 of 2015 (U)

PETITIONER(S):

1. PABDUL BASHEER,
S/O.POKKER KUTTY, FATHIMA MANZIL, POST KOLATHUR,
KOZHIKODE DISTRICT.
2. ASHRAF PADINJAREYIL,
S/O.POKKER KUTTY, FATHIMA MANZIL, POST KOLATHUR,
KOZHIKODE DISTRICT.
3. NIZAR P.,
S/O.POKKER KUTTY, FATHIMA MANZIL, POST KOLATHUR,
KOZHIKODE DISTRICT.

BY ADV. SRI.K.P.SUDHEER

RESPONDENT(S):

1. THALAKULATHUR GRAMA PANCHAYATH,
POST THALAKUALATHUR, PIN - 673 317, KOZHIKODE DISTRICT,
REPRESENTED BY ITS SECRETARY.
2. THE LOCAL LEVEL MONITORING COMMITTEE,
THALAKULATHUR GRAMA PANCHAYATH,
REPRESENTED BY ITS CONVENOR,
(THE AGRICULTURAL OFFICER), KRISHI BHAVAN,
THALAKULATHUR, KOZHIKODE DISTRICT, PIN - 673 317.

R1 BY ADV. SRI.JACOB ABRAHAM

R2 BY GOVERNMENT PLEADER SRI.T.R.RAJESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 14361 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. TRUE COPY OF SALE DEED NO.3178/2012 DATED 06.09.2012 OF
CHELANNUR SRO.**

**EXHIBIT P2. TRUE COPY OF ORDER NO.A1 8313/14 DATED 12.01.2015 (WRONGLY
SHOWN AS 12.01.2014) ISSUED BY THE 1ST RESPONDENT.**

**EXHIBIT P3. TRUE COPY OF RELEVANT EXTRACT OF DATA BANK CONCERNING THE
PROPERTY OF THE PETITIONER.**

**EXHIBIT P4. TRUE COPY OF REPORT DATED 11.11.2013 OF THE VILLAGE OFFICER,
THAKKULATHUR.**

EXHIBIT P5. TRUE COPIES OF THE PHOTOGRAPHS (3 NOS.) OF THE PETITIONER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.14361 of 2015

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Dated this the 12th day of June, 2015

JUDGMENT

Ext.P2 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioners are the owners in possession of the property covered by Ext.P1 sale deed. They submitted an application for building permit before the respondents which was rejected by Ext.P2 on the ground that the land is classified as a paddy field as per revenue records. The petitioners allege that before submitting Ext.P1 they applied to the revenue authorities for correcting the entries in their records. In those proceedings, the Village Officer submitted Ext.P4 report which would show that the land was reclaimed several years back and there are aged trees.

3. The petitioners further allege that the draft data bank was notified in the Kerala Gazette on 24.3.2012. According to them, the

property is not included in the data bank. Hence, this writ petition.

4. Arguments have been heard.

5. The learned standing counsel for the respondent panchayat justified the stand taken by the panchayat in Ext.P2 order for rejecting the application submitted by the petitioners.

6. The learned counsel for the petitioners would submit that on coming to know that the property is included as 'nilam' in the revenue records, the petitioners submitted an application before the R.D.O, Kozhikode who directed the Village Officer to conduct an inspection and to submit a report. Accordingly, the Village Officer submitted Ext.P4 report which would show that the property was reclaimed years back.

7. In this connection, the learned counsel for the petitioners invited my attention to Ext.P5 photographs which would show the present nature of the property in question. Ext.P5 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.

8. As per Ext.P5, 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 (**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.

9. 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.P2 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 the application taking into account Ext.P4 and the entries in Ext.P3 draft data bank, pass appropriate orders, and grant permission if the respondent is satisfied that the property is unfit for paddy cultivation at present, after affording the petitioners 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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