

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 14385 of 2015 (W)

PETITIONER(S):

**AMINU, W/O.AWJU, EZIKOTTAYIL HOUSE,
PUNNAYOORKULAM. P.O., PAROOR,
CHAVAKKAD TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.K.I.SAGEER.

RESPONDENT(S):

- 1. THE SECRETARY,
PUNNAYURKULAM GRAMA PANCHAYATH,
PANCHAYATH OFFICE, P.O. PUNNAYURKULAM,
THRISSUR DISTRICT- 679 561.**
- 2. STATE OF KERALA,
REP. BY ITS SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

**R1 BY ADVS. SRI.SANTHOSH P.PODUVAL,
SMT.R.RAJITHA,
SMT.VINAYA V.NAIR.
R2 BY GOVT. PLEADER SMT.ANITHA RAVINDRAN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 14385 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- A TRUE COPY OF THE CERTIFICATE ISSUED BY THE LAND TRIBUNAL, CHAVAKKAD AS PER ITS CERTIFICATE NO.397/1975.**
- P2- A TRUE COPY OF THE LAND TAX RECEIPT IN RESPECT OF 32 CENTS OF LAND IN SY.NO.213/6 OF PUNNAYOORKULAM VILLAGE ISSUED BY THE VILLAGE OFFICER, DTD. 20.04.2015.**
- P3- A TRUE COPY OF THE SKETCH OF THE PROPOSED ENGLISH MEDIUM SCHOOL BUILDING.**
- P4- A TRUE COPY OF THE ORDER NO.A2-2603/15 DTD. 29.04.2015 ISSUED BY THE 1ST RESPONDENT.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.14385 of 2015

Dated this the 21st day of July, 2015

JUDGMENT

Ext.P4 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of about 32 cents of land in Sy.No.213/6 of Punnayoorkulam Village. In the property, the petitioner intends to construct an English Medium School having a plinth area of 275 sq.m. and the petitioner submitted an application for building permit before the first respondent which was rejected by Ext.P4 on the ground that the land is classified as nanja as per revenue records without considering the physical nature of the property.

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.

5. 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 field so as to attract the provisions of the Kerala Conservation of Paddy Land and Wetland Act and Rules.

6. 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.

7. 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 field 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.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 respondents are also directed to re-

consider the application and pass orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation. 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**

CSS/

true copy

PS.TO JUDGE