

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYASHTA, 1937

WP(C).No.15847 of 2015 (E)

PETITIONER:

**MOHAMMED JABIR,AGED 43 YEARS,
S/O.SAIDUMOHAMMED VEERAN,
KIZAN MANZIL,MADATHUMPADI,
PANAYIKULAM P.O,ALANGAD VILLAGE,
PARAVUR TALUK,ERNAKULAM DISTRICT-683 511.**

**BY ADVS.SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE**

RESPONDENT'S:

- 1. THE ALANGAD GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE ALANGAD GRAMA PANCHAYAT,
NEERIKOD,ALANGAD,ERNAKULAM DISTRICT,PIN-683511.**
- 2. THE SECRETARY,ALANGAD GRAMA PANCHAYAT,
OFFICE OF THE ALANGAD GRAMA PANCHAYAT,
NEERIKOD,ALANGAD,ERNAKULAM DISTRICT-683 511.**

R1 & R2 BY SRI.DINESH MATHEW J.MURICKEN,S.C

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1- TRUE PHOTOCOPY SETTLEMENT DEED NO.7645/1995 OF SRO, ALANGAD DATED 20.11.1995.
- P2- TRUE PHOTOCOPY OF BASIC TAX RECEIPT DATED 11.5.2015.
- P3- TRUE PHOTOCOPY OF BUILDING TAX RECEIPT DATED 4.12.1955.
- P4- TRUE PHOTOCOPY OF BUILDING TAX RECEIPT DATED 31.3.1972.
- P5- TRUE PHOTOCOPY OF BUILDING TAX RECEIPT DATED 13.3.1984.
- P6- TRUE PHOTOCOPY OF PROPERTY TAX RECEIPT DATED 8.5.2015.
- P7- TRUE PHOTOCOPY OF LAND IDENTIFICATION DETAILS ISSUED BY THE VILLAGE OFFICER, ALANGAD.
- P8- PHOTOGRAPHS THREE IN NUMBERS SHOWING THE OLD BUILDING SITUATED IN THE PETITIONER'S PROPERTY WITH OLD TREES.
- P9- TRUE PHOTOCOPY OF BUILDING PERMIT APPLICATION DATED 16.3.2015.
- P10- TRUE PHOTOCOPY OF LETTER ISSUED BY THE 2ND RESPONDENT DATED 27.3.2015

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 15847 of 2015

Dated this the 10th day of June, 2015

J U D G M E N T

Ext.P10, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is the owner in possession of an extent of 50 cents of property comprised in Sy.Nos.320/10B and 320/8 of Alangad Village in Paravur Taluk within the local limits of the respondent panchayath as per Ext.P1. He submitted an application for building permit, which was rejected by the 2nd respondent as per Ext.P10 for the reason that in the basic tax register, the property is mentioned as 'paddy land'. According to the petitioner, there are old building and trees situated in the said property, and his father, who was residing therein, has been paying property tax. For substantiating the said contention, he produced Ext.P3 property tax receipt for the year 1955. He alleges that the Village Officer has certified that this is a dry land

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and not included as paddy land anywhere. According to him, without considering any of these matters, the 2nd respondent rejected his application for building permit. Hence, he has approached this Court.

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 of his house (**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.

6. In **Jalaja Dileep v Revenue Divisional Officer**

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(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.

Therefore, this writ petition is allowed. Ext.P10 is quashed.

The respondent panchayath 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 consider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation. 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

bka/-