

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYASHTA, 1937

WP(C).No. 16076 of 2015 (H)

PETITIONER(S):

**SURESH KUMAR, S/O.LATE PRABHAKARAN NAIR,
AGED 49 YEARS, RESIDING AT AJITH BUILDING,
RAILWAY COLONY ROAD, AKATHETHARA AMSOM,
PALAKKAD TALUK, (THE PETITIONER IS REPRESENTED
HEREIN BY HIS POWER OF ATTORNEY HOLDER - HIS
MOTHER - V.K. RUGMINI, W/O.LATE PRABHAKARARN NAIR,
AGED 71 YEARS, RESIDING AT AJITH BUILDING,
RAILWAY COLONY ROAD, AKATHETHARA AMSOM,
PALAKKAD TALUK).**

**BY ADVS.SRI.T.C.SURESH MENON,
SRI.P.S.APPU.**

RESPONDENT(S):

**AKATHETHARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
AKATHETHARA P.O., PALAKKAD - 678 008.**

BY ADV. SRI.U.BALAGANGADHARAN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 16076 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P-1: TRUE COPY OF THE TAX RECEIPT DATED 15.02.2013.**
- EXT.P-2: TRUE COPY OF THE PROCEEDINGS PASSED BY THE REVENUE
DIVISIONAL OFFICER, PALAKKAD DATED 25.11.2004.**
- EXT.P-3: TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT
PANCHAYATH DATED 18.04.2015.**
- EXT.P-4: TRUE COPY OF FEW PHOTOGRAPHS WHICH SHOWS THE LIE OF
THE PETITIONER'S PROPERTY DATED -NIL-.**
- EXT.P-5: TRUE COPY OF THE JUDGEMENT IN WP(C).NO. 13442/2014 ON THE
FILE OF THIS HONOURABLE COURT DATED 05.08.2014.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 16076 of 2015

Dated this the 15th day of June, 2015

J U D G M E N T

Ext.P3, 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 12 cents of land comprised in Sy.No.247/4 of Akathethara Village in Palakkad Taluk within the local limits of the respondent panchayath. The petitioner has purchased the said property with an intention to construct a residential building and he applied for building permit. As per Ext.P2, he obtained permission under the Kerala Land Utilization Order for an extent of 5 cents of property though his entire property is no longer used for paddy cultivation. However, as per Ext.P3, the application for building permit was rejected by the respondent panchayath stating that permission under the Kerala Land Utilization Order was granted only for five cents of land, whereas the proposed building utilizes 5.31 cents of land. According to the

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petitioner, the entire area, where he proposes to construct the residential house, has been used for construction of residential houses by other persons and it has virtually become a residential colony. Hence, this writ petition.

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-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.

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.P3 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 respondent is also directed to consider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondent is 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/-