

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

WP(C).No. 16100 of 2015 (J)

PETITIONER(S):

1. ANNAMMA MATHEW,
OTTARACKAL KADATHU HOUSE, CHEKKIDIKADU.P.O,
PACHA,EDATHUA, ALAPUZHA DISTRICT.
2. MATHEW K VARGHESE.
KALAPURACKAL HOUSE, CHEKKIDIKADU.P.O, PACHA,
EDATHUA, ALAPUZHA DISTRICT

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.
2. DIRECTOR OF PANCHAYATH,
PANCHAYATH DIRECTORATE,PUBLIC OFFICE BUILDING,
MUSEUM P.O., THIRUVANANTHAPURAM- 695 001.
3. DEPUTY DIRECTOR OF PANCHAYATH,
OFFICE OF THE DEPUTY DIRECTOR, ALAPUZHA- 688 001.
4. EDATHUA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
EDTHUA GRAMA PANCHAYATH, EDATHUA P.O.,
ALAPUZHA- 689 573.
5. REVENUE DIVISIONAL OFFICER,
REVENUE DIVISIONAL OFFICE, ALAPUZHA- 689 001.

R1 TO R3 & R5 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR
R4 BY ADV. SRI.P.VINODKUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE SALE DEED NO.2246/2005 OF SRO AMBALAPUZHA
- EXT.P2: TRUE COPY OF THE SALE DEED NO.2245/2005.
- EXT.P3: TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT DATED 02/08/2007 TO THE 1ST PETITIONER.
- EXT.P4: TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT ON 17/08/2007 TO THE 1ST PETITIONER
- EXT.P5: TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER TO THE 5TH RESPONDENT DATED 06/10/2010 WITH REGARD TO THE PROPERTY OF THE 1ST PETITIONER.
- EXT.P6: TRUE COPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER TO THE 5TH RESPONDENT ON 07/10/2010 WITH REGARD TO THE PROPERTY OF THE 2ND PETITIONER.
- EXT.P7: TRUE COPY OF THE ORDER OF THE 5TH RESPONDENT DATED 19/02/2011 WITH REGARD TO THE 1ST PETITIONER.
- EXT.P8: TRUE COPY OF THE ORDER THE 5TH RESPONDENT WITH REGARD TO THE 2ND PETITIONER.
- EXT.P9: TRUE COPY OF THE REPORT OF THE ASST.EXECUTIVE ENGINEER WITH REGARD TO THE PROPERTY OF THE 1ST PETITIONER.
- EXT.P10: TRUE COPY OF THE NOTICE DATED 06/11/2014 OF THE 4TH RESPONDENT ADDRESSED TO THE 2ND PETITIONER.
- EXT.P11: TRUE COPY OF THE APPLICATION SUBMITTED BY THE 2ND PETITIONER.
- EXT.P12: TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.31551/2014 DATED 05/02/2015.
- EXT.P13: TRUE COPY OF THE SKETCH SHOWING THE LYE OF THE BUILDING.
- EXT.P14: TRUE COPY OF THE PHOTOGRAPHS SHOWING THE GROUND REALITY.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.16100 of 2015

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Dated this the 17th day of June, 2015

JUDGMENT

Aggrieved by the inaction on the part of the 4th respondent in taking action on Ext.P4 application submitted by the petitioners for numbering their building, the petitioners have come up before this Court.

2. The petitioners allege that they were moving pillar to post for the last several years to get the building constructed by them numbered. The first petitioner is conducting a teashop and the second petitioner is conducting a tailoring shop and fruit stall; it is alleged. The petitioners further alleged that they constructed shop room in 2005 and at the time of construction, there was no building rule in the panchayat area and, therefore, permission was not required. However, according to them, the construction was strictly as per Section 220 of the Kerala Panchayat Raj Act.

3. After completion of the building, the petitioners made an application to the panchayat for numbering the building to obtain electricity connection. At that time, Paddy Conservation Act has

not came into force as the same was enacted only in 2008. Exts.P5 to P9 reports of the Village Officer, RDO and Assistant Executive Engineer show that the property is not a paddy field and the building was constructed in the year 2005. The grievance of the petitioners is that while the application of the 2nd petitioner was pending, Kerala Conservation of Paddy Land and Wetland Act, 2008 was published in the Gazette on 12.8.2008. Due to the same, the 4th respondent has not taken any action on the application.

4. The petitioners further allege that they have produced certificate from the 5th respondent RDO, which clearly states that the property is not a paddy field and the same was reclaimed even prior to the enactment of Kerala Conservation of Paddy Land and Wetland Act. The petitioners state that the the Government passed Kerala Building (Regularisation of Unauthorised Construction) Rules and published the same on 27.8.2014. Thereafter, the 4th respondent on 6.11.2014 issued Ext.P10 notice to the petitioners requiring to submit an application as per Rule 5 to regularise the building. Accordingly, the 2nd respondent submitted Ext.P11 application with all documents required as per Rule 5. However, it could not evoke any positive response.

5. Arguments have been heard.

6. The learned counsel for the petitioners, inviting my attention to Ext.P14 photographs, which shows the lie of the petitioners' building and surround buildings. Ext.P14 photos show the present nature of the land of the petitioners and the neighbouring buildings. The respondents failed to note that as per Ext.P12 they have already numbered the nearby buildings. However, the petitioners were singled out arbitrarily.

7. 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.

8. As per Ext.P14, it can be seen that the property is not a paddy land. It is settled position that the applicant can choose the best land suited for construction (**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.

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 petitioners' application. Therefore, this writ petition is allowed.

The respondent Panchayat is directed to consider the petitioner's application(Ext.P4) and to number the building on being satisfied regarding the present lie as well as the condition of the building of the petitioner and surrounding properties in a local inspection. The petitioner shall be given an opportunity of being heard. This shall be done within a period of two month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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