

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 18862 of 2013 (G)

PETITIONER(S):

**PRADEEP.P.M.,
POOVALIVELIYIL HOUSE, KANICHUKULANGARA P.O.,
CHERTHALA, ALAPPUZHA-688 594.**

BY ADV. SRI.SAIBY JOSE KIDANGOOR.

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF REVENUE,
THIRUVANANTHAPURAM-695 001.**
- 2. THE REVENUE DIVISIONAL OFFICER,
FORT KOCHI-682 001.**
- 3. VILLAGE OFFICER,
CHENGAMANADU VILLAGE,
CHENGAMANADU-683 585.**
- 4. THE CHENGAMANADU GRAMA PANCHAYATH,
CHENGAMANADU, REPRESENTED BY ITS SECRETARY, PIN-683 585.**

**R1 TO R3 BY GOVT. PLEADER SRI.RAFEEK. V.K.
R4 BY ADV. SRI.ANIL K.MOHAMMED.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 18862 of 2013 (G)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1. TRUE COPY OF THE SALE DEED NO.2825/2012 DATED 16/06/2012 OF CHENGAMANADU SUB REGISTRY.
- EXHIBIT P2. TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.7642/2012 DATED 13/07/2012.
- EXHIBIT P3. TRUE COPY OF THE ORDER NO.243/2012 DATED 22/10/2012 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P4. TRUE COPY OF THE JUDGMENT IN WP(C).NO. 26330/2012 DATED 12/11/2012 BEFORE THIS HONOURABLE COURT.
- EXHIBIT P5. TRUE COPY OF THE ORDER NO.A3-268/13 DATED 06/02/2013 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.18862 of 2013

Dated this the 25th day of March, 2015

JUDGMENT

The petitioner, who is the owner of the property having an extent of 2.15 Ares, as per Ext.P1 applied for a permit before the respondent Panchayat for constructing a residential house in the said property. The same was rejected by Ext.P5 order stating that regarding the said property Writ Petition No.2882/2012 is pending before this Court and therefore, permission cannot be granted to the petitioner for constructing the house.

2. Though notice was served on the respondents, they did not enter appearance.

3. Arguments have been heard.

4. The definite case of the petitioner is that though his property was paddy land years back, at present, it is a reclaimed land and no cultivation is

possible in the said land. The petitioner also points out that only with the intention of constructing a house, he has purchased the land. He also points out that there are several other dwelling houses in and around the area.

5. The learned counsel for the petitioner submitted that the 4th respondent, before rejecting the application for permission for constructing a house, ought to have conducted a site inspection for realising the ground realities.

6. 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.

7. It is settled position that the applicant can choose the best land suited for construction of his building (***Sunil v. Killimangalam-Panjai 5th Ward Nellulpadaka Samootham*** [2012 (4) KLT 511]).

Only if there is cultivation, presently, 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.

8. 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. Ext.P5 is quashed. The 4th respondent 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 for construction of a residential house and pass appropriate orders, after affording the

petitioner an opportunity of being heard. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Though in Ext.P5, reference is made to the pendency of WPC No.2882/2012, it does not say whether any stay order has been granted by this Court in that case. If any stay order is there, the aforesaid exercise shall be postponed till the stay order is vacated or the said writ petition is disposed of. If the said writ petition has already been disposed of, the direction in the judgment shall be subject to the decision in that writ petition.

**Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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true copy

P.S.TO JUDGE