

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 16473 of 2015 (H)

PETITIONER(S):

**SARASWATHI AMMA, AGED 57 YEARS,
D/O.VASUDEVAN PILLAI, PEROORVADAKKATHIL,
PULIKKANAKKU P.O., KRISHNAPURAM, KAYAMKULAM,
ALLEPPEY.**

**BY ADVS.SRI.T.V.VINU
SRI.JAISHANKAR V.NAIR
SMT.ARATHI KARUNAKARAN
SMT.PARVATHY S.KRISHNAN**

RESPONDENT(S):

**SECRETARY, KRISHNAPURAM PANCHAYATH,
KRISHNAPURAM VILLAGE, KARTHIKAPALLY TALUK,
KAYAMKULAM, ALLEPPEY - 690 533.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 16473 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE ORDER DATED 10.2.15.

EXHIBIT P2. COPY OF THE CERTIFICATE DATED 3.2.15.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 16473 of 2015

Dated this the 3rd day of July, 2015

J U D G M E N T

Ext.P1 order, 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 17.39 ares of property comprised in Sy.No.164/1 of Krishnapuram Village in Karthikappally Taluk within the local limits of the respondent panchayath. The petitioner submitted an application for building permit, which was rejected by the respondent as per Ext.P1 for the reason that the land is shown as paddy land in revenue records and as per circular No.45846/ARI/08/LSGD, permission cannot be granted for the petitioner. According to the petitioner, the said property is dry land and is not included in the data bank. To prove the same, the petitioner has produced Ext.P2 certificate issued by the Agricultural Officer. He further alleges that the application of the petitioner was rejected purely mechanically and without enquiring into the present condition of the property with mala

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fide intention. Therefore, according to the petitioner, Ext.P3 is purely illegal, unjust, arbitrary and liable to be quashed.

3. Though notice has been served on the respondent, they did not turn up.

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** [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.P1 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 reconsider 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/-