

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C) .No. 16587 of 2015 (W)

PETITIONER(S) :

A.V.JOSE,
AGED 70 YEARS, S/O A.J. VARGHESE,
DIRECTOR,
SPRING MIST SPORTS & GAMES PRIVATE LIMITED,
CHELAKKARA,
THRISSUR-680 586. (RESIDING AT ALUKKA HOUSE,
MISSION QUARTERS, EAST FORT, THRISSUR-680001)

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

RESPONDENT(S) :

CHELAKKARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, CHELAKKARA P.O.,
THRISSUR-680 586.

BY ADV. SRI.BINOY VASUDEVAN
BY ADV. SMT.P.G.BABITHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER, CHELAKKARA TO THE PETITIONER DATED 16.4.2015.
- EXHIBIT P2: TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT PANCHAYATH TO THE PETITIONER DATED 25.4.2015.
- EXHIBIT P3: TRUE COPY OF FEW PHOTOGRAPHS DEPICTING THE LIE OF THE PROPERTY DATED NIL.
- EXHIBIT P4: THE TRUE COPY OF THE JUDGMENT IN WPC NO.13442/2014 ON THE FILE OF THIS HONOURABLE COURT DATED 5.8.2014.

RESPONDENT(S) ' EXHIBITS :

- EXHIBIT R1(A): THE TRUE COPY OF THE RELEVANT PAGES OF THE DATA BANK IN RESPECT OF THE PETITIONER'S PROPERTY.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.16587 of 2015

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Dated this the 5th day of August, 2015

JUDGMENT

Ext.P2 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of 143.71 Ares of land comprised in different survey numbers within the limits of respondent panchayat. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P2 on the ground that the land is classified as a paddy field as per revenue records.

3. In the counter affidavit filed by the respondents, they would contend that the property of the petitioner is a pucca paddy field and is included in the data bank prepared by the local level monitoring committee in terms of the Kerala Conservation of Paddy Land and Wetland Act, 2008. Therefore, they prayed for a dismissal of the writ petition.

4. Arguments have been heard.

5. The learned standing counsel for the respondent panchayat opposed the petition on the ground that as per the

possession certificate the petitioner's property nilam. In answer to the same, the learned counsel for the petitioner invited my attention to Ext.P3 photographs which would show that at present the property of the petitioner is a pucca garden land having aged trees. Ext.P3 photos show the present nature of the land of the petitioner and the neighbouring properties. The respondents failed to note that they have already allowed the persons residing near to petitioner's property to construct buildings. However, the petitioner was arbitrarily prevented from construction.

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 house [**Sunil v. Killimangalam-Panjal 5th Ward Nellulpadaka Samooham** 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.

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 petitioner's application.

9. The learned counsel for the petitioner invited my attention also to the decision of this Court in **Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others** [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

Therefore, this writ petition is allowed. Ext.P6 is quashed. The respondent panchayat 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 panchayat is also directed to re-consider the application

and to grant permission if they are satisfied that the property is not cultivable at present. The petitioner shall be given an opportunity of being heard. 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

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