

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYASHTA, 1937

WP(C).No.16721 of 2015 (M)

PETITIONER'S:

1. **PATHUMMAYAI,W/O.IBRAHIM.P,AGED 65 YEARS,
JARAS MAHAL,KONGANUR P.O.,ATHOLI,
KOZHIKODE DISTRICT,PIN-673315.**
2. **JUBAIRIYA.P,D/O.IBRAHIM,AGED 45 YEARS,
JARAS MAHAL,KONGANUR P.O.,ATHOLI,
KOZHIKODE DISTRICT,PIN-673315.**
3. **RASAL P.,S/O.IBRAHIM,AGED 39 YEARS,
JARAS MAHAL,KONGANUR P.O.,ATHOLI,
KOZHIKODE DISTRICT,PIN-673315.**
4. **NESE E.K,D/O.IBRAHIM,AGED 36 YEARS,
JARAS MAHAL,KONGANUR P.O.,ATHOLI,
KOZHIKODE DISTRICT,PIN-673315.**

**BY ADVS.SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V
SRI.DAVID JOHN**

RESPONDENT'S:

1. **DISTRICT COLLECTOR,KOZHIKODE,
COLLECTORATE P.O.,CIVIL STATION,KOZHIKODE,
PIN-673320.**
2. **VILLAGE OFFICER,ATHOLI VILLAGE,P.O.ATHOLI,
VIA KOZHIKODE,KOZHIKODE DISTRICT,PIN-673515.**
3. **ATHOLI GRAMA PANCHAYAT,P.O.ATHOLI,
VIA KOZHIKODE,KOZHIKODE DISTRICT,
PIN-673515,REPRESENTED BY SECRETARY.**

**R1 & R2 BY GOVT. PLEADER SRI.T.R.RAJESH.
R3 BY ADV.SRI.SANTHARAM.P**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1:TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED WITH
REGISTRATION NO.893/1995 OF SRO, CHAMANCHERY.**

**EXT.P2:TRUE COPY OF THE TAX RECEIPT ISSUED BY R2 FOR RESIDENTIAL
HOUSE CONSTRUCTED DURING 1982 IN THE PROPERTY OF THE
PETITIONERS COVERED BY EXT.P1.**

**EXT.P3:TRUE COPY OF THE PHOTOGRAPH OF THE PROPERTY COVERED BY
DO.893/1995 INCLUDING THE OLD HOUSE, WHEREIN PETITIONERS
RESIDING FROM 1982 ONWARDS.**

**EXT.P3(a):TRUE COPY OF THE PHOTOGRAPH OF THE NEIGHBORING PROPERTY
CONSISTING OF BUILDING.**

**EXT.P4:TRUE COPY OF THE PLAN SUBMITTED ALONG WITH APPLICATION FOR
BUILDING PERMIT.**

**EXT.P5:TRUE COPY OF THE ORDER OF R2 REJECTING THE APPLICATION FOR
BUILDING PERMIT.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V.RAMAKRISHNA PILLAI, J

WPC No.16721 of 2015

Dated this the 11th day of June, 2015

JUDGMENT

Ext.P5 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioners are the owners in possession of the property having an extent of 22.5 cents in Re.Sy.No.15/1B1 of Atholi Village. The petitioners submitted an application for building permit before the respondents which was rejected by Ext.P5 on the ground that the land is classified as a paddy field as per revenue records without considering the physical nature of the property which is evident from Ext.P3 and P3(a) photographs.

3. Arguments have been heard.

4. The learned counsel for the petitioners submitted that though the village records show the

nature of the land as nilam, factually, it is a garden land in which there is a house, wherein the petitioners reside from 1982 onwards. This property is surrounded by properties consisting of residential building having more than 50 years old and commercial buildings as evident from Ext.P3 series photographs and Ext.P4 plan produced.

5. 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 to construct a house.

6. It can be seen from Exts.P3 and P3(a) that the property is not a paddy land and it is having full of trees. It is settled position that the applicant can choose the best land suited for construction of his house (***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.

7. 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 respondent Grama 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 petitioners and surrounding properties. The second respondent is also directed to re-consider the application and grant permission if the respondent is 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**

CSS/

true copy

P.S.TO JUDGE