

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 16828 of 2015 (C)

PETITIONER(S):

**JAGAN THOMAS,
PANAKKAYIL HOUSE, KADAPRA, NIRANAM P.O.,
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENT(S):

- 1. KADAPRA GRAMA PANCHAYATH (SPECIAL GRADE),
NIRANAM P.O., THIRUVALLA, PATHANAMTHITTA DISTRICT,
PIN - 689 621, REPRESENTED BY ITS SECRETARY.**
- 2. THE SPECIAL GRADE SECRETARY,
KADAPRA GRAMA PANCHAYATH (SPECIAL GRADE),
NIRANAM P.O., THIRUVALLA, PATHANAMTHITTA DISTRICT,
PIN - 689 621.**

BY ADV. SRI. T.P.PRADEEP

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 16828 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE PHOTOCOPY OF THE SALE DEED BEARING NO.912/07 DATED 4.10.2007 OF S.R.O., KADAPRA.

P1(a)- TRUE PHOTOCOPY OF THE SALE DEED BEARING NO.913/07 DATED 4.10.2007 OF S.R.O., KADAPRA.

P1(b)- TRUE PHOTOCOPY OF THE SALE DEED BEARING NO.765/09 DATED 5.8.2009 OF S.R.O., KADAPRA.

P2- TRUE PHOTOCOPY OF THE LOCATION SKETCH OF THE PROPERTIES BEARING NO.239/50 DATED 30.1.2015 COVERED BY EXT. P1 SERIES OF SALE DEEDS ISSUED BY THE VILLAGE OFFICER, KADAPRA.

P3- TRUE PHOTOGRAPHS OF THE PROPERTIES.

P4- TRUE PHOTOCOPY OF THE APPLICATION DATED 26.2.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

P5- TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE BEARING NO.239/15 DATED 30.1.2015.

P6- TRUE PHOTOCOPY OF THE ORDER BEARING NO.A2-1361/2015 DATED 22.3.2015

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 16828 of 2015

Dated this the 13th day of July, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit, the petitioner has come up before this Court.

2. The petitioner submitted an application for building permit to construct a commercial building in the property purchased by him as per Ext.P1 series of sale deeds. The petitioner alleges that the property in respect of which the petitioner had submitted the application for building permit is dry land. However, the second respondent without verifying the true nature and character of the property in question and ignoring the law laid down by this Court, rejected the application submitted by the petitioner as per Ext.P6 order stating that the land in question is mentioned as paddy land in the possession certificate issued by the village officer concerned on the basis of the entries in the revenue records; it

is alleged.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayat in the matter.

4. Opposing the application, the learned standing counsel for the respondent panchayath, would submit that as per the revenue records, the property of the petitioner is described as paddy field.

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 for construction.

6. 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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

8. 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 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 respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondents are 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.

A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.