

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 17048 of 2015 (E)

PETITIONER(S):

**SURESH C.P., AGED 44 YEARS,
S/O.PRABHAKARAN, CHERUNGAL HOUSE, KALLEPPADAM P.O.,
PAZHAYANNUR, THRISSUR DISTRICT.**

**BY ADVS.SRI.SANTHEEP ANKARATH
SRI.ARUN MATHEW VADAKKAN**

RESPONDENT(S):

**PAZHAYANNUR GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PAZHAYANNUR P.O.,
THRISSUR DISTRICT, PIN-680 587.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : TRUE COPY OF POSSESSION CERTIFICATE DATED 17-10-2014 ISSUED BY THE VILLAGE OFFICER, PAZHAYANNUR VILLAGE.

P2 : TRUE COPY OF APPLICATION FOR BUILDING PERMIT DATED 18-10-2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.

P3 : TRUE COPY OF ORDER NO.A4-8033/14 DATED 22-12-2014 ISSUED BY THE RESPONDENT.

P4 : TRUE COPY OF THE REPORT OF THE ASSISTANT ENGINEER, LSGD DATED 4-12-2014.

P5 : TRUE COPY OF RESOLUTION NO.17 DATED 18-12-2014 ISSUED BY THE RESPONDENT.

P6 : TRUE COPY OF REPORT DATED 20-11-2014 OF THE VILLAGE OFFICER, PAZHAYANNUR ALONG WITH THE SKETCH AND THE BASIC TAX REGISTER OF THE PROPERTIES OF THE PETITIONER.

P7 : TRUE COPY OF LETTER DATED NIL ISSUED BY THE AGRICULTURAL OFFICER, PAZHAYANNUR TO THE PETITIONER.

P8 : TRUE COPY OF NO OBJECTION CERTIFICATE ISSUED BY THE NEIGHBOURING PROPERTY OWNER OF THE PETITIONER ON 13-10-2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 17048 of 2015

Dated this the 29th day of June, 2015

J U D G M E N T

Ext.P3, 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 0.0212 hectares of property comprised in Sy.No.458/2 of Pazhayannur Village in Talappilly Taluk within the local limits of the respondent panchayath. The petitioner submitted Ext.P2 application for building permit, which was rejected by the respondent as per Ext.P3, stating the sole reason that certain persons in the neighbourhood have complained that construction of the building in the properties, which is already situated at a higher level than the remaining properties, would hinder flow of water and affect cultivation. The petitioner points out that the property is classified as dry land in the revenue records0

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and the properties are not included in the data bank prepared under the Kerala Conservation of Paddy Land and Wet Land Act, 2008. He further points out that his property is situated on the south of the PWD road and a drainage is going along the boundary of the petitioner's property. According to the petitioner, the drainage is big enough to accommodate any quantity of water during the rainy season and there is no possibility of getting the area water logged. The petitioner has also produced Ext.P8 NOC issued by the neighbouring property owner of the petitioner for the purpose of construction. It is in this context, the petitioner has approached this Court.

3. Arguments have been heard.

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-Panjali 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 petitioners' application.

Therefore, this writ petition is allowed. Ext.P3 is quashed.

The respondent panchayath is directed to conduct a local inspection of the property regarding the present lie

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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/-