IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No.17167 of 2015 (U)

PETITIONER:

K.BHAKTHAVALSALAN,AGED 72 YEARS,
S/O.GOPALAN,"PAITHRUKAM",KURUVAMCHERRY,
CHEVARAMBALAM P.O-673017,KOZHIKODE TALUK.

BY ADV.SRI.M.KRISHNAKUMAR

RESPONDENTS:

1. **THE KOZHIKODE CORPORATION,**
   REPRESENTED BY ITS SECRETARY,
   CORPORATION OFFICE,KOZHIKODE-673001.

2. **THE SECRETARY,KOZHIKODE CORPORATION,**
   CORPORATION OFFICE,KOZHIKODE-673001.

3. **THE LOCAL LEVEL MONITORING COMMITTEE,**
   KOZHIKODE CORPORATION,
   REPRESENTED BY ITS CHAIRMAN-673001.

R1 & R2 BY SRI.K.D.BABU,SC,KOZHIKODE CORPORATION
R3 BY GOVT.PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.17167 of 2015 (U)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1-TRUE COPY OF REGISTERED DOCUMENT NO.1917/1992 DATED 15-5-1992.

EXHIBIT P2-POSSESSION CERTIFICATE DATED 24-5-2014.

EXHIBIT P3-PHOTOGRAPH OF THE LAND.

EXHIBIT P4-TRUE COPY OF THE NOTICE DATED 19-11-2014.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V.RAMAKRISHNA PILLAI, J

WPC No.17167 of 2015

Dated this the 30th day of June, 2015

JUDGMENT

Ext.P4 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of an extent of 6.4 cents of land in R.S.No.289/3 of Chevayoor Village in Kozhikode Taluk within the limits of the Kozhikode Corporation as per registered Partition Deed No.1917/1992 of SRO Chevayoor (Ext.P1). The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P4 on the ground that the land is classified as nilam and that it is contained in the Data Bank.

3. Arguments have been heard.

4. The learned counsel for the respondent Corporation submitted that the application was

rejected on the ground that as per the classification, the petitioner's property is a paddy field.

5. However, the learned counsel for the petitioner invited my attention to Ext.P3 photograph and submitted that in half of the property, there is already a building and the remaining property is pucca garden land and not fit for paddy cultivation at present.

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 to construct a house.

7. It can be seen from Ext.P3 that the property is not a paddy land and it is having aged coconut and arecanut trees. 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. Therefore, this writ petition is allowed. Ext.P4 is quashed.

The respondent Corporation 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 second respondent is also directed to consider the application and pass orders granting

permit, if they are satisfied that the land in the present form is unfit for paddy cultivation. 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