

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 17191 of 2015 (Y)

PETITIONER(S):

**SUBHA K., AGED 45 YEARS,
W/O.MANI M., MUNDAKKAL P.O., CHEEKKODE,
MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

- 1. THE CHEEKKODE GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, MUNDAKKAL P.O.,
MALAPPURAM DISTRICT, PIN-673 640.**
- 2. THE SECRETARY,
THE CHEEKKODE GRAMA PANCHAYATH, MUNDAKKAL P.O.,
MALAPPURAM DISTRICT, PIN-673 640.**

BY ADV. SRI.P.K.MOHAMED JAMEEL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 17191 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 : TRUE COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER BY THE
2ND RESPONDENT DATED 5-3-2015.**

**P2 : TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTIES OF THE
PETITIONER.**

**P3 : TRUE COPY OF THE RELEVANT PAGE OF THE DATA BANK OF THE CHEEKKODE
GRAMA PANCHAYATH.**

**P4 : TRUE COPY OF THE RELEVANT PAGE OF THE FAIR VALUE REGISTER
CONCERNING R.S.NO.37/8 OF MUTHUVALLUR VILLAGE.**

P5 : TRUE COPY OF THE DOCUMENT NO.2177/1995 OF THE S.R.O., AREACODE.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 17191 of 2015

Dated this the 1st day of July, 2015

J U D G M E N T

Ext.P1, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is the owner of a property comprised in Re.Sy.No.37/8 of Muthuvallur Village within the local limits of the respondent panchayath. She submitted an application for building permit for construction of a commercial building, which was rejected by the 2nd respondent as per Ext.P1 on the ground that as per the revenue records, the description of the properties is nilam; and therefore, building permit cannot be issued. According to the petitioner, the said land was converted more than 40 years back and the areacanut trees, aging 30 years, are standing in the properties. She produced Ext.P2 photographs to substantiate her contention. She

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further points out that in Ext.P3, which is the copy of the extract of data bank, and in Ext.P5 document dated 13.06.1995, the property is described as converted land; and in Ext.P4, which is the relevant page of the fair value register, it is stated that the property is a residential plot with vehicular access. Therefore, according to the petitioner, Ext.P1 is illegal and liable to be quashed.

3. Arguments have been heard.

4. The learned Standing Counsel for the respondent panchayath, inviting my attention to Ext.P1 communication, would submit that the property of the petitioner is a paddy field. However, Ext.P2 photographs shows the present nature of the property and it appears from Ext.P2 that the property is not fit for paddy cultivation.

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

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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 Nellupadaka 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.

Therefore, this writ petition is allowed. Ext.P1 is quashed.

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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 reconsider 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.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-