

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 17212 of 2015 (B)

PETITIONER:

**SAJIKUMAR, AGED 49 YEARS,
S/O.PRABHAKARAN, ELINJERIPARAMBIL HOUSE,
CHITTISSERY P.O., THRISSUR DISTRICT.**

**BY ADVS.SRI.SANTHOSH P.PODUVAL,
SMT.R.RAJITHA,
SMT.VINAYA V.NAIR.**

RESPONDENT:

**NENMANIKKARA GRAMA PANCHAYAT,
REP. BY ITS SECRETARY,NENMENIKKARA,
THRISSUR- 680 301.**

**BY ADVS. SRI.C.HARIKUMAR,
SMT.C.B.ANUROOPA,
SRI.ALOK RAJ,
SRI.RENJITH RAJAPPAN.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 17212 of 2015 (B)

APPENDIX

PETITIONER'S EXHIBITS:-

P1:- TRUE COPY OF ORDER DATED 05/03/2015 ISSUED BY THE RESPONDENT.

**P2:- TRUE COPY OF RELEVANT PAGE OF DATA BANK OF NENMENIKKARA
GRAMA PANCHAYATH.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.17212 of 2015

Dated this the 18th day of June, 2015

JUDGMENT

Ext.P1 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of the property having an extent of 4.13 Ares of property in Sy.No.440/1 of Nenmenikkara Village. The petitioner submitted an application for building permit before the respondent which was rejected by Ext.P1 on the ground that the land is classified as nilam as per revenue records.

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-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.

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 position 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.

The respondent 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 petitioner and surrounding properties. The respondent is also directed to reconsider the application and to grant permit, if the respondents are 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