

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 17391 of 2015 (Y)

PETITIONER(S) :

**K.P.ROY, AGED 53 YEARS,
S/O.PAAPPU, KOTTAKURISSI, PAYALLOOR P.O.,
KOLLENGODE, PALAKKAD.**

**BY ADVS.SRI.JAISHANKAR V.NAIR
SMT.ARATHI KARUNAKARAN
SMT.PARVATHY S.KRISHNAN**

RESPONDENT(S) :

**SECRETARY,
KOLLENGODE GRAMA PANCHAYATH,
KOLLENGODE, PALAKKAD- 678 506.**

**BY ADV. SRI.S.KANNAN, S.C
ADV. SRI.N.ANAND, S.C**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

WP(C).No. 17391 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 27.10.2014

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 17391 of 2015

Dated this the 6th day of August, 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 in possession of an extent of property comprised in Re.Sy.No.409/1 of Kollengode No.2 Village within the local limits of the respondent panchayath. The petitioner submitted an application for building permit, which was rejected by the respondent as per Ext.P1 for the reason that the land is categorized as 'nilam' in the revenue records. The petitioner alleges that the said property is owned by the petitioner for the last so many years and no cultivation of any means is possible in the said land. According to the petitioner, the respondent has no right to reject the application without enquiring into the present condition of the land and the act of the respondent in rejecting the

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application of the petitioner without conducting any physical examination of the land was purely mechanical. Therefore, according to the petitioner, Ext.P1 is beyond jurisdiction, illegal and liable to be quashed.

3. Arguments have been heard.

4. The learned Standing Counsel for the respondent, inviting my attention to Ext.P1, submitted that the property is included as paddy land and the petitioner has not produced any record to show that permission was obtained under the KLU Act.

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-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.

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)

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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.

As the petitioner's property is lying as garden land at present and the same has been reclaimed in 2008, this writ petition is allowed. Ext.P1 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 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/-