

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. 17428 of 2015 (C)

PETITIONER :

**SHAMSUDHEEN, AGED 37 YEARS,
S/O. MOIDEEN, OTTATHENGULLATHIL, RIYAZ MANZIL,
ARIKKULAM POST, KOZHIKODE DISTRICT 673 620**

**BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN**

RESPONDENTS :

- 1. ARIKKULAM GRAMA PANCHAYATH, PO ARIKKULAM
ARIKKULAM, KOZHIKODE DISTRICT, REPRESENTED BY
ITS SECRETARY PIN- 673 620**
- 2. THE SECRETARY,
ARIKKULAM GRAMA PANCHAYATH, P.O. ARIKKULAM,
VIA KOYILANDY, ARIKKULAM - 673620 KOZHIKODE 673620**

R1 & R2 BY ADV. SRI.SANTHARAM.P

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

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE SALE DEED REGISTERED AS DOC. NO.,2563/2012 DATED 2.10.2012 OF MEPPAYOOR SRO.

EXHIBIT P2: TRUE COPY OF ORDER NO.A1/8057/14 DATED 16.2.2015 ISSUED BY THE 2ND RESPONDENT, REFUSING TO GRANT BUILDING PERMIT TO THE PETITIONER.

EXHIBIT P3: TRUE COPY OF THE RELEVANT PAGES OF DRAFT DATA BANK PUBLISHED IN KERALA GAZETTEE DATED 24.3.2012 IN RESPECT OF THE 1ST RESPONDENT GRAMA PANCHAYATH.

EXHIBIT P4: TRUE COPY OF THE PHOTOGRAPH (2 NOS) OF THE PETITIONER.

EXHIBIT P5: TRUE COPY OF THE JUDGMENT DATED 14.1.2015 IN WPC NO. 770/2015 PASSED BY THIS HON'BLE COURT

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J

WPC No.17428 of 2015

Dated this the 18th day of June, 2015

JUDGMENT

Ext.P2 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 12.804 Ares in Re.Sy.No.22/4 of Arikkulam Village in Koyilandy Taluk. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P2 on the ground that the land is classified as nilam (Nanja) as per revenue records.

3. Arguments have been heard.

4. According to the petitioner, Ext.P4 photos show the present nature of the land of the petitioner.

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 to construct a house.

6. It can be seen from Ext.P4 that the property is not a paddy land and it is having full of aged trees. 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.

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 position settled by this Court escaped the attention of the

authorities while rejecting the petitioner's application. Therefore, this writ petition is allowed. Ext.P2 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 respondents are 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