

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WP(C).No. 17445 of 2015 (E)

PETITIONER(S):

**CHANDRAN, S/O.KUTTY MASTER,
"CHAITHRAM", P.O - VATAKARA
KOZHIKODE DISTRICT, PIN - 673 101.**

**BY ADVS.SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V**

RESPONDENT(S):

- 1. THE SECRETARY
PERAMBRA GRAMMA PANCHAYATH, P.O - PERAMBRA
KOZHIKODE DISTRICT. PIN - 673 525.**
- 2. THE DISTRICT COLLECTOR
KOZHIKODE COLLECTORATE
CIVIL STATION - POST
KOZHIKODE DISTRICT
PIN - 673 001.**

BY GOVERNMENT PLEADER K.A.SANGEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 17445 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1 : TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED WITH REGISTRATION NO.1962/2007 OF S.R.O., PERAMBRA IN THE NAME OF THE PETITIONER AND ANOTHER**
- EXT.P-2 : TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED WITH REGISTRATION NO.349/1995 OF S.R.O., PERAMBRA.**
- EXT.P-3 : TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 3RD RESPONDENT DATED 18.3.2014**
- EXT.P-3(A) : TRUE COPY OF THE SITE PLAN OF THE BUILDING.**
- EXT.P-4 : TRUE COPY OF THE PHOTOGRAPH OF THE CONSTRUCTED BUILDING.**
- EXT.P-4(A) : TRUE COPY OF THE PHOTOGRAPH OF THE SURROUNDINGS OF THE PETITIONERS PROPERTY.**
- EXT.P-5 : TRUE COPY OF THE ORDER 30/5/2015 BY 1ST RESPONDENT, REJECTING APPLICATION FOR COMPLETION CERTIFICATE.**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

A.V.RAMAKRISHNA PILLAI, J

W.P.(C).No17445 of 2015

Dated this the 23rd day of June, 2015

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit, the petitioner come up before this Court.

2. Petitioner after obtaining a property as per Exhibit P-1 document on the side of Perambra - Kuttyadi High way Road at Perambra town, obtained a building permit (Extb.P3) to construct a commercial building therein. Long prior to purchase of the property, it was a garden land with yielding coconut trees of the age group more than 50 years; it is alleged. The petitioner points out that the plot is covered by commercial buildings including a petrol pump on either side of the property. After completion of the building construction, following the conditions as per Exhibit P-3 building permit, the petitioner applied for completion certificate. It was

rejected as per Exhibit P-5, for the reason that the property is classified as 'Nilam'. Hence this writ petition.

3. Arguments have been heard.

4. Exts.P1 and P2 which are the title deeds in relation to the property, would show that the property of the petitioner was lying as garden land since 1995 onwards. The petitioner has also produced Ext.P4 - photographs, which shows the nature of the surrounding lands wherein the buildings have come up.

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-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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioners' application.

8. Therefore, this writ petition is allowed.

Ext.P5 is quashed and 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 petitioners and surrounding properties. The respondents are also directed to reconsider the application and pass positive orders granting building permit after affording the petitioners 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 one month from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

VS