

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 17448 of 2015 (E)

PETITIONER(S)/PETITIONER:

**N.A.SUNNY, AGED 62 YEARS
S/O.ANTHAPPAN, PARIYARAM HOTELS PRIVATE LIMITED
KANJIRAPPILLY P.O, THRISSUR DISTRICT
(RESIDING AT NEDUMPARAMBIL HOUSE, I.M.A.LANE
THRISSUR DISTRICT).**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENT(S)/RESPONDENT:

**PARIYARAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, PARIYARAM.P.O
THRISSUR-680721.**

R1 BY ADV. SRI.SHEEJO CHACKO

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE RECEIPT ISSUED BY THE VILLAGE
 OFFICER,PARIYARAM TO THE PETITIONER DATED 30.8.2014
- EXT.P2 TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT
 PANCHAYATH TO THE PETITIONER DATED 15.1.2015.
- EXT.P3 TRUE COPY OF THE COMMUNICATION FROM THE AGRICULTURAL
 OFFICER, KRISHI BHAVAN, PARIYARAM DATED 14.1.2015
- EXT.P4 TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE
 OFFICER,PARIYARAM DATED 1.1.2015
- EXT.P5 TRUE COPY OF THE JUDGMENT IN W.P(C)13442/2014 ON THE FILE OF
 THIS HONOURABLE COURT DATED 05.08.2014.

RESPONDENT(S)' EXHIBITS: NIL

//True copy//

P.A. to Judge

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P.BHAVADASAN, J.

W.P.C. No. 17448 of 2015

Dated this the 14th day of October, 2015

J U D G M E N T

The petitioner has approached this Court seeking the following reliefs:

“(i) call for the records leading to the passing of Ext.P2 by the respondent Panchayath and quash the same by the issue of a writ of certiorari or other appropriate writ, order or direction;

(ii) issue a writ in the nature of mandamus directing the respondent Panchayath to reconsider the application for building permit submitted by the petitioner, in the light of Ext.P3 and P4 and in the light of the dictum laid down by this honourable court in 2012(1) KHC 523 (DB), 2010 (2) KLT 617 and 2009 (3) KLT 899 and taking into consideration the present state of affairs now prevailing in the area in question;”

2. The petitioner is the absolute owner in possession and enjoyment of 0.3076 hectares in Sy.No.345 of Pariyaram Village in Chalakudy Taluk, Thrissur District falling within the

jurisdiction of the first respondent Panchayath. Desirous of establishing a tourist resort, petitioner wanted to construct some cottages in the property and therefore applied to the respondent Panchayath for building permit. To the utter shock of the petitioner, the Panchayath rejected the application pointing out that the land is shown in the revenue records as 'nilam' and the respondent Panchayath cannot grant permission sought for by the petitioner. True copy of the said order is produced as Ext.P2.

3. The petitioner points out that the Agricultural Officer, Krishi Bhavan, Pariyaram has certified that the property belonging to the petitioner has not been included in the data bank. True copy of the said order is produced as Ext.P3. Ext.P4 is the communication received by the Village Officer, Pariyaram certifying as the land owned by the petitioner is no longer fit for paddy cultivation and there are a large number of trees namely, mango, areacanut, coconut etc.. The petitioner points out that from these records, it is

evident that paddy cultivation is not possible in the property and it is no longer a paddy land.

4. The learned counsel pointed out that in properties surrounding the property of the petitioner, permission has been granted and constructions have been put up and the objection is taken only in respect of petitioner's application.

5. Relying on the decision reported in **Jafarkhan v. K.A. Kochumakkar and others** (2012 (1) KHC 523), the petitioner points out that merely because the revenue records show the property as 'nilam', that cannot be a ground to reject an application without inspecting the property and without ascertaining the facts available as of now. He also relies on the decisions reported in **Praveen v. Land Revenue Commissioner** (2010 (2) KLT 617) for the said purpose. Same is the view taken in the decision reported in **Shahnaz Shukkoor v. Chelannur Grama Panchayat** (2009 (3) KLT 899).

6. Complaining about the non application of mind in rejecting the application for putting up construction made by the petitioner, it is pointed out that in the light of the principles laid down in the decisions referred to by the petitioner, the order cannot survive.

7. The learned counsel appearing for the Panchayath pointed out that there has been subsequent decisions by this Court which restrict the scope of such writ petition and the application need not be considered.

8. In the decisions referred to by the learned counsel for the petitioner, this Court has taken the view that merely because the records show that the nomenclature of land is shown as paddy land, that cannot be conclusive. It is averred that in the properties surrounding the property of the petitioner, structures have come up.

9. Of particular significance is Ext.P5 judgment of this Court in W.P.C. 13442/2014 wherein, an identical question was considered. In that petition, a direction was given to a

local authority to conduct an inspection in the property to ascertain its real nature and also the nature of the nearby properties and take a fresh decision on an application which resulted in the impugned order in that writ petition. The principle laid down in the said decision applies with all force to the facts of the case and there is no justification as to why the same direction should not be issued in this case also.

For the above reasons, Ext.P2, the impugned order is quashed. There will be a direction to the respondent to conduct inspection of the property and to ascertain its real nature and also the nature of the nearby properties and take a fresh decision on the application filed by the petitioner. Steps may be taken in this regard within one month from the date of receipt of a copy of this judgment.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge