

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 JYASHTA, 1937

WP(C).No.17479 of 2015 (H)

PETITIONER:

**SYRIAC GEORGE,THUNDIYIL HOUSE,S.H.MOUNT P.O.,
NATTASSERY,KOTTAYAM DISTRICT,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
CHINNAMMA GEORGE,W/O.T.K.GEORGE,
AGED 76 YEARS,THUNDIYIL HOUSE,S.H.MOUNT P.O.,
NATTASSERY,KOTTAYAM DISTRICT.**

**BY ADVS.SRI.N.RAGHURAJ
SRI.BIJU SUKUMARAN
SMT.K.AMMINIKUTTY**

RESPONDENT'S:

- 1. ATHIRAMPUZHA GRAMA PANCHAYATH (SPECIAL GRADE),
ATHIRAMPUZHA P.O.,KOTTAYAM DISTRICT,
PIN:686562,REPRESENTED BY ITS SECRETARY.**
- 2. THE SPECIAL GRADE SECRETARY,
ATHIRAMPUZHA GRAMA PANCHAYATH (SPECIAL GRADE),
ATHIRAMPUZHA P.O.,KOTTAYAM DISTRICT,PIN:686 562.**

**R1&R2 BY SRI.RAJESH THOMAS,SC,
ATHIRAMPUZHA GRAMA PANCHAYATH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE PHNOTOCOPY OF THE SALE DEED DATED 20.1.1996.

**EXHIBIT P2:TRUE PHOTOGRAPHS OF THE PROPERTY COVERED BY EXT.P1
PROPERTY.**

**EXHIBIT P2(a):A TRUE PHOTOCOPY OF TH ERELEVANT EXTRACT OF PADDY
LAND AND WET LAND IDENTIFICATION DETAILS (DATA BANK).**

**EXHIBIT P3:TRUE PHOTOCOPY OF THE LOCATION SKETCH OF EXT.P1
PROPERTY ISSUED BY THE VILLAGE OFFICER,ATHIRAMPUZHA
ON 7.1.2015.**

**EXHIBIT P4:TRUE PHOTOCOPY OF THE APPLICATION DATED 30.1.2015 BEFORE
THE 2ND RESPONDENT.**

**EXHIBIT P5:TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE BEARING
NO.36/15 DATED 6.1.2015 (SIGNED BY THE VILLAGE OFFICER,
ATHIRAMPUZHA ON 7.1.2015).**

**EXHIBIT P6:TRUE PHOTOCOPY OF THE ORDER BEARING NO.A4-887/2015
DATED 2.5.2015.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V.RAMAKRISHNA PILLAI, J

WPC No.17479 of 2015

Dated this the 18th day of June, 2015

JUDGMENT

Ext.P6 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of 19.20 Ares of property comprised in Re.Sy.No.637/2001 in Athirampuzha Village. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P6 on the ground that the land is classified as nilam in the possession Certificate issued by the Village Officer and therefore, the petitioner has to obtain the permission of the Local Level Monitoring Committee. The petitioner alleges that he had reclaimed the property about 15 years ago and the same is remaining as dry land for the last 15 years.

3. The learned standing counsel for the

respondent Panchayat would submit that as per Ext.P2 Data Bank, it could be seen that the petitioner's property was converted in 2000. As per Ext.P6 the application was rejected stating that as it was a paddy field, clearance from the local level monitoring committee is necessary. However, as it is evident from the documents that the property has been converted in 2000, it is not necessary to obtain clearance from the Local Level Monitoring Committee as suggested in Ext.P6.

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 to construct a house.

5. It can be seen from Ext.P2 photographs 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-Panjal 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.P6 to the extent it directs the petitioner to approach the local level monitoring committee with an application is quashed. The respondent Municipality is directed to make a local inspection of the

property and to reconsider the application of the petitioner and pass orders granting permit, if they are satisfied that the property is not fit for paddy cultivation at present, after affording him an opportunity of being heard. 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**

CSS/

true copy

P.S.TO JUDGE