

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 17891 of 2014 (J)

PETITIONER(S):

**KUNHIRAMAN NAIR, AGED 60 YEARS,
S/O. K.V. RAMAN NAIR, PARAYIL, RAM NIVAS,
28/1927B, THONDAYADU BYE PASS, NELLIKKODE,
KOZHIKKODE DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU**

RESPONDENT(S):

- 1. THE FEROKE GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, FEROKE,
KOZHIKKODE DISTRICT-673 631.**
- 2. THE SECRETARY,
FEROKE GRAMA PANCHAYATH, FEROKE,
KOZHIKKODE DISTRICT-673 631.**

BY ADV. SRI.P.C.SASIDHARAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 17891 of 2014 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1. TRUE COPY OF THE ORDER, REJECTING THE APPLICATION FOR BUILDING
PERMIT ISSUED BY THE 2ND RESPONDENT DATED 28-3-2014.**

**P2. TRUE COPIES OF THE COPIES OF THE PHOTOGRAPHS, SHOWING THE
PROPERTIES OF THE PETITIONER AND THE NEIGHBOURING PROPERTIES.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 17891 of 2014

Dated this the 15th day of July, 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, who is the proprietor of KVR Automobiles and the authorized dealer of Bajaj 2/3 wheelers at Kozhikode, is the owner in possession of an extent of 62.33 cents of property comprised in R.S.Nos.421/1B2 & 42/3B2 of the Feroke Village within the local limits of the respondent panchayath. He is keeping the vehicles in a temporarily erected shed; and as he wanted to construct a building in the said property, he submitted an application for building permit, which was rejected by the 2nd respondent as per Ext.P1 on the ground that the description of the properties is 'nilam' in the survey records and, therefore, the application for

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building permit cannot be considered. The petitioner points out that the said property is situated on the side of Kozhikode - Palakkad Highway; and the property is surrounded by several commercial buildings, which are constructed with the permission of competent authorities. He further alleges that even after rejecting the application for building permit, now there is an attempt to demolish the temporary shed erected in the property of the petitioner. According to him, there are other automobile showrooms in the neighboring properties, which have been constructed after obtaining building permits from the respondents. To substantiate his contention, he has produced Ext.P2 series of photograph, which shows the present nature of the property. Therefore, according to the petitioner, Ext.P1 illegal and liable to be quashed.

3. A counter affidavit has been filed by the respondent panchayath contending that though the petitioner claims that the paddy land has been converted, as no certificate or order enabling the petitioner to do

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such conversion is produced before the panchayath, they cannot issue any licence or building permit. According to them, such a conversion can be done only in accordance with the statutory provisions in the Act. Therefore, according to them, as the land is admittedly a paddy land, permission cannot be granted for construction.

4. Arguments have been heard.

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 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) of sub-section (4) of Section 5 could

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at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

Therefore, 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 respondents are also directed to reconsider the application and pass positive orders granting building permit after affording the petitioner 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 two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-