

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

WP(C).No. 17824 of 2015 (C)

PETITIONER(S):

**JANEESH, AGED 32 YEARS,
S/O. HYDERALI, KUMMALI HOUSE, MANIYANI,
KOORAD P.O., MALAPPURAM DISTRICT.**

BY ADV. SRI.U.K.DEVIDAS

RESPONDENT(S):

**THE CHOKKAD GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, CHOKKAD,
MALAPPURAM DISTRICT - 679 332.**

**BY ADVS. SRI.MURALI PURUSHOTHAMAN
SRI.DEEPU LAL MOHAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 17824 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ASSIGNMENT DEED OF THE ABOVE PROPERTY.

**EXHIBIT P2: TRUE COPY OF THE RECEIPT DATED 23.10.2013 ISSUED BY THE
RESPONDENT.**

**EXHIBIT P3: TRUE COPY OF THE ORDER DATED 4.6.2015 PASSED BY THE
RESPONDENT.**

EXHIBIT P4: TRUE COPY OF THE PHOTOGRAPHS OF THE PROPERTY.

RESPONDENT(S)' EXHIBITS:

**EXT.R1(a): THE PHOTOCOPY OF THE STOP MEMO NO.131/14/-2 DTD.12.11.2014
ISSUED BY THE VILLAGE OFFICER.**

**EXT.R1(b): THE PHOTOCOPY OF THE APPLICATION FOR BUILDING PERMIT
DTD.23.1.2015 SUBMITTED BY THE PETITIONER BEFORE THE
SECRETARY, CHOKKAD GRAMA PANCHAYAT.**

**EXT.R1(c): THE PHOTOCOPY OF THE CIRCULAR NO.45846/R.A1/08/LSGD
DTD.31.7.2008.**

**EXT.R1(d): THE PHOTOCOPY OF THE MAHAZAR PREPARED BY THE COMMITTEE
AFTER INSPECTING THE LAND OWNED BY THE PETITIONER.**

**EXT.R1(e): THE PHOTOCOPY OF THE PROCEEDINGS OF THE COMMITTEE
CONSTITUTED UNDER CIRCULAR NO.45846/R.A1/08/LSGD DTD.31.7.2008 IN ITS
MEETING HELD ON 26.2.2015.**

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.17824 of 2015

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Dated this the 18th day of August, 2015

JUDGMENT

The petitioner is challenging the rejection of his application for building permit by the respondents.

2. The petitioner is the owner in possession of 8 cents of land comprised in R.S No.255/10 in Chokkad village in Eranad taluk. The petitioner alleges that he has no other property except the aforesaid land and the property is situated on the side of the public road within the limits of respondent panchayat. The petitioner further alleges that he has purchased the above property covered under Ext.P1 document in the year 2014 only and before 1978, the above property was used as a dry land. When the petitioner purchased the property, there were valuable aged trees.

3. The petitioner submitted Ext.P2 application for building permit along with plan for constructing a building in the above

property which was rejected by Ext.P3 order dated 4.6.2015. It was stated that the description of all adjacent properties in the documents are termed as nilam. The petitioner alleges that in the years 2014 and 2015, the very same panchayat granted building permits to the adjacent lands. It is with this background, the petitioner has approached this Court.

4. The respondent panchayat has filed a counter affidavit wherein they have produced Exts.R1(a) to R1(e). They contended that the committee of the respondent panchayat has considered the application for building permit submitted by the petitioner and many other similarly situated persons whose land is shown as nilam in the revenue records. It was stated that the committee has examined the application in detail and prepared Ext.R1(d) mahazar after conducting inspection wherein it was found the petitioner's property has been reclaimed just one year before and the coconut trees in the land, eight in numbers, are nearly ten years old. It was found that the

construction activity in the said property would cause obstruction to the natural flow of water and usually water gets stagnated on the subject land during rainy reasons. In the light of the above, the committee denied permission for construction to the petitioner.

5. Arguments have been heard.

6. Opposing the writ petition, the learned standing counsel for the respondent panchayat would submit that if the proposed construction is permitted, the same would obstruct the free flow of water leading to stagnation of the water in the adjoining properties.

7. In answer to the said submission, the learned counsel for the petitioner submitted that the petitioner is ready to provide facilities to avoid any such stagnation in the event of construction is permitted. It was also pointed out by the learned counsel for the petitioner, inviting my attention to Ext.R1(b) report that there are coconut trees aged more than ten years in the petitioner's property.

8. 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.

9. As per Ext.P4, it can be seen that the property is not a paddy land and it is having full of aged trees. That itself would show that Ext.P1 is not a cultivating paddy field. 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.

10. 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.

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

Therefore, this writ petition is disposed of quashing Ext.P3 and directing the respondent panchayat 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 respondent panchayat is also directed to re-consider the application and to grant permission if they 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 one month from the date of receipt of a copy of this judgment.

It is also hereby made clear that the petitioner shall see that the construction does not obstruct free flow of water from the neighbouring properties and it shall be responsibility of the panchayat to oversee the construction and issue necessary directions to the petitioner in the matter of providing drainage facility. If the petitioner refuses to provide proper drainage facility it shall be open to the respondent panchayat to refuse numbering of the building.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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