

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.17846 of 2015 (E)

PETITIONER:

**THYVALAPPIL SHAJU,S/O.KANNAN.K,AGED 42 YEARS,
RESIDING AT NIKUNCHAM,CHIRAKKUNI PALAM,
P.O PINARAYI,THALASSERY TALUK,KANNUR DISTRICT-670 741.**

**BY ADVS.SRI.V.C.JAMES
SRI.K.KUNHIKRISHNAN**

RESPONDENT:

**PINARAYI GRAMA PANCHAYATH,REPRESENTED BY ITS
SECRETARY,P.O PINARAYI,THALASSERY.**

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

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WP(C).No.17846 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:A TRUE COPY OF THE DEATH CERTIFICATE SMT. CHEEROOTI.

EXHIBIT P2:TRUE COPIES OF THE 2 PHOTOGRAPHS OF THE GARDEN LAND.

**EXHIBIT P3:TRUE COPY OF THE APPLICATION FOR NUMBERING THE BUILDING
DATED 8.12.14.**

**EXHIBIT P4:A TRUE COPY OF THE ORDER NO.B17487/14 ISSUED BY THE
RESPONDENT REJECTING THE APPLICATION.**

**EXHIBIT P5:TRUE COPY OF THE INFORMATION UNDER RTI ACT DATED 21.1.15
STATING THAT THE LAND IS NO INCLUDED IN THE DATA BANK.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 17846 of 2015

Dated this the 23rd day of June, 2015

J U D G M E N T

Ext.P4, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is a co-owner of 14.14 Ares of property within the local limits of the respondent panchayath. The petitioner submitted an application for building permit, which was rejected by the respondent as per Ext.P4 stating that the petitioner's building cannot be numbered as it is commercial building and it was constructed violating the provisions of the Kerala Wet Land and Paddy Land Act. It was pointed out that the Public Information Officer, Village Office Pinarayi, under the provisions of RTI Act, reported that the land has been excluded from the data bank as per Ext.P5. The petitioner has produced Ext.P2 photographs, which show that the land is a garden land. Therefore, according to the

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petitioners, Ext.P4 is beyond jurisdiction, illegal and liable to be quashed.

3. Arguments have been heard.

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 for construction.

5. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjali 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

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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.

Therefore, this writ petition is allowed. Ext.P4 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 respondent is also directed to reconsider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondent is 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/-