

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. 17960 of 2015 (T)

PETITIONER(S):

- 1. C.K. MUHAMMED, S/O.ABDULLA,
AGED 41 YEARS, C.K. COTTAGE, NADUVANNUR POST,
NADUVANNUR, KOZHIKODE DISTRICT.**
- 2. JAMEELA,W/O.MOIDEEN HAJI, AGED 50 YEARS,
ANNAMPOYIL, MUTHUVANA POST,
MONIYOOR, KOZHIKODE DISTRICT, PIN- 673 523.**
- 3. SHAKEENA, W/O.ABDUL GAFOOR, AGED 35 YEARS,
ANTHOOMAKANDY, NADUVANNUR POST,
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.P.SUDHEER,
SRI.ARUN MATHEW VADAKKAN.**

RESPONDENT(S):

- 1. NADUVANNUR GRAMA PANCHAYAT,
POST NADUVANNUR, PIN- 673 614, KOZHIKODE,
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
NADUVANNUR GRAMA PANCHAYAT,
POST NADUVANNUR, PIN -673 614, KOZHIKODE.**

**BY ADVS. SRI.R.SUDHISH,
SMT.M.MANJU.**

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

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT-P1: TRUE COPY OF SALE DEED REGISTERED AS DOC.NO.32/2007 OF NADUVANNUR SRO.**
- EXHIBIT-P2: TRUE COPY OF BUILDING PERMIT NO.BL: 375/09-10 DATED 28.01.2010 ISSUED BY THE RESPONDENT PANCHAYAT.**
- EXHIBIT-P3: TRUE COPY OF BUILDING PERMIT NO.BL:422/09-10 DATED 27.02.2010 ISSUED BY THE RESPONDENT PANCHAYAT.**
- EXHIBIT-P4: TRUE COPY OF NOTICE NO.A3-648/14 DATED 21.02.2015 ISSUED BY THE RESPONDENT PANCHAYAT.**
- EXHIBIT-P5: TRUE COPY OF APPLICATION DATED 18.04.2015 SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.**
- EXHIBIT-P6: TRUE COPY OF ORDER NO.A3-648/14 DATED 24.04.2015 ISSUED BY THE RESPONDENT PANCHAYAT.**
- EXHIBIT-P7: TRUE COPY OF THE RELEVANT PAGES OF THE DRAFT DATA BANK OF NADUVANNUR GRAMA PANCHAYATH PUBLISHED IN THE KERALA GAZETTE DATED 24.03.2012.**
- EXHIBIT-P8: PHOTOGRAPHS (2 NOS.) OF THE PETITIONER'S BUILDING AND THE BUILDING OF O.M.BALAN NAIR AND ONE SATHIANATHAN.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 17960 of 2015

Dated this the 23rd day of June, 2015.

JUDGMENT

The petitioners have approached this Court aggrieved by the non- numbering of the petitioners' building on the ground that the construction was done deviating from the building permit issued and the building was constructed in a paddy field as per the revenue records.

2. By virtue of Ext.P1 sale deed, the first petitioner acquired 18 cents of land in Re-Sy.No.98/3 A of Naduvannur amsom desom in Koyilandy Taluk. The petitioners allege that Ext.P1 sale deed was executed by one Ganghadharan and he was residing in the said property and the respondent issued building number to the said house as X/122. Exts. P2 and P3 are the building permits issued by the respondent Grama panchayat for constructing a shopping complex in the property covered by Ext.P1. After completing the construction, the petitioners approached the respondent for assigning number to

the building. Ext.P4 notice was issued by the second respondent saying that, in the revenue records, the property is shown as nilam and that the petitioners violated the building permit. Therefore, the petitioners submitted Ext.P5 application for regularisation. Thereafter, in Ext.P6 order, the respondent has taken a stand that unless the revenue records are not corrected, his application for regularisation cannot be considered.

3. Arguments have been heard.

4. One of the grounds raised by the respondent in not numbering the building was that the construction was made deviating from the building permit already issued. In answer to this, the learned counsel for the petitioners submits that the petitioners submitted Ext.P5 application for regularisation. The next ground of attack is that the property where the building was constructed, is Nilam.

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-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.

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.

Therefore, this Court is of the view that there can be a direction to the respondent pananchat to consider Ext.P5

application for regularisation without insisting for correction in the revenue records. As it appears from the records that the buildings in the adjacent area were numbered by the respondent panchayat, the contention that the building was constructed in the paddy field, will not stand.

Therefore, the writ petition is disposed of directing the respondent panchayat to consider Ext.P5 application without insisting for correction in the revenue records and to pass final orders within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.