

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 18094 of 2015 (J)

PETITIONER(S):

**SHAJAHAN,
S/O.MUHAMMED, KKURUPPUMVEETIL HOUSE, BEEYYAM P.O.,
PIN - PONNANI TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT(S):

- 1. THE PONNANI MUNICIPALITY,
REPRESENTED BY THE SECRETARY, PONNANI P.O.,
PIN - MALAPPURAM DISTRICT.**
- 2. THE SECRETARY PONNANI MUNICIPALITY,
PONNANI P.O., MALAPPURAM DISTRICT.**

BY ADV. SRI.S.SUJIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 18094 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1:-A TRUE COPY OF THE INTIMATION BY THE 2ND RESPONDENT TO THE
PETITIONER DTD NIL.**

**P2:-A TRUE COPY OF THE INTIMATION BY THE RESPONDENT MUNICIPALITY TO THE
PETITIONER DTD 13/10/2014.**

P3:-A TRUE COPY OF THE CERTIFICATE OF THE VILLAGE OFFICER DTD 7/11/2014.

P4:-A TRUE COPY OF THE ORDER DTD 28/4/2015 PASSED BY THE 2ND RESPONDENT.

**P5:-A TRUE COPY OF THE DATA BANK EXTRACT OF THE PETITIONERS PROPERTY
COMPRISING IN R.S. 214/1.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 18094 of 2015

Dated this the 1st day of July, 2015

J U D G M E N T

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

2. The petitioner is the owner in possession of 65 cents of property comprised in Re.Sy.No.214/1 of Eshwaramangalam Amsom Cheruvayikkara Desom in Izhavathuruthi Village within the local limits of the respondent municipality. The petitioner submitted an application for building permit along with the plan before the 1st respondent on 16.01.2014. Thereafter, he was intimated by Exts.P1 & P2 that he need to submit few more documents, which were also submitted by the petitioner in the second week of November, 2014. However, his application for building permit was rejected by the 2nd respondent as per Ext.P4 order, stating that the

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description of the property in village records is 'nanja' and hence, the application for building permit cannot be considered. According to the petitioner, the above property is a garden land for the last more than 50 years. He further points out that even in Ext.P5, which is the copy of extract of data bank, the said property is excluded. Hence, this writ petition.

3. Arguments have been heard.

4. Though it was submitted by the learned counsel for the respondent municipality that the property of the petitioner is a paddy field, the learned counsel for the petitioner, inviting my attention to Ext.P2 intimation issued by the Secretary of the respondent panchayath, submitted that in Ext.P2 itself, it is stated that the property has not been included so far in the data bank.

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

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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.

Therefore, this writ petition is allowed. Ext.P4 is quashed.

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The respondent municipality 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/-