

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 18132 of 2015 (N)

PETITIONER:

**SAINABA CHERADA, AGED 62 YEARS,
D/O. MUHAMMED HAJI, MAILAMPADATH HOUSE,
PANG P.O., CHENDI, MALAPPURAM DISTRICT.**

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S):

- 1. KURUVA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PADAPPADAMBU, VATTALLOOR P.O.,
MAKKARAPARAMBA,
MALAPPURAM DISTRICT - 676 507,
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
KURUVA GRAMA PANCHAYAT,
PADAPPADAMBU, VATTALLOOR P.O.,
MAKKARAPARAMBA,
MALAPPURAM DISTRICT - 676 507.**

BY ADV. SRI.U.K.DEVIDAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 18132 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 - TRUE COPY OF THE LAND TAX RECEIPT DATED 09.10.14 ISSUED FROM THE KURUVA VILLAGE OFFICE.
- P2 - TRUE COPY OF THE POSSESSION CERTIFICATE FROM THE KURUVA VILLAGE OFFICER DATED 09.10.14.
- P3 - PHOTOGRAPHS OF THE PETITIONER'S PROPERTY.
- P4 - TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER.
- P5 - TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 09.3.15.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.18132 of 2015

Dated this the 29th day of June, 2015.

JUDGMENT

The petitioner is aggrieved by non-disposal of her application for building permit for constructing a commercial building for the reason that the petitioner's property is recorded in the revenue records as paddy field.

2. The petitioner is having 38 cents of land in Sy.No.421/2 and 3 of Kuruva Village of Perinthalthana Taluk of Malappuram District. The petitioner alleges that her property is a reclaimed land for the last 30 years. The property of the petitioner is a commercial property and the adjoining properties are constructed with commercial buildings. In such circumstances, the petitioner submitted an application before the second respondent for issuing building permit for constructing commercial building. The second respondent without conducting any inspection, rejected the same on the ground that no permission can be given to the petitioner to

construct commercial building since the property of the petitioner is described as Nilam in the revenue records. It is with this background, the petitioner has come up before this Court.

3. Though notice has been served to the respondents, they did not turn up.

4. I have heard the learned counsel for the petitioner in the matter.

5. The learned counsel for the petitioner submitted that the property of the petitioner is not suitable for paddy cultivation. This position can be ascertained by a mere visit to the property by the second respondent. It is also pointed out that the adjoining properties of the petitioner are residential and commercial areas wherein buildings have come up.

6. The learned counsel for the petitioner invited my attention to Ext.P3 photographs in support of his argument.

7. 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.

8. 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.

9. 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.P5 is quashed.

The respondent panchayat 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 consider 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

Scl.