

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 18453 of 2015 (F)

PETITIONER:

LALAMMA, AGED 47 YEARS,
W/O. BABY, RESIDING AT CHATHANAT HOUSE,
VANDAZHI II VILLAGE, MUDAPPALLUR P.O.,
PALAKKAD DISTRICT.

BY ADVS.SRI.S.KRISHNA PRASAD (AYALUR)
SMT.MINI.V.A.

RESPONDENTS:

1. VANDAZHI GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, MUDAPPALLUR P.O.,
PALAKKAD - 678 705.
2. THE SECRETARY,
VANDAZHI GRAMA, MUDAPPALLUR P.O., PALAKKAD - 678 705.

R1-R2 BY ADV. SRI.P.RAVINDRA NATH
R1-R2 BY ADV. SRI.N.KRISHNA PRASAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

P1 - TRUE COPY OF THE EMPLOYMENT CARD ISSUED TO THE PETITIONER UNDER THE EMPLOYMENT GUARANTEE ACT.

P2 - TRUE COPY OF THE PHOTOGRAPH SHOWING THAT THE PETITIONER ALONG WITH HER FAMILY IS RESIDING IN A TEMPORARY SHED IN THE PROPERTY.

P3 - TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, VANDAZHI - II, DT. 02.6.15.

P4 - TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE EXTENSION OFFICER, VANDAZHI - II DT. 22.5.15.

P5 - TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT SUBMITTED BEFORE THE RESPONDENTS.

P6 - TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE 2ND RESPONDENT BY THE PETITIONER.

P7 - TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DT. 12.6.15.

RESPONDENTS' EXHIBITS :

A.V.RAMAKRISHNA PILLAI, J

WPC No.18453 of 2015

Dated this the 16th day of July, 2015

JUDGMENT

Aggrieved by the rejection of the application, submitted by the petitioner for building permit, by the respondent Panchayat, the petitioner has come up before this Court.

2. The petitioner is the owner in possession of 20 Ares of property in Re.Sy.No.91/10 of Vandazhi Village. According to the petitioner she filed an application for building permit before the respondent Grama Panchayat and the same is rejected vide Ext.P7 stating that as per the records, the property is nilam. The respondents while rejecting the application did not consider the fact that the land is not suitable for paddy cultivation and the same is reclaimed land and there is no paddy cultivation for the last several years. It is with this background the petitioner has come up before this court.

3. Respondents 1 and 2 had entered appearance on notice.

4. Arguments have been heard.

5. The learned standing counsel for the respondent Panchayat opposed the application on the ground that the property of the petitioner is classified as Nilam in the revenue records. However, the learned counsel for the petitioner inviting my attention to Ext.P3 certificate of the village Officer would submit that she is residing in the same property for about 9 years in a temporary shed constructed by her.

6. According to the petitioner, she was granted financial assistance for the construction of a residential house as per the IAY Residence Programme, 2015-2016 as evident from Ext.P4 and after the inclusion in the beneficiary list for financial assistance for construction of the residential building, the petitioner submitted an application for building permit before the respondents.

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 to construct a house.

8. 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.

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 position settled by this Court escaped the attention of the authorities while

rejecting the petitioner's application.

10. 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 allowed. Ext.P7 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 re-consider the

application and pass orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation. The petitioner shall be given an opportunity of being heard. 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**

CSS/

true copy

P.S.TO JUDGE