

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 18731 of 2015 (N)

PETITIONER(S):

1. K.RAJAN, AGED 59 YEARS,
S/O. KRISHNAN, 'KRISHNA', AISWARYA NAGAR,
KUNNATHOORMEDU, PALAKKAD DISTRICT.
2. K.M.SATHEEDEVI,
W/O. RAJAN, 'KRISHNA', AISWARYA NAGAR,
KUNNATHOORMEDU, PALAKKAD DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

1. THE KANNADI GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, KANNADI P.O.,
PALAKKAD DISTRICT, PIN-678 701.
2. THE SECRETARY,
KANNADI GRAMA PANCHAYATH, KANNADI P.O.,
PALAKKAD DISTRICT, PIN-678 701.

BY ADV. SRI.P.R.VENKETESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 18731 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1- TRUE COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER BY
THE 2ND RESPONDENT, 31-10-2014.**

**EXHIBIT P2- TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTIES OF THE
PETITIONER AND THE ADJACENT BUILDINGS.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.18731 of 2015

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Dated this the 13th day of July, 2015

JUDGMENT

Aggrieved by the Ext.P1 communication rejecting the application submitted by the petitioners for building permit, the petitioners have come up before this Court.

2. The petitioners, who are husband and wife, own 1.50 acres of property comprised in Sy. Nos.115/6, 116/1, 116/2, 117/3, 117/4, 117/5 and 117/7 within the limits of respondent panchayat. They submitted application for building permit before the respondents which was rejected by Ext.P1 stating that since the property is described as paddy field, building permit cannot be granted.

3. Arguments have been heard.

4. The learned counsel for the petitioners, inviting my attention to Ext.P2 photographs, submitted that buildings have come up in the nearby locality. It can be seen from Ext.P2 that the property

are situated on the side of Kozhikode-Thrissur National Highway.

Ext.P2 photos show the present nature of the land.

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 position settled by this Court escaped the attention of the authorities while rejecting the application submitted by the petitioners.

8. The learned counsel for the petitioners 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.P6 is quashed. 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 petitioners and surrounding property. The respondents are also directed to re-consider the application and to grant permit to the petitioners if the respondent is satisfied that the property are not cultivable at present. The petitioners shall be given an 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

krj