

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. 18737 of 2015 (N)

PETITIONER(S):

**SOLLY GEORGE,
VETTIKKAD POLACHIRA HUSE,
NELUKODY P.O., PAIPAD
CHANGANASSERRY.**

**BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEESH KUMAR**

RESPONDENT(S):

- 1. THE SECRETARY
PERINGARA GRAMA PANCHAYATH,
PERINGARA P.O., THIRUVALLA.
PIN : 689 101**
- 2. THE AGRICULTURAL OFFICER/CONVENOR OF
THE LOCAL LEVEL MONITOING COMMITTEE
KRISHI BHAVAN, PERINGARA P.O., THIRUVALLA.
PIN : 689 101**
- 3. THE VILLAGE OFFICER
VILLAGE OFFICE, KAVUMBHAGOM, THIRUVALLA.
PIN : 689 101**

**R1 BY ADV SRI.S.SUBHASH CHAND
R2 AND 3 BY GOVERNMENT PLEADER SMT.K.A.SANGEETHA**

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

VS

WP(C).No. 18737 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1 : TRUE COPY OF THE SALE DEED DOCUMENT NO.844/2005 OF
SUB REGISTRAR OFFICE, THRIUVALLA.**

**EXT.P2 : TRUE COPY OF THE COMMUNICATION OBTAINED UNDER
RIGHT TO INFORMATION ACT FROM THE 2NBD RESPONDENT**

**EXT.P3 : TRUE COPY OF THE CERTIFICATE DATED 18/7/2010 ISSUED BY
THE 2ND RESPONDENT**

**EXT.P4 : TRUE COPY OF THE BUILDING PERMIT DATED 24/1/2009
ISSUED BY THE 1ST RESPONDENT**

**EXT.P5 : TRUE COPY OF THE TAX RECEIPT DATED 28/5/2009 ISSUED BY
THE 1ST RESPONDENT**

EXT.P6 : TRUE COPY OF THE PHOTOGRAPHS OF THE LAND

EXT.P7 : TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

A.V.RAMAKRISHNA PILLAI, J

W.P.(C).No.18737 of 2015

Dated this the 23rd day of June, 2015

JUDGMENT

Aggrieved by the inaction on the part of the respondents in considering Ext.P7 application for building permit, the petitioner come up before this Court.

2. Petitioner obtained 8.9 Ares of land comprising in Resurvey No.192/1-2 of Kavumbhagom Village as per Ext.P1 sale deed. The land is described as 'Nilam' in Ext.P1 sale deed and in revenue records. The petitioner alleges that the land was reclaimed about 20 years before the enactment of the Kerala Conservation of Paddy land and Wet land Act, 2008 and it is not included in the DataBank as per Ext.P2-Communication. Petitioner preferred Ext.P7 application for permit for constructing a commercial building in the above land before the 1st respondent along with a detailed plan. However, the 1st respondent is not taking any steps to grant building permit as the land is described as 'Nilam' in the sale deed

and revenue records.

3. Heard the learned counsel for the petitioner and learned Standing Counsel for the respondents.

4. The petitioner alleges that his land has been reclaimed about 20 years before the commencement of the Kerala Conservation of Paddy land and Wet land Act, 2008 and not included in the report of Local Level Monitoring Committee.

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. The learned counsel invited my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465], wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future.

Reliance was also placed to the decision of the apex court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222], wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

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 petitioner's application.

8. Therefore, this writ petition is allowed. Ext.P4 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 three months from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

VS