

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 18867 of 2015 (G)

PETITIONER(S):

**PHILOMINA JOY,
MUTHIRAKALAYIL, ETTUMANOOR POST,
KOTTAYAM DISTRICT.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH**

RESPONDENT(S):

**THE ETTUMANOOR GRAMA PANCHAYATH,
ETTUMANOOR POST, KOTTAYAM - 686 631,
REPRESENTED BY ITS SECRETARY.**

- 2. THE SECRETARY,
THE ETTUMANOOR GRAMA PANCHAYATH,
ETTUMANOOR POST, KOTTAYAM - 686 631.**

BY SRI.SIBY CHENAPPADY, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 18867 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: PHOTOGRAPHS SHOWING THE PROPERTY.

EXT.P1(a): PHOTOGRAPHS SHOWING THE PROPERTY.

EXT.P1(b): PHOTOGRAPHS SHOWING THE PROPERTY.

**EXT.P2: A TRUE COPY OF THE INTIMATION DTD.9.6.2015 ISSUED BY THE
2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms v/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.18867 of 2015

Dated this the 10th day of July, 2015.

JUDGMENT

Aggrieved by Ext.P2 order rejecting the application for building permit on the ground that the petitioner's land is described as wet land in the possession certificate, the petitioner has come up before this Court.

2. The petitioner is the owner in possession of an extent of 7.10 ares of dry land within the jurisdiction of the first respondent Grama Panchayat. The petitioner alleges that application dated 4.5.2015 for building permit has been rejected by the second respondent as per Ext .P2 intimation on the solitary ground that the property is described as wet land in the possession certificate. The petitioner alleges that a bare reference to Ext.P1 photographs would show beyond doubt that the property is dry land and the entire adjoining properties are covered by commercial buildings. In spite of all these, the second respondent has now rejected the application

for building permit on the ground that the property is described as wet land in the possession certificate; it is alleged.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayat in the matter.

4. The learned counsel for the respondent panchayat, opposing the prayer, would submit that it was specifically stated in the possession certificate produced along with the petitioner's application that the property was shown as 'paddy field'. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P1 series photographs which would give the nature of the petitioner's land as well as the adjacent land. It is pointed out by the learned counsel for the petitioner that the building have come in the locality. As the property of the petitioner is surrendered by the land which had already been reclaimed where the buildings have come up, the petitioner is not in a position to have any paddy cultivation in his property at present.

5. 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.

6. 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.

7. 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.

8. 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.P2 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.