

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 18996 of 2015 (Y)

PETITIONER(S) :

**MUSTHAFA E.T.K., AGED 53 YEARS,
S/O.MAMMAD, EDAKKEMBURATH THAZHE KUNI HOUSE,
KUNNATHARA P.O., ULLOOR, KOZHIKODE DISTRICT,
REPRESENTED BY POWER OF ATTORNEY HOLDER,
PRAKASHAN N.M, AGED 42 YEARS, S/O. KUNHEKKAN,
NALLUVEETIL MEETHAL, ULLIYERI P.O, KOYILANDY,
KOZHIKODE DISTRICT, PIN- 673 620.**

**BY ADVS.SRI.SANTHARAM.P
SMT.REKHA ARAVIND
SMT.T.S.REMYA**

RESPONDENT(S) :

- 1. SECRETARY, ULLIYERI GRAMA PANCHAYATH,
ULLIYERI PANCHAYATH OFFICE, ULLIYERI P.O.,
KOZHIKODE - 673 620.**
- 2. ULLIYERI GRAMA PANCHAYATH,
ULLIYERI P.O, KOYILANDY TALUK, KOZHIKODE - 673 620,
REPRESENTED BY ITS SECRETARY.**

**BY ADVS. SRI.P.R.SREEJITH
SRI.M.PROMODH KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE DOCUMENT NO.3000/07 SRO,
CHEMMANCHERY.**

**EXHIBIT P2: TRUE COPY OF THE DOCUMENT NO.3044/07 OF SRO,
CHEMMANCHERY.**

**EXHIBIT P3: TRUE COPY OF THE RELEVANT PAGES OF THE DATA BANK
ISSUED BY THE RESPONDENT PANCHAYATH.**

**EXHIBIT P4: TRUE COPY OF THE BUILDING PERMIT NO.307/2013-14
DATED 18.10.2013.**

**EXHIBIT P4(A): TRUE COPY OF THE BUILDING PERMIT NO.308/2013-14
DATED 18.10.2013.**

**EXHIBIT P5: TRUE COPY OF THE SITE PLAN FOR THE PROPOSED ADDITION
TO EXISTING BUILDING.**

EXHIBIT P6: COPIES OF THE PHOTOGRAPHS OF THE SITE.

EXHIBIT P7: TRUE COPY OF THE NOTICE DATED 27.05.2015.

EXHIBIT P8: TRUE COPY OF THE REPLY DATED 03.06.2015.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.18996 of 2015

Dated this the 13th day of August, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P7 notice, by which the respondent Panchayat has directed the petitioner to stop the construction of a building which was being carried out in accordance with a valid permit issued by the respondent Panchayat.

2. The petitioner is the owner in possession of a property by virtue of Exts.P1 and P2 of the year 2007. By the time of purchase itself, the property was a pucca garden land; it is alleged. Ext.P2 shows that there are 8 shop rooms constructed by the erstwhile owner after obtaining valid permit from the respondent Panchayat. The petitioner points out that Ext.P3 is the data bank published by the respondent Panchayat which would reveal that the petitioner's property is not included in it and therefore, it can be safely concluded that the property is a garden land and would not attract the provisions of

Act 18 of 2008.

3. According to the petitioner, the petitioner decided to make addition to the existing building and he was issued with Ext.P4 and P4(a) licenses for the same, by the respondent Panchayat. Ext.P5 is the site plan and Ext.P6 is the photograph of the site. On the basis of Ext.P4 and P4(a), the petitioner started the construction of building and when it was going on, the petitioner was served with Ext.P7 notice directing him to stop the construction and to show cause why the building permit should not be cancelled within 7 days on the receipt of that notice. According to the petitioner, in the said notice, it is stated that the description of the property in the title deed is 'Nilam' and building license was obtained by misrepresenting the respondent Panchayat. The petitioner alleges that the first respondent issued Exts.P4 and P4(a) license after complying with the formalities such as physical verification of the property etc. Against Ext.P7, Ext.P8 reply was filed. According to the petitioner, the first respondent is under the constant pressure from the

members of a political party who are in inimical terms with the petitioner. It is with this background, the petitioner has come up before this Court.

4. Arguments have been heard.

5. The learned standing counsel for the respondent Panchayat opposed the application on the ground that the description of the property in the title deed of the petitioner is nilam and the building permit was obtained by the respondent mis-representing the facts.

6. In answer to the said submission, the learned counsel for the petitioner would submit that the building permit was issued by the Panchayat, being satisfied that the petitioner's property had already been reclaimed, though as per the description in the title deed, it is classified as nilam.

7. It can be seen from Ext.P6 photographs that there exists an old well in the property which would indicate that the said property was reclaimed long back. Buildings have come up in the surrounding properties and there are aged trees also. No paddy field is seen in the

nearby vicinity.

8. 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.

9. 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.

10. 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.

11. 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 permit the petitioner to carry on with the construction as per the permit and plan already approved,

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