

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 19877 of 2015 (H)

PETITIONER(S):

1. VALSA,
W/O.ALIAS, VANDANATHIL HOUSE, VENGOOR VILLAGE,
VENGOOR KARA, KUNNATHUNADU TALUK.
2. MINI,
W/O.SHAJI, KEECHERI HOUSE, VENGOOR WEST VILLAGE,
MUDAKUZHA KARA, KUNNATHUNADU TALUK.

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

RESPONDENT(S):

1. MUDAKKUZHA GRAMA PANCHAYATH,
MUDAKUZHA POST - 683 546,
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY,
MUDAKUZHA GRAMA PANCHAYATH,
MUDAKUZHA - 683 546.

R BY SRI.ARUN BASIL, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 19877 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: PHOTOGRAPH OF THE PROPERTY OF THE PETITIONERS

**EXT.P-2: TRUE COPY OF THE INTIMATION DATED 5.6.2015 ISSUED BY THE 2ND
RESPONDENT**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19877 of 2015

Dated this the 9th day of July, 2015.

JUDGMENT

By Ext.P2 intimation by which the petitioners' application for building permit was rejected on the ground that the petitioners' land is described as wet land in the possession certificate; it under challenge in this writ petition.

2. Petitioners are the joint owners in possession of an extent of 28.42 ares within the jurisdiction of the first respondent Grama Panchayath. The petitioners allege that the application dated 19.5.2015 for building permit has been rejected by the second respondent as per Ext.P2 intimation on the ground that the property is described as wet land in the possession certificate. The petitioners point out that a bare reference to Ext.P1 photograph would show beyond doubt that the property is dry land and the entire adjoining properties are covered by substantial buildings. In spite of all these, the second respondent has now rejected the application for

building permit. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent panchayat in the matter.

4. The learned counsel for the petitioners would submit that as per the order, the property of the petitioners was reclaimed two years back from the date of preparation of the data bank. The learned counsel for the petitioners inviting my attention to Ext. P1 photographs would submit that the entire property is now covered with trees and other cultivations and the same is not fit for paddy cultivation at present.

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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

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.P2 is quashed.

The respondent panchayath 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 properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioners 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.