

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C) .No. 19896 of 2015 (J)

PETITIONER(S) :

NISHAD,
AGED 34 YEARS, S/O.MUHAMMADALI,
MAMMIMUSALIYARAKATH HOUSE,
THAIKKAD P.O., CHOWALLOORPADI,
THRISSUR DISTRICT.

BY ADV. SRI.P.RAMACHANDRAN.

RESPONDENT(S) :

1. KANDANASSERY GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, MATTOM P.O.,
THRISSUR DISTRICT-680 602.
2. THE SECRETARY,
KANDANASSERRY GRAMA PANCHAYATH, MATTOM P.O.,
THRISSUR DISTRICT-680 602.

R1,R 2 BY ADV. SRI.M.ANIL KUMAR &
R1,R 2 BY ADV. SMT.PREETHI K.PURUSHOTHAMAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT-P1: TRUE COPY OF THE POSSESSION CERTIFICATE DATED 12.09.2014 BEARING NO.8034756 BY THE SPECIAL VILLAGE OFFICER, KANDANASSERY VILLAGE ISSUED TO THE PETITIONER AND HIS BROTHER.
- EXHIBIT-P2: TRUE COPY OF ORDER BEARING NO.B 4825/2014 DATED 08.01.2015 BY THE SECOND RESPONDENT.
- EXHIBIT-P3: PHOTOGRAPHS SHOWING LIE AND NATURE OF THE PROPERTY OF THE PETITIONER.
- EXHIBIT-P4: TRUE COPY OF THE CERTIFICATE DATED 25.02.2015 ISSUED BY THE VILLAGE OFFICER, KANDANASSERY CERTIFYING THE NATIVE OF THE PROPERTY.
- EXHIBIT-P5: TRUE COPY OF THE GAZETTE NOTIFICATION IN RESPECT OF FINAL FAIR VALUE OF LAND FOR SURVEY NO.570 OF KANDAMASERY VILLAGE.
- EXHIBIT-P6: TRUE COPY OF THE RELEVANT EXTRACT OF DRAFT DATA BANK PERTAINING TO SY.NO.570/1 OF KANDANASSERY VILLAGE ISSUED BY AGRICULTURAL OFFICER, KANDANASSERY ON 03.09.2014.
- EXHIBIT-P7: TRUE COPY OF THE JUDGMENT DATED IN W.P(C) NO.29147/2014 BY THIS HONOURABLE COURT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19896 of 2015

Dated this the 30th day of July, 2015

J U D G M E N T

Ext.P2, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is in joint ownership of a small parcel of land having an extent of 10.5 cents of property comprised in Sy.No.570/1 of Kandanassery Village in within the local limits of the respondent panchayath. The petitioner submitted an application for building permit, which was rejected by the 2nd respondent as per Ext.P2 stating that the property is shown as 'nilam' as per possession certificate and hence, permission could not be granted. According to the petitioner, Ext.P2 is per se illegal and it has resulted in serious prejudice to the petitioner. He further alleges that there are commercial and residential buildings in the close vicinity of the said

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property and it is a pucca garden land with full of coconut trees etc. In order to substantiate the said contention, the petitioner has produced Ext.P3 series of photograph and Ext.P4 certificate issued by the Village Officer. Therefore, according to the petitioner, Ext.P2 is beyond illegal and liable to be quashed.

3. Arguments have been heard.

4. The learned Standing Counsel for the respondent panchayath opposed the application for building permit on the ground that the property of the petitioner is a paddy field. In response to the same, the learned counsel for the petitioner, invited my attention to Ext.P7 judgment, by which, this Court issued directions to the respondent panchayath to grant building permit in respect of an adjacent property comprised in the same survey number.

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

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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-Panjai 5th Ward Nellupadaka 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 petitioner invited

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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 petitioner and surrounding properties. The respondents are also directed to reconsider the application and pass positive

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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

bka/-