

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. 20017 of 2015 (B)

PETITIONER(S):

**BALACHANDRAN, AGED 42 YEARS
S/O.KANNAN, MEETHALE MADATHIL HOUSE, PULIYAVU PO,
KOZHIKODE, PIN 673 509.**

**BY ADVS.SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V**

RESPONDENT(S):

- 1. SECRETARY, CHEKKIYAD GRAMA PANCHAYATH,
PARAKADAVU PO, VATAKARA,
KOZHIKODE DISTRICT, PIN 673 509.**
- 2. VILLAGE OFFICER, CHAKYADU GRAMA PANCHAYATH,
PARAKADAVU PO, VATAKARA,
KOZHIKODE DISTRICT, PIN 673 509.**
- 3. THE DISTRICT COLLECTOR,
KOZHIKODE DISTRICT, POST - CIVIL STATION,
KOZHIKODE. PIN 673 020.**

**R1 BY ADV. SRI.S.NARAYANAN NAIR
R2 & 3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE JENMAM ASSIGNMENT DEED STANDS IN THE NAME OF THE PETITIONER**
- P2- TRUE COPY OF THE BUILDING PLAN SUBMITTED ALONG WITH THE APPLICATION FOR THE BUILDING PERMIT**
- P2(A)- TRUE COPY OF THE SITE PLAN THE SUBMITTED ALONG WITH THE APPLICATION FOR THE BUILDING PERMIT**
- P3- TRUE COPY OF THE REJECTION ORDER BY THE 1ST RESPONDENT DATED 23.6.15 REJECTING THE APPLICATION FOR BUILDING PERMIT**
- P4- TRUE COPY OF THE PHOTOGRAPHS SHOWING THE LIE OF THE LAND BELONGING TO THE PETITIONER**
- P5- TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER ALONG WITH THE REPORT SHOWN IN THE BACK SIDE OF THE POSSESSION CERTIFICATE**
- P5(A)- TRUE COPY OF THE REPORT ENDORSED BY VILLAGE OFFICER ON THE BACK SIDE OF THE POSSESSION CERTIFICATE**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.20017 of 2015

Dated this the 10th day of July, 2015

JUDGMENT

Ext.P3 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of an extent of 3.818 Ares of property at Chekkyad Town on the northern side of the Valayam-Parakkadavu PWD road. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P3 on the ground that the land is classified as nilam as per revenue records.

3. Arguments have been heard.

4. The learned counsel for the respondent Panchayat opposed the application on the ground that as per revenue records, the property of the

petitioner is described as 'nanja'.

5. The learned counsel for the petitioner, invited my attention to Ext.P4 photographs, which would reveal that the property is lying on the side of the road and there are aged trees in the property. According to the learned counsel for the petitioner, just behind the property of the petitioner, a school building has been constructed for the approval of the Panchayat in the year 1968. Ext.P5 report of the Village Officer would reveal that the coconut trees in the petitioner's property is aged between 25 to 40 years.

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 to construct a house.

7. It can be seen from the photographs that the property is not a paddy field and it is having full

of aged trees. 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.

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

9. 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.P3 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 reconsider the application and pass orders granting permit, 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