

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 20040 of 2015 (D)

PETITIONER(S) :

**GOPIDASAN, AGED 35 YEARS,
S/O.PARANGODAN, PULLANIKATTU PARAMBIL, VAIKKATHUR,
VALANCHERY, MALAPPURAM DISTRICT-676 552.**

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S) :

- 1. VALANCHERY GRAMA PANCHAYATH,
VALANCHERY P.O., MALAPPURAM-676 552,
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
VALANCHERY GRAMA PANCHAYATH, VALANCHERY P.O.,
MALAPPURAM-676 552.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 20040 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE LAND TAX RECEIPT DATED 31.10.2013.

EXHIBIT P2 : TRUE COPY OF THE POSSESSION CERTIFICATE DATED 27.05.2015.

EXHIBIT P3 : TRUE COPY OF THE RECEIPT DATED 26.03.2015.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20040 of 2015

Dated this the 3rd day of July, 2015.

JUDGMENT

The petitioner is aggrieved by the non-consideration of the petitioner's building permit by the second respondent.

2. The petitioner is having 4 Ares of property in Re-Sy.No.59/1/1C-18 of Kattiparuthy Village of Tirur Taluk of Malappuram District. The petitioner alleges that his property is a reclaimed land is a residential area. Adjoining property owners have constructed residential buildings. The property is not suitable for paddy cultivation. Though the petitioner submitted an application before the second respondent for issuing building permit, the second respondent has not passed any orders on the same for the reason that in the revenue records, the property of the petitioner shown as paddy field. Though, the petitioner clarified that the property of the petitioner is a dry land and not suitable for paddy cultivation

and the provisions of Paddy Act is not applicable, the second respondent has not passed any positive order in the matter. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. Today when the matter came up for hearing, the learned counsel for the petitioner adverting to Exts.P1 to P3, would submit that the petitioner's property is a garden land at present. He confined his argument to the limited prayer for a direction to the second respondent to consider the petitioner's application within a time frame.

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-Panjali 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. Considering the nature of the submissions and the nature of the relief sought for, this Court is of the view that the writ petition can be disposed of, even without issuing notice to the respondents.

Therefore, the writ petition is disposed of directing the respondent panchayat to consider the application of the petitioner, after inspecting the petitioner's property to

ascertain whether the same is fit for paddy cultivation at present and affording the petitioner an opportunity of being heard, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.