

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. 20045 of 2015 (E)

PETITIONER(S):

**KRISHNAKUMAR. P., AGED 49 YEARS,
S/O.PRABHAKARAN, PUTHENPARAMBU HOUSE,
NORTH ARYAD P.O., ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.S.SANAL KUMAR,
SRI.M.T.SURESHKUMAR,
SMT.T.J.SEEMA,
SMT.BHAVANA VELAYUDHAN.**

RESPONDENT(S):

- 1. THE MANNANCHERY GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
MANNANCHERRY P.O., ALAPPUZHA- 688 538.**
- 2. STATE F KERALA,
REPRESENTED BY THE SECRETARY TO
LOCAL ADMINISTRATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**

R2 BY GOVT. PLEADER SMT.K.A. SANJEETHA.

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

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- TRUE COPY OF THE SETTLEMENT DEED NO.338/2011 OF MARARIKULAM S.R.O DATED 02.02.2011.**
- P2- TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER, KOMALAPURAM DATED 20.04.2015.**
- P3- TRUE COPY OF THE CASH RECEIPT DATED 10.02.2015 ISSUED BY MANNANCHERY GRAMA PANCHAYATH.**
- P4- TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED BY THE MANNANCHERY GRAMA PANCHAYATH DATED 28.04.2015.**
- P5- TRUE COPY OF THE CERTIFICATE DATED 20.02.2015 ISSUED BY THE VILLAGE OFFICER, KOMALAPURAM.**
- P6- TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 1ST RESPONDENT DATED 16.10.2012 WITH PLAN.**
- P7- TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE 1ST RESPONDENT DATED 16.10.2012 WITH PLAN.**
- P8- TRUE COPY OF THE CERTIFICATE ISSUED BY THE KERALA FINANCIAL CORPORATION, ALAPPUZHA BRANCH DATED 24.06.2015.**
- P9- TRUE COPY OF THE PLAN.**
- P10- TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 20.03.2015.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20045 of 2015

Dated this the 9th day of July, 2015.

JUDGMENT

Aggrieved by Ext.P10 by which the first respondent refused to approve the revised permit submitted by the petitioner for the reason that the construction is being carried out within 50 metres from the banks of backwaters, the petitioner has come up before this Court.

2. The petitioner herein is the owner-in-possession of 8.96 Ares of property comprised in Sy.No.627/10 of Komalapuram Village. According to him, he prepared a project for launching a resort in the name and style M/s. Sky Lake Resorts and applied to the Kerala Financial Corporation for a loan for the construction of two building units adjacent to each other. The smaller unit is of 106.08 sq.mtr. with ground floor alone. Just adjacent to it, the two storied bigger unit was proposed to be constructed. Separate building permits were issued by the first respondent by way of Exts.P6 and P7. The

petitioner alleges that while the construction was undergone, on the advice of the Engineer, the two units proposed to be constructed adjacent, were constructed as a single building without any variation in the plinth area or in structure and elevation. The petitioner, while the construction was progressing, submitted a revised plan for approval. On the oral assurance of the first respondent, the petitioner continued with construction. However, by Ext.P10 dated 20.3.2015, the first respondent refused to approve the revised permit for the reason that the construction is being carried out within 50 metres from the banks of Vembanadu Backwater, which is against the provisions of the Kerala Land and Wet Lands Act, 2008; it is alleged.

3. Though the notice has been served on the first respondent panchayat, they have not turned up.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

5. The petitioner for the purpose of launching a resort

in the said property, made application for building permit for construction of two units of buildings adjacent to each other and he was granted Ext.P6 building permit. However, when the petitioner commenced the construction of the two buildings adjacent to each other by Exts. P6 and P7, he was advised by the engineer that it is better to have the units together taking into account the nature of the soil of the property of the construction was made. Therefore, the petitioner made a deviation from the original plan and decided to construct both the units as a single unit without making any other alterations. It is with these background, the petitioner submitted new application. In Ext.P10 rejection order, the respondent panchayat has stated that the Coastal Zone Regulations is not applicable to the petitioner's property. However, they are of the view that the construction is prohibited within the distance of 50 metres from the backwaters and therefore, the permission cannot be granted under the Kerala Conservation of Paddy Lands and Wet Lands Act, 2008 (hereinafter called "the

Act"). The learned counsel for the petitioner would submit that the prohibition regarding the construction is contained in Section 14 of the Act is with regard to the construction of a wet land converted or reclaimed in contravention of the provisions of the Act. Admittedly, the petitioner's property is not a reclaimed land. The distance with regard to the construction near backwater is not found in the Act as rightly pointed out by the learned counsel for the petitioner. The learned counsel for the petitioner would further submit that though the present construction for which the approval is sought is in deviation from the original plan, but is perfectly in accordance with the Rules prescribed under the Kerala Panchayat Raj Building Rules and the various provisions of the Panchayath Raj Act.

6. As it appears from the matters now placed on record that the rejection of the petitioner's application for building permit as per Ext.P2 is not a valid ground, this Court is of the definite view that it calls for the interference by this

Court.

In the result, the writ petition is allowed and Ext.P10 is quashed. Respondent panchayat is directed to consider the petitioner's application and to issue positive orders in granting permit, within a period of two weeks from the date of receipt of a copy of this judgment, if the application is otherwise in the order. The respondent panchayat is also directed to number the petitioner's building and to issue the occupancy certificate to the petitioner, if the construction is otherwise in the order.

A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.