

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 20816 of 2015 (B)

PETITIONER:

**ABDUL LATHEEF, S/O.MOOSA HAJI, EDAVALATH, P.O.ATHOLI,
(VIA) KOZHIKODE, KOZHIKODE DISTRICT, PIN-673 315.**

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

RESPONDENT(S):

- 1. CHEMANJERY GRAMA PANCHAYATH, POST-CHEMANJERI, KOYILANDI-VIA,
KOZHIKODE DISTRICT, PIN-673 315,
REPRESENTED BY ITS SECRETARY.**
- 2. THE DISTRICT COLLECTOR, KOZHIKODE DISTRICT, COLLECTORATE,
KOZHIKODE CIVIL STATION,
KOZHIKODE DISTRICT, PIN-673 021.**

**R1 BY ADV. SRI.SANTHARAM.P
R2 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P T O

WP(C).No. 20816 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED WITH
NO.444/1/2011 OF S.R.O., CHEMANCHERY, IN THE NAME OF THE
PETITIONER.**

**EXT.P1(A): TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED WITH
NO.1615/2007 OF S.R.O., CHEMANCHERY.**

EXT.P2: TRUE COPY OF THE PHOTOGRAPH TAKEN FROM THE SCENE.

EXT.P2(A): TRUE COPY OF THE PHOTOGRAPH TAKEN FROM THE SCENE.

**EXT.P3: TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY VILLAGE
OFFICER, CHEMANJERY.**

**EXT.P4: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER FOR BUIDLING
PERMIT, BEFORE THE 1ST RESPONDENT.**

**EXT.P5: TRUE COPY OF THE REJECTION ORDER DATED 1.7.2015 ISSUED BY THE 1ST
RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL.

//TRUE COPY//

P.A. TO JUDGE

NVB

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.20816 of 2015

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Dated this the 17th day of July, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P6 order rejecting the application for building permit submitted by him.

2. The petitioner purchased 29 cents of garden land comprised in R.S. No.154/1, 3 of the respondent panchayat. The petitioner alleges that his property is a garden land for the last several years and there are around 40 standing trees in the property. The petitioner alleges that in Ext.P1 series documents, his property is shown as a garden land prior to 2008 itself. Therefore, the petitioner applied for building permit for construction of a residential house by way of Ext.P4 before the first respondent along with plan and Ext.P3 possession certificate. The application was rejected by Ext.P5 order stating that as per the village records, the property covered by Ext.P1 is described as paddy field. It is with this background, the petitioner has approached this Court.

3. Arguments have been heard.

4. The learned standing counsel for the respondent panchayat opposing the petition submitted that the petitioner has already

approached this Court with W.P(C) No.601 of 2015 wherein this Court by judgment dated 27.3.2015 has given option to the petitioner to file an application under the KLU order before the first respondent and in the event of filing such an application within two weeks, the first respondent shall consider the same in accordance with law, in the light of Ext.P6 also after getting a report from the additional 5th respondent the local level monitoring committee.

5. The learned standing counsel for the respondent panchayat submitted that the petitioner has not approached the District Collector as ordered by this Court. The learned standing counsel also made available to me a copy of the said judgment for perusal. The said judgment would reveal that the petitioner has approached the respondents for effecting changes in the records maintained by them. It is open to the petitioner to get the same corrected through parallel proceedings.

6. The present request of the petitioner is only to give a direction to the respondent panchayat to grant building permit in the light of the present nature of the property. 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 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.

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.P6 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 respondent panchayat is also directed to re-consider the application and to grant permission if they are satisfied that the property is not cultivable at present. 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

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