

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 21735 of 2015 (N)

PETITIONER:

VELAYUDHAN, S/O.KANDARAN, AGED 64 YEARS
KATTILAKAYIL HOUSE, KODATHUR, POST PERUMPADAPPU
MALAPPURAM DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENTS:

1. PERUMPADAPPU GRAMA PANCHAYATH
POST PERUMPADAPPU, MALAPPURAM DISTRICT, PIN-679 580
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY
PERUMPADAPPU GRAMA PANCHAYATH, POST PERUMPADAPPU
MALAPPURAM DISTRICT, PIN-679 580.

R1&2 BY ADV. SMT.BHAVANA VELAYUDHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 21735 of 2015 (N)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 - THE TRUE COPY OF THE DOCUMENT NO.1610/1973 OF SRO PONNANI DATED
26.6.1973

P2 - THE TRUE COPY OF THE TAX RECEIPT ISSUED BY THE PERUMPADAPPU
VILLAGE OFFICE DATED 11.6.2015

P3 - THE TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE
PERUMPADAPPU VILLAGE OFFICE DATED 12.06.2015

P4 - THE TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONER

P5 - THE TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED
20.6.2015

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21735 of 2015

Dated this the 6th day of August, 2015.

JUDGMENT

The petitioner is aggrieved by the rejection of the petitioner's application for building permit on the ground that as per the village records, the petitioner's property is described as Nilam.

2. The petitioner is the owner in possession of 7 cents of land in Sy. No. 244/2 of Perumpadappu village in Ponnani Taluk. The petitioner purchased the aforesaid land in the year 1973 as per Ext.P1 document. The petitioner alleges that after execution of the aforesaid document, he is in possession of the aforesaid property and paying land tax of the same. The petitioner points out that even though the description of the above land is described as wet land in revenue records it is already converted and not fit for paddy cultivation. The Local Level Monitoring Committee constituted under the Kerala Conservation of Paddy Land and Wet Land Act, 2008, has

noted the status of the land in the draft data bank as converted land. All the surrounding lands are also converted. The petitioner further alleges that he proposed commercial building in this property and applied for building permit in the respondent Grama Panchayath. The application was rejected as per Ext.P5 order by the 2nd respondent assigning the reason that the property is described as wet land in the revenue records. It is alleged that, it is issued without verifying the nature of land. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayath.

4. The application was opposed by the learned counsel for the respondent panchayath on the ground that as per the revenue records, the petitioner's property is described as paddy field. In answer to the said submission, the learned counsel for the petitioner inviting my attention to Ext. P4

photographs, would submit that the property is a strip of land between the public road and the residential building of the petitioner.

5. As it appears from Ext.P4 photographs that it is a strip of land between the public road and the petitioner's existing building, where no drainage facilities are provided, it is impossible to hold that any paddy cultivation is possible in the petitioner's property at present.

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 for construction.

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 positions 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.P5 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 consider the application and pass positive 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

Scl.