

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 21773 of 2015 (V)

PETITIONER(S):

**RAPHEL,
S/O. VAREED, VELIYATHUKUDY HOUSE, THALORE P.O.,
THRISSUR DISTRICT.**

**BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA**

RESPONDENT(S):

- 1. NENMANIKKARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, NENMANIKKARA,
THRISSUR - 680 301.**
- 2. SECRETARY,
NENMANIKKARA GRAMA PANCHAYATH, NENMANIKKARA
THRISSUR DISTRICT - 680 301.**

**BY ADVS. SRI.C.HARIKUMAR
SRI.RENJITH RAJAPPAN
SMT.SANU S MALAKEEL**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 21773 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1-TRUE COPY OF THE BASIC TAX RECEIPT DATED 23/04/2015 ISSUED BY
THE VILLAGE OFFICER, NENMANIKKARA.**

**EXHIBIT-P2-TRUE COPY OF THE PHOTOGRAPH SHOWING PETITIONER'S PROPERTY
AND ADJACENT BUILDINGS.**

**EXHIBIT-P3-TRUE COPY OF THE INTIMATION DATED 31/03/2015 ISSUED BY THE
SECRETARY OF THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21773 of 2015

Dated this the 19th day of August, 2015.

JUDGMENT

Ext.P3 proceedings, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is the owner in possession of a total extent of 0.556 ares of land in Sy.No.872/2 of Nenmanikkara Village. The above said property is situated abutting the National Highway 47 on the western side. The petitioner alleges that the entire property and the area where the petitioner's land is situated ceased to be paddy land at least 40 years back. There are shop buildings in the said area and it is a pucca commercial area. The petitioner further alleges that he has decided to construct the commercial building in the aforesaid property and has filed a building permit application before the first respondent. Recently the petitioner was given a letter dated 31.3.2015, stating that since the land is

classified as 'nilam' in revenue records, no sanction could be granted for construction of a building. The petitioner points out that in the data bank prepared under the Kerala Conservation of Paddy and Wetland Act, it is clearly mentioned that the petitioner's land is a reclaimed land and not a paddy land. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. The learned Standing Counsel for the respondent panchayath opposing the application, would submit that as per the village records, the land is included as 'Nilam'.

5. However, the learned counsel for the petitioner inviting my attention to Ext.P2 photographs, would submit that the petitioner's property as well as the surrounding property was reclaimed years back, ie, even before the commencement of the Kerala Conservation of Paddy and Wet Land Act.

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.P4 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.

The extent and survey No. "0.556 Ares in Sy.No.872/2 of Nenmanikkara Village" occurring in the 2nd paragraph of the judgment dated 19/08/2015 in W.P.(C) No.21773/2015 is corrected and substituted as "0.0564 Ares in Sy.No.987/2 of Nenmanikkara Village" vide order dated 16/06/2016 in I.A.No.9101/2016 in W.P.(C) No.21773/2015.

Sd/-
Registrar (Judicial)