

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 22011 of 2015 (B)

PETITIONER:

**JOSEPH P.H., AGED 49 YEARS,
S/O.MATHAI, ARAKKAL HOUSE, POVATHUR,
PAVARATTY, THRISSUR - 680 508.**

BY ADV. SRI.LOWEL CHERIAN

RESPONDENT(S):

- 1. PAVARATTY GRAMA PANCHAYAT,
PAVARATTY, CHAVAKKAD TALUK,
THRISSUR DISTRICT,
REP. BY ITS SECRETARY - 680 508.**
- 2. THE SECRETARY,
PAVARATTY GRAMA PANCHAYAT,
PAVARATTY, CHAVAKKAD THALUK,
THRISSUR DISTRICT - 680 508.**

BY ADV. SRI.RAJIT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 22011 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1- THE TRUE COPY OF THE SALE DEED BEARING NO.24/2014 OF THE S.R.O MULLASSERY.
- P2- THE TRUE COPY OF THE DRAFT DATA BANK PREPARED BY THE AGRICULTURAL OFFICER, KRISHI BHAVAN, PAVARATTY IN RESPECT OF THE PROPERTY PURCHASED BY THE PETITIONER, AS OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.
- P3- THE TRUE COPY OF THE PHOTOGRAPHS SHOWING THE PROPERTY OF THE PETITIONER.
- P4- THE TRUE COPY OF THE ORDER BEARING NO.A2-2625/15 DATED 7.7.15.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.22011 of 2015

Dated this the 11th day of August, 2015.

JUDGMENT

This writ petition is filed seeking to quash Ext.P4 order passed by the second respondent rejecting the application of the petitioner for construction of a commercial building in the property purchased by the petitioner on the ground that the property of the petitioner is shown as Nanja in the encumbrance certificate.

2. The petitioner purchased 8.25 cents of land situated in R.Sy.No.142/12 of Vemenad Village as per Ext.P1.

3. The petitioner alleges that the documents as well as the Data Bank prepared by the municipality would show that the land purchased by the petitioner is a garden land having coconut trees which are 25 years old.

4. The application submitted by the petitioner for construction of a commercial building was rejected by the second respondent on the ground that the encumbrance

certificate produced by the petitioner shows the property as Nanja and the relevant Government circular permits construction of residential houses only in such land.

5. The petitioner alleges that the Government circular in fact does not contain such restrictions for properties which have already been constructed 10 years before the coming into force of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. Therefore, according to the petitioner, Ext.P4 order passed by the second respondent rejecting the application submitted by the petitioner is illegal. It is with this background, the petitioner has come up before this Court.

6. Arguments have been heard.

7. The learned standing counsel for the respondent municipality opposed the petition on the ground that as per the village records, the petitioner's property is shown as paddy field. In answer to the said submission, the learned counsel for the petitioners inviting my attention to Ext.P2 photographs, submitted that his property is lying as a garden with aged

coconut trees and at present, it is not lying paddy field.

8. 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.

9. 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.

10. 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.

11. 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.