

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. 22100 of 2015 (J)

PETITIONER:

PRINCE, S/O.EMMANUEL
KONNAKKAL HOUSE, NADUKANI POST, KOTHAMANGALAM.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENTS:

1. THE VARAPETTY GRAMA PANCHAYATH
VARAPETTY POST, KOTHAMANGALAM, ERNAKULAM DISTRICT
REPRESENTED BY THE SECRETARY - 686 691.
2. THE SECRETARY
THE VARAPETTY GRAMA PANCHAYATH, VARAPETTY POST
KOTHAMANGALAM, ERNAKULAM DISTRICT, 686 691

R1,R2 BY ADV. SRI.PEEYUS A.KOTTAM

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

WP(C) .No. 22100 of 2015 (k)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: A TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DT. 12/6/15.

EXT.P2: PHOTOGRAPH SHOWING THE PROPERTY.

EXT.P3: A TRUE COPY OF THE JUDGMENT IN WP(C) NO.28508/2014 DATED
4.11.2014.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22100 of 2015

Dated this the 19th day of August, 2015.

JUDGMENT

Ext.P1 order, 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 17.09 ares of land in Sy.No.73/3 of Varapetty Village, Kothamangalam Taluk. The petitioner alleges that he purchased the same vide registered sale deed No.1292 of 2011 dated 31.5.2011 of SRO Pothanicaad within the limits of the first respondent Grama Panchayath. The application for building permit has been rejected by the second respondent as per Ext.P1 proceedings on the solitary ground that the property is shown as Nilam in the draft data bank and in view of the provisions contained in the Kerala Conservation of Paddy and Wetland Act, the application for building permit cannot be favourably considered. The petitioner alleges that a bare

reference to Ext.P2 photographs would show beyond doubt that the property is dry land and there is no wet land anywhere in the vicinity of the property. In spite of the above fact, the second respondent has now rejected the application for building permit on the sole ground that the property is shown as nilam in the draft data bank. 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 photograph, would submit that the property is dry land and there is no wet land anywhere in the property.

5. 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.

6. 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.

7. 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.

8. 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.