

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WP(C).No. 22107 of 2015 (K)

PETITIONER(S) :

**THOMAS GEORGE,
RAJAGIRI HOUSE, PERUNNA P.O., CHANGANASSERRY,
KOTTAYAM.**

**BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR**

RESPONDENT(S) :

**1. PERINGARA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
PERINGARA GRAMA PANCHAYAT, PERINGARA P.O.,
THIRUVALLA- 689 649.**

**2. THE SECRETARY,
PERINGARA GRAMA PANCHAYAT, PERINGARA P.O.,
THIRUVALLA- 689 645.**

BY ADV. SRI.S.SUBHASH CHAND, S.C

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-08-2015, THE COURT ON 25-09-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE SALE DEED DOCUMENT NO.424/1979 OF SUB REGISTRAR OFFICE, THIRUVALLA DATED 16.08.1979.

EXHIBIT P2: TRUE COPY OF THE SALE DEED DOCUMENT NO.4358/2008 OF SUB REGISTRAR OFFICE, THIRUVALLA DATED 07.06.2008

EXHIBIT P3: TRUE COPY OF THE LETTER PREFERRED BY THE AGRICULTURAL OFFICER TO THE 2ND RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE RELEVANT PAGES OF THE DATA BANK PREPARED BY THE LOCAL LEVEL MONITORING COMMITTEE IN PERINGARA PANCHAYTH.

EXHIBIT P5: TRUE COPY OF THE PHOTOGRAPHS OF THE LANDS.

EXHIBIT P6: TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT.

EXHIBIT P6(A):TRUE COPY OF THE RECEIPT DATED 24.03.2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.22107 of 2015

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Dated this the 25th day of September, 2015

JUDGMENT

Aggrieved by the inaction on the part of the second respondent in granting building permit to the petitioner on the ground that the land is described as nilam in the possession certificate, the petitioner has come up before this Court.

2. The petitioner obtained 19.20 ares of land comprised in RS No.127/4 of Kavumbjagom village as per Ext.P1 sale deed. He also obtained 5.12 ares of land comprised in R.S No.137 of the same village as per Ext.P2 sale deeds. The petitioner alleges that the above lands are lying together. According to the petitioner, the land covered by Ext.P1 is described as reclaimed land in the data bank and the land covered by Ext.P2 is not included in the data bank. The petitioner has produced Ext.P3 which is the letter of the Agricultural Officer,

Ext.P4 which is the relevant pages of the data bank and also Ext.P5 photographs in support of his claim.

3. The petitioner preferred Ext.P6 application for building permit for constructing a commercial building in the aforesaid lands before the respondents along with a detailed plan. However, it could not evoke any positive response. It is with this background, the petitioner has approached this Court.

4. Arguments have been heard.

5. Opposing the writ petition, the learned standing counsel for the respondent panchayat would submit that the properties of the petitioner is described as paddy field in the revenue records and, therefore, permission cannot be granted to the petitioner for construction. It was also pointed out that the property covered by Ext.P1 has been reclaimed without obtaining orders either under the KLU Order or under the Kerala Conservation of Paddy Land and Wetland Act.

6. Referring to Ext.P4 which is the copy of the data bank prepared by the local level monitoring committee of the respondent panchayat, the learned counsel for the petitioner submitted that the land covered by Ext.P1 is described as reclaimed land and the property covered by Ext.P2 is not included therein.

7. The learned counsel for the petitioner, inviting my attention to Ext.P5 photographs, submitted that commercial buildings have come up in the adjacent properties. Ext.P5 photos show the present nature of the petitioner's property and adjacent properties. 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.

8. As per Ext.P5, it can be seen that the property is not a paddy land. It is settled position that the applicant can choose the best land

suited for construction of his house [**Sunil v. Killimangalam-Panjai 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.

9. 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.

10. 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 disposed of directing the respondent panchayat 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 petitioner's 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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