

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 26426 of 2009 (W)

PETITIONER :

**A.K.SREEDHARAN,S/O.KELAN,
AZHICKAL HOUSE, PLASSANAL P.O.,
KOTTAYAM DISTRICT.**

**BY ADVS.SRI.P.V.BABY
SRI.R.KIRAN**

RESPONDENTS :

- 1. THE THALAPPALAM GRAMA PANCHAYAT,
PLASSANAL P.O., KOTTAYAM DISTRICT
REP.BY ITS SECRETARY.**
- 2. THE SECRETARY,
THALAPPALAM GRAMA PANCHAYAT, PLASSANAL P.O.
KOTTAYAM DISTRICT.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE SALE DEED NO. 2454/2008 DT 24/10/2008 OF THE SRO ERATTUPETTA.**
- P2: COPY OF THE POSSESSION CERTIFICATE DT 26/4/2006 ISSUED BY THE VILLAGE OFFICER, THALAPPALAM.**
- P3: COPY OF THE NO OBJECTION CERTIFICATE DT 30/5/2006 ISSUED BY THE R2.**
- P4: COPY OF THE LAND TAX RECEIPT DT 29/7/2009 ISSUED BY THE VILLAGE OFFICER, THALAPPALAM.**
- P5: COPY OF THE POSSESSION CERTIFICATE DT 29/7/2009 ISSUED BY THE VILLAGE OFFICER, THALAPPALAM.**
- P6: COPY OF THE ORDER DT 27/8/2009 ISSUED BY THE RESPONDENT PANCHAYAT.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 26426 of 2009

Dated this the 3rd day of August, 2015.

JUDGMENT

Ext.P6 order, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. Petitioner has purchased 27 cents of property as per Ext.P1 document along with a residential building which was under construction. The said fact is mentioned in Ext.P1 document itself. The petitioner alleges that on a reading of Ext.P1 document, it could be seen that the property is purayidom and various improvements are effected in the property. In the surrounding properties, there are residential buildings within 15 meters. The erstwhile owner started construction of the residential building after getting No Objection Certificate from the respondent Panchayat. In Ext.P2 certificate issued by the

Village Officer, Thalappalam the description of the property is mentioned as purayidom. When Ext.P5 certificate was issued by the same Village Officer the description of the property has been mentioned as nilam. When regularisation and numbering was sought for by the petitioner from the respondent Panchayat, the same was rejected on the ground that in Ext.P5 the description of the property mentioned as nilam, hence only after obtaining necessary permission for reclamation of the property from the concerned authorities, numbering and regularisation would be done. Ext.P6 is the said order issued by the respondent Panchayat. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. 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.

5. 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.

6. 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.

7. 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.P6 is quashed.

The respondent panchayat 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.