

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. 22482 of 2015 (I)

PETITIONER :

**HAMSA HAJI
S/O. MOIDEEN, AGED 63 YEARS
"SITHARA", POTTACHOLA
ERAMANGALAM POST, ERAMANGALAM,
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN**

RESPONDENT :

**ULLIYERI GRAMA PANCHAYAT
ULLIYERI P.O., KOZHIKODE DISTRICT – 673 620
REPRESENTED BY ITS SECRETARY.**

**BY ADVS. SRI.P.R.SREEJITH
SRI.M.PROMODH KUMAR**

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

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WP(C).No. 22482 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF SALE DEED REGISTERED DOC NO. 566/2013 OF
NADUVANNUR SRO AND DATED 5.3.2013.
- EXT.P2 COPY OF SALE DEED REGISTERED AS DOC NO. 2373/2006 DATED
25.11.2006 OF SRO, NADUVANNUR.
- EXT.P3 COPY OF BUILDING TAX RECEIPTS ISSUED BY ULLIYERI GRAMA
PANCHAYAT DATED 2.3.2013.
- EXT.P4 COPY OF SERVICE PLAN OF THE BUILDING OF THE PETITIONER.
- EXT.P5 COPY OF ORDER NO. A3-2482/2015 DATED 16.7.2015 ISSUED BY THE
RESPONDENT.
- EXT.P6 COPY OF PHOTOGRAPHS (2 NOS.) OF THE PROPERTY OF THE
PETITIONER.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.22482 of 2015

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Dated this the 3rd day of August, 2015

JUDGMENT

The petitioner is aggrieved by the first condition in Ext.P5 order issued by the respondent panchayat by which the petitioner's application for building permit was rejected.

2. The petitioner is the owner in possession of a parcel of land having an extent of 3.452 Ares corresponding to 8.75 cents in r.Sy.No.54/9 of respondent panchayat. He acquired the property as per Ext.P1 sale deed. Ext.P2 is the prior title deed. It is alleged that there is a shop in the property which was constructed in the year 1960. the petitioner's predecessor was paying the building tax in respect of the said shop and Ext.P3 is the copy of the building tax receipts.

3. The petitioner submitted application for building permit on 29.4.2015 for constructing a commercial building which was rejected by Ext.P5 order refusing to grant building permit stating three reasons. The first reason is that the property is described as nilam in the revenue records. The petitioner states that regarding

reasons 2 and 3 in Ext.P5, the petitioner can cure those defects.

4. Arguments have been heard.

5. The learned counsel for the petitioner, inviting my attention to Ext.P6 photographs, submitted that there is a commercial building in the property since 1960 and in the nearby locality buildings were constructed. Ext.P6 photos show the present nature of the petitioner's property. The respondents failed to note that they have already allowed the persons who are residing near Ext.P1 property to construct buildings, but the petitioners were arbitrarily prevented from construction.

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. As per Ext.P6, it can be seen that the property is not a paddy land and it is having full of aged trees. That itself would show that Ext.P1 is not a cultivating paddy field. 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.

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 position 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.P5 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 respondent panchayat is also directed to re-consider the 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.

As the petitioner is bound to comply with the other two directions in Ext.P5, the granting of permit will be subject to the compliance of the two conditions in Ext.P5.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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