

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 22604 of 2015 (A)

PETITIONER :

**SUDHARMA, AGED 52 YEARS,
ATTUVALLIKKATTIL HOUSE, THALAYAR,
KUTTOOR P.O., THIRUVALLA.**

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

RESPONDENTS :

- 1. KUTTOOR GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY
KUTTOOR GRAMA PANCHAYAT OFFICE,
KUTTOOR, THIRUVALLA 689106.**
- 2. THE SECRETARY
KUTTOOR GRAMA PANCHAYAT OFFICE,
KUTTOOR, THIRUVALLA 689106.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE SALE DEED DOCUMENT NO.793/1/2012 OF SUB REGISTRAR OFFICE, THIRUVALLA DATED 07.03.2012.

EXHIBIT-P2: TRUE COPY OF THE PHOTOGRAPHS OF THE LAND COMPRISING IN RESURVEY NO.90/16-2 OF KUTTOOR VILLAGE.

EXHIBIT-P3: TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT DATED 11.06.2015.

EXHIBIT-P4: TRUE COPY OF THE REJECTION LETTER DATED 01.07.2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22604 of 2015

Dated this the 7th day of August, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's request for building permit on the ground that the petitioner's property is wet land in the revenue records, the petitioner has come up before this Court.

2. The petitioner obtained 2.78 Ares of land comprising in Re-Sy.No.90/16-2 of Kuttoor Village as per Ext.P1 sale deed. The petitioner alleges that the land covered by Ext.P1 sale deed is described as Nilam in revenue records and the data bank prepared by the Local Level Monitoring Committee. However, the above land was reclaimed about 20 years before the enactment of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. The land is described as Dry Land in Ext.P1 sale deed. Three boundaries of the said land are dry lands. Now the petitioner preferred Ext.P3 application for

permit for constructing a residential building in the above land before the first respondent along with a detailed plan. However, the second respondent issued Ext.P4 letter rejecting the application preferred by the petitioner; it is alleged.

3. Arguments have been heard.

4. The learned standing counsel for the respondent panchayat submitted that as per the possession certificate issued by the concerned Village Officer on 6.6.2015, the property was converted recently and as per the report received by the respondent panchayat on 10.6.2015 also, the petitioner's property was converted recently . In answer to the said submission, the learned counsel for the petitioner inviting my attention to the description of the property in Ext.P1, which is the title deed by which the petitioner obtained the property, submitted that on the date of Ext.P1 the petitioner's property was garden land.

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.