

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 22705 of 2015 (K)

PETITIONER(S):

**GEORGE N. GEORGE,
NADUVILETHAYYIL HOUSE, OLASSA KARA, OLASSA P.O.,
AYMANAM VILLAGE, KOTTAYAM DISTRICT-686 014.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENT(S):

- 1. AYMANAM GRAMA PANCHAYAT,
AYMANAM P.O., KOTTAYAM DISTRICT, PIN 686 015,
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
AYMANAM GRAMA PANCHAYAT, AYMANAM P.O.,
KOTTAYAM DISTRICT, PIN 686 015.**

BY ADV. SRI.S.HARIKRISHNAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 22705 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE PHOTOCOPY OF THE SALE DEED DATED 11.07.2005.

**EXHIBIT-P2: TRUE PHOTOCOPY OF THE SITE PLAN OF THE PROPERTY COVERED BY
EXT.P1 SALE DEED.**

EXHIBIT-P3: TRUE PHOTOGRAPHS THE PROPERTY COVERED BY EXT.P1 SALE DEED.

**EXHIBIT-P4: TRUE PHOTOCOPY OF THE RELEVANT EXTRACT OF DATA BANK OF
AYMANAM VILLAGE.**

**EXHIBIT-P5: TRUE PHOTOCOPY OF THE BUILDING PERMIT DATED 16.04.2008 ISSUED
BY THE 2ND RESPONDENT.**

**EXHIBIT-P6: TRUE PHOTOCOPY OF THE APPLICATION FOR BUILDING PERMIT
DATED 10.07.2015.**

**EXHIBIT-P7: TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE ISSUED FROM
THE AYMANAM VILLAGE OFFICE.**

**EXHIBIT-P8: TRUE PHOTOCOPY OF THE ORDER BEARING NO.A1.101/15-
16/N.DIS.DATED 16.07.2015.**

**EXHIBIT-P9: TRUE PHOTOCOPY OF THE JUDGMENT DATED 18.06.2015 IN
W.P.(C) 17479/2015.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.22705 of 2015

Dated this the 21st day of August, 2015.

J U D G M E N T

The petitioner has approached this Court aggrieved by the rejection of the petitioner's application for building permit, vide Ext.P8.

2. The petitioner preferred Ext.P6 application for building permit to construct residential building in the property purchased by him as per Ext.P1 sale deed before the 2nd respondent. The petitioner alleges that the property covered by Ext.P1 deed was converted as dry land at least a decade back even as per the atea bank particulars (Ext.P4). However, the 2nd respondent without verifying the true nature and character of the property in question and ignoring the law laid down by this Court, returned the application submitted by the petitioner as per Ext.P8 order stating that the land in question is mentioned as 'nilam' in

the possession certificate and accordingly required the petitioner to obtain the permission of the Local Level Monitoring Committee. The petitioner points out that this Court has repeatedly held that 'merely because the property is described as paddy field in revenue records, property cannot be treated as one coming within the definition of a paddy field under Act 28 of 2008 and that the present condition of land has to be ascertained while considering an application for permit'. In Local Level Monitoring Committee Constituted under Section 5 of the Kerala Conservation of Paddy Land and Wetland Act 2008, in Kozhakkambalam Grama panchayat vs. Mariumma reported in 2015 (2)KLT 516, a Division Bench of this Court has held that the provision of the Kerala Conservation of paddy land and Wetland Act, 2008 is inapplicable if the conversion of property had taken place before the said Act, came into force. Therefore, it is prayed that Ext.P8 order directing the

petitioner to obtain permission from the Local Level Monitoring Committee constituted in terms of the Act, 2008, be set aside and the respondents be directed to issue building permit to the petitioner as applied for. Ext.P9 judgment was rendered by this Court in similar circumstances. It is submitted by the petitioner that he being similarly situated is entitled for similar relief. It is with this backdrop, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

4. Opposing the application of the petitioner, the learned counsel for the respondent would submit that the petitioner's property is a paddy field as per the details in the revenue records. It is also submitted that the petitioner has to obtain clearance from the Local Level Monitoring Committee. In answer to the said submission, the learned

counsel for the petitioner invited my attention to Ext.P4 which is copy of the data bank of Aymanam village, which reveals that the petitioner's property was converted prior to 2005 and this Court in W.P.(C)No.17479 of 2015 (Ext.P9) has repelled the contentions raised by the Local authority in the aforesaid case.

5. The learned counsel for the petitioner, inviting my attention to Ext.P3 photographs, which show the present nature of the land of the petitioner. 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 to construct a house.

6. It can be seen from Ext.P3 photograph that the property is not a paddy land and it is having full of aged trees. It is settled position that the applicant can choose the

best land suited for construction of his house (**Sunil v Killimangalam-Panjali 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 position 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.P8 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 petitioner can approach the Local Level Monitoring Committee with the application for building permit and the respondents are also directed to reconsider the application and pass orders granting permit, if they are satisfied that the land in the present form is unfit

for paddy cultivation. The petitioner shall be given an opportunity of being heard. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

ami/

//True copy//

P.A. to Judge