

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C) .No. 23511 of 2015 (L)

PETITIONER(S) :

FASILA,
AGED 27 YEARS, D/O.ALIKOYA,
KUNDIYOTTU, KAVIL P.O.,
KOZHIKODE DISTRICT, PIN - 673 614.

BY ADVS.SRI.SANTHARAM P.
SMT.REKHA ARAVIND.

RESPONDENT(S) :

SECRETARY,
ULIYERI GRAMA PANCHAYATH,
ULLIYARI P.O., KOZHIKODE DISTRICT,
PIN - 673 620.

R1 BY ADV. SRI.P.R.SREEJITH
R1 BY ADV. SRI.M.PROMODH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1:- TRUE COPY OF THE DOC NO 1279/2007 DTD 4/5/2007 OF CHEMANNGERY SRO. '

EXT. P2:- TRUE COPY OF ORDER DTD 21/3/2014 BY THE RESPONDENT.

EXT. P3:- TRUE COPY OF THE REPORT DTD 3/7/2014 ISSUED BY THE VILLAGE OFFICER, ULLIYERI, KOZHIKODE.

EXT. P4:- TRUE COPY OF THE SITE PLAN OF THE PROPOSED BUILDING.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.23511 of 2015

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Dated this the 13th day of August, 2015

JUDGMENT

The petitioner is aggrieved by the rejection of her application for building permit on the ground that her property is shown as paddy field as per the revenue records.

2. The petitioner is the owner in possession of a property having an extent of 4.35 Ares in R.S No.84/56 which is within the local limits of respondent panchayat. The petitioner acquired the property as per Ext.P1. She submitted an application for issuing building permit for constructing a commercial building in the property. By Ext.P2 order the said request was rejected for the reason that the nature of the land is paddy field and, therefore, permission from the RDO is required. It is with this background, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayat.

4. Opposing the application, the learned standing counsel for the respondent panchayat would submit that that the RDO concerned had rejected the petitioner's request in spite of Ext.P3 report of the village officer.

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-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.P2 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 one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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