

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C) .No. 23554 of 2015 (T)

PETITIONER(S) :

RABIYA R.,
AGED 43 YEARS, W/O.ABDUL RAZACK,
SHIFA MANZIL, (KOLOKANDY),
KARAYAD POST, MEPPAYUR,
KOZHIKODE DISTRICT.

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

RESPONDENT(S) :

ARIKKULAM GRAMA PANCHAYATH,
P.O.ARIKKULAM, VIA KOYILANDY,
ARIKKULAM - 673 620,
KOZHIKODE DISTRICT,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.SANTHARAM P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1: TRUE COPY OF THE SALE DEED REGISTERED AS DOC.NO.1139/1999 DATED
28/5/1999 OF MEPPAYUR SRO.

EXT. P2: TRUE COPY OF ORDER NO.A1/1987/15 DATED 15/5/2015 ISSUED BY THE
RESPONDENT, REFUSING TO GRANT BUILDING PERMIT TO THE PETITIONER.

EXT. P3: TRUE COPY OF THE PHOTOGRAPH OF THE PROPERTY OF THE PETITIONER.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.23554 of 2015

Dated this the 12th day of August, 2015.

J U D G M E N T

The petitioner is aggrieved by the rejection of the petitioner's application for building permit by the respondent panchayat on the ground that the petitioner's property is a paddy land as per the revenue records.

2. The petitioner is the owner in possession of a land having an extent of 2.82 Ares corresponding to 6.97 cents of re-survey No.3/1 of Arikkulam village in Koyilandy Taluk in Kozhikode District. She acquired the property by virtue of Ext.P1 sale deed registered as Doc.No.1139/1999 dated 28.5.1999 of Meppayur SRO. According to the petitioner, Ext.P1 would show that the property was shown as garden land. By Ext.P2 order, the application submitted by the petitioner for building permit was rejected for the reason that in the revenue records the property is described as

'nilam'. According to the petitioner, the reason stated in Ext.P2 order cannot stand the scrutiny of law and the same is against the dictum laid down by this Court in 2009(3)KLT 899, 2010(2)KLT 617, 2012(1)KLT491, 2012(3)KLT 86, 2012 (3) KLT 333, 2014(1)KHC 685 and 2014(1)KLT 1078. It is with this backdrop, 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. The standing counsel for the respondent opposed the application for the reason that the property of the petitioner is a paddy field as per the revenue records. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P1 title deed dated 28.5.1999 which shows that it is not a paddy field. The learned counsel also invited my attention to Ext.P3 photograph which shows the present nature of the land of

the petitioners wherein aged coconut trees are seen. However, the petitioner is arbitrarily prevented from constructing her houses.

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 to construct a house.

6. It can be seen from Ext.P3 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-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.

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 respondents are also directed to re-consider 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 two months from the date of receipt of a copy of this judgment.

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

ami/

//True copy//

P.A. to Judge