

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C) .No. 23776 of 2015 (V)

PETITIONER:

LIJO JOSEPH, AGED 42 YEARS
S/O. JOSEPH, PUTHUPPARA HOUSE, KIDNGOOR P.O.
THURAVOOR VILLAGE, ALUVA - 686 572.

BY ADV. SRI.N.ASHOK KUMAR

RESPONDENTS:

THE NENMANIKKARA GRAMA PANCHAYATH
PALIAKKARA, CHITTISERY P.O., THRISSUR - 680 301
REPRESENTED BY THE SECRETARY.

R1 BY ADV. SRI.RENJITH RAJAPPAN

R1 BY ADV. SMT.SANU S MALAKEEL

R BY SRI.C.HARIKUMAR, SC, NENMANIKKARA GRAMA PANCHAYATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23776 of 2015 (V)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 - THE TRUE COPY OF PRE BASIC TAX RECEIPT DT. 19.4.2015 ISSUED BY
THRIKKUR VILLAGE.

P2 - THE TRUE COPY OF THE APPLICATION FOR THE BUILDING PERMIT DT.
23.5.2015 SUBMITTED TO THE RESPONDENT PANCHAYATH.

P3 - THE TRUE COPY OF THE ORDER DT. 03.6.2015 ISSUED BY THE
RESPONDENT TO THE PETITIONER.

P4 - THE TRUE COPY OF THE PHOTOGRAPH SHOWING THE PRESENT POSITION OF
THE PROPERTY COVERED AS PER EXT. P1.

P5 - THE TRUE COPY OF THE JUDGMENT DT. 18.6.2015 IN WPC NO.
17212/2015 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 23776 of 2015

Dated this the 19th day of August, 2015.

JUDGMENT

Ext.P3 order, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is the owner of the property covered by Ext.P1 which is a dry land. It was not cultivable land at the time of purchase by the petitioner. The land had been reclaimed in the year 2004. The petitioner alleges that he applied for building permit for constructing a tile showroom in Sy.No.54/3. The respondent rejected the application on the ground that the property is shown as 'Nilam' as per village records; it is alleged. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. The learned Standing Counsel for the respondent panchayath opposing the application, would submit that as per

the village records, the land is included as 'Nilam'.

5. However, the learned counsel for the petitioner inviting my attention to Ext.P4 photograph, would submit that the petitioner's property as well as the surrounding property was reclaimed in the year 2004, ie, even before the commencement of the Kerala Conservation of Paddy and Wet Land Act.

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. 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.

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 positions 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.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.

The survey number "54/3" mentioned in the 6th line of paragraph 2 of the judgment dated 19.08.2015 in W.P.(C) No.23776/2015 (v) is corrected as "545/3", vide order dated 30/10/2015 in I.A. 15621/2015 in W.P.(C) No.23776/2015.