

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. 24468 of 2015 (G)

PETITIONER(S):

**YOUSAF A.P. AGED 47 YEARS,
S/O.KUNHEERTHU, AYAPALLI HOUSE, KAREKKAD,
KADAMPUZHA, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU**

RESPONDENT(S):

- 1. THE EDAYOOR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, EDAYOOR P.O,
MALAPPURAM DISTRICT. 676 552.**
- 2. THE SECRETARY,
THE EDAYOOR GRAMA PANCHAYATH, EDAYOOR P.O,
MALAPPURAM DISTRICT. 676 552.**

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

PJ

WP(C).No. 24468 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT
DATED 20.3.15.**

**EXHIBIT P2. COPY OF THE PHOTOGRAPHS OF THE PROPERTIES OF THE
PETITIONER.**

**EXHIBIT P3. COPY OF THE CERTIFICATE ISSUED BY THE AGRICULTURAL OFFICER,
KRISHI BHAVAN, EDAYOOR DATED NIL.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.24468 of 2015

Dated this the 21st day of August, 2015.

J U D G M E N T

Ext.P1 communication rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner intended to construct a hollow brick manufacturing unit in his properties. The 2nd respondent by Ext.P1 communication, rejected the application, on the ground that as per the revenue records, the description of the properties is nanja (nilam) and therefore, the building permit cannot be issued. It is alleged that the land in question was converted long ago, more than 40 years back. The petitioner points out that coconut trees and other trees are there in the properties and the neighbouring properties as evidenced by Ext.P2 photographs. The Agricultural Officer, Krishi Bhavan Edayoor, also had issued Ext.P3 certificate stating that for decades together, there was no

paddy cultivation in the properties. The petitioner also points out that this Court has held in several decisions that the description of the properties in the revenue records cannot be reckoned for the purpose of considering the application for building permit and what is relevant is the present position of the properties, which can only be ascertained after a site inspection of the properties. The petitioner also relied on the decision reported in Praveen v. Land Revenue Commissioner (2010(2)KLT 617), wherein it has been held that the description of properties in the revenue records cannot be reckoned for the purpose of issuance of building permits and the actual lie of the properties shall be reckoned by inspecting the properties by the concerned authorities. Therefore, the rejection of application for building permit as per Ext.P1 order of the panchayat is per se illegal ; it is alleged. It is in this backdrop, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner, inviting my attention to Ext.P2 photographs, submitted that the land in question was converted long ago, more than 40 years back. Ext.P2 photos show the present nature of the land of the petitioner.

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.P2 photographs 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.P1 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