

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. 24473 of 2015 (H)

PETITIONER(S):

- 1. SALIM R.P, AGED 35 YEARS,
RAROTH THAZHA HOUSE, ATHOLI POST, KOZHIKODE DISTRICT
673 315.**
- 2. ABDUL RASHEED,
S/O.KUTTOOSA, ATHOLI POST, KOZHIKODE DISTRICT,
PIN-673 315.**

**BY ADVS.SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V**

RESPONDENT(S):

- 1. ATHOLI GRAMA PANCHAYAT,
POST VELOOR, ATHOLI, KOZHIKODE DISTRICT,
PIN-673 315, REPRESENTED BY ITS SECRETARY.**
- 2. DISTRICT COLLECTOR,
KOZHIKODE, COLLECTORATE, CIVIL STATION,
KOZHIKODE 673 020.**

**R1 BY ADVS. SRI.VINOD SINGH CHERIYAN
SRI.T.M.KHALID**

R2 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN

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

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE DOCUMENT WITH NO.1092/2011 OF SRO CHEMANCHERY.**
- EXHIBIT P2. COPY OF THE AGREEMENT WITH AGREEMENT IN BETWEEN PETITIONERS.**
- EXHIBIT P3. COPY OF THE PHOTOGRAPHS.**
- EXHIBIT P4. COPY OF THE APPLICATION FOR BUILDING PERMIT.**
- EXHIBIT P5. COPY OF THE ORDER DATED 6.8.15 OF IST RESPONDENT REJECTING BUILDING PERMIT.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.24473 of 2015

Dated this the 21st day of August, 2015.

J U D G M E N T

Ext.P4 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The 1st petitioner is the owner of large extent of 48 cents of land covered by Ext.P1 document. On the request of 2nd petitioner, he has consented to donate 10 cents of property to the 2nd petitioner committee, of which the 1st petitioner is an office barer, for constructing a permanent building for Madrasa running under the 2nd petitioner. The property covered by Ext.P1 is a garden land which is consisting of residential house of the 1st petitioner and many number of standing timbers including coconut trees of age group of 50-60 years as evident from Ext.P3 photographs. By Ext.P5 order, the 1st respondent rejected the application for building permit to construct the Madrasa building, pointing out that the property of the petitioner is classified

as paddy field in village records. It is in this backdrop, the petitioner has approached this Court.

3. Heard both sides.

4. The learned standing counsel for the respondent panchayat opposing the petitioners' application for building permit submitted that the petitioner's property is a paddy field. In answer to the said submission, the learned counsel for the petitioners invited my attention to Ext.P3 photographs, has submitted that the property of the petitioner is a pakka garden land. Ext.P3 photos show the present nature of the land of the petitioners.

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 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-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 petitioners 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.P3 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 petitioners 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