

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. 25107 of 2015 (K)

PETITIONER(S) :

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1. SAIDALAVI HAJI,
AGED 62 YEARS, S/O.LATE MUHAMMED KUTTY HAJI,
AARATTU THODIKA HOUSE,
VENNIYUR P.O., MALAPPURAM, PIN-676 508.
 2. HYDROSE,
AGED 45 YEARS, S/O.LATE MUHAMMED KUTTY HAJI,
AARATTU THODIKA HOUSE,
VENNIYUR P.O., MALAPPURAM, PIN-676 508.

BY ADVS.SRI.AVM.SALAHUDIN
SMT.A.D.DIVYA
SMT.EMIL STANLEY

RESPONDENT(S) :

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1. REVENUE DIVISIONAL OFFICER,
KOZHIKODE, PIN-673 001.
 2. VILLAGE OFFICER,
VILLAGE OFFICE, NELLIKODE,
KOZHIKODE-673 015 .
 3. SECRETARY,
KOZHIKODE CORPORATION, KOZHIKODE-673 001.
 4. KOZHIKODE CORPORATION,
REPRESENTED BY ITS SECRETARY, KOZHIKODE CORPORATION,
KOZHIKODE-673 001.

BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
BY SRI.K.D.BABU,SC,KOZHIKODE CORPORATION

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

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1 : TRUE COPY OF THE PURCHASE CERTIFICATE NO.1073/1979 DT.27-8-1979.

EXT. P2 : TRUE COPY OF THE REPORT DT.16-4-2015 BY THE R2.

EXT. P3 : TRUE COPY OF THE LETTER DT.1-6-2015 ISSUED BY R1.

EXT. P4 : TRUE COPY OF THE A SITE PLAN.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.25107 of 2015

Dated this the 21st day of August, 2015.

J U D G M E N T

The petitioners are aggrieved by the inaction on the part of the 2nd respondent Corporation in considering the petitioners' application for building permit on the basis of Ext.P3 letter from the RDO, Kozhikode, rejecting the petitioners' application for building permit.

2. The petitioners filed an application before the 1st respondent to correct and change the description regarding the nature of the petitioners' property in village and revenue records. On that basis, the 2nd respondent prepared a report stating that the petitioners' property is at present lying as a garden land and there are so many growing trees having age of 15-25 years in the property. The 1st respondent rejected the application as per Ext.P3 letter stating that no law is prevailing to correct the nature of the property in revenue records. Thereafter, the petitioner filed an

application for building permit along with the copy of the report (Ext.P2) prepared by the 2nd respondent -village officer. However, the 3rd respondent even though accepted the application hesitate to issue building permit stating that the necessary changes as to the nature of the property in revenue records are to be carried out. The stand and approach taken by respondents 3 and 4 is illegal ; it is alleged. It is with this backdrop, the petitioners have approached this Court.

3. I have heard the learned counsel for the petitioners, the learned Government Pleader and the learned Standing counsel for the respondent.

4. The learned Standing counsel would submits that the petitioners' application has not been rejected. The learned counsel for the petitioners heavily relied on Ext.P2 certificate issued by the Village officer which states that the petitioners' property has been converted 25 years prior to

16.4.2015 as 'nilam'. However, it was specified in Ext.P2 that the sanction was given subject to condition that the petitioner should provide adequate drainage facility and avoid water logging in the adjacent property.

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 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.P2 is quashed.

The respondent Corporation is directed to conduct a local inspection of the property to ascertain the present nature 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 3 weeks from the date of receipt of a copy of this judgment, if the same is otherwise in order.

It is hereby made clear that the respondent Corporation shall ensure that no water logging occurs in the area on account of the construction undertaken by the petitioner. The petitioner shall provide adequate drainage facility if

there is change of water logging. It is the responsibility of the respondent Corporation to see that necessary drainage facility is provided by the petitioner to avoid water logging in the adjacent properties.

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

ami/

//True copy//

P.A. to Judge