

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 25504 of 2015 (K)

PETITIONER(S):

- 1. MEZHUVELI GRAMA PANCHAYAT,
ELAVUMTHITTA.P.O., KOZHANCHERRY TALUK,
REPRESENTED BY ITS PRESIDENT,
ELAVUMTHITTA.P.O., KOZHANCHERRY.**
- 2. N.SULOCHANA, AGED 72 YEARS,
W/O.K.K.SUKUMARAN, ASWATHY, ELAVUMTHITTA.P.O.,
KOZHANCHERRY TALUK, NOW SERVING AS THE PRESIDENT
OF MEZHUVELI GRAMA PANCHAYAT.**

**BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR**

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO THE GOVERNMENT,
MINISTRY OF LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF PANCHAYATS,
DIRECTORATE OF PANCHAYATS, PUBLIC OFFICE BUILDING,
MUSEUM P.O., THIRUVANANTHAPURAM-695 033.**
- 3. THE DEPUTY DIRECTOR OF PANCHAYATS,
PATHANAMTHITTA, PATHANAMTHITTA DISTRICT - 689 101.**
- 4. THE STATE ELECTION COMMISSION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE COMPLEX, LMS JUNCTION,
THIRUVANANTHAPURAM-33.**
- 5. STATE DELIMITATION COMMISSION,
KERALA, REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE COMPLEX, LMS JUNCTION,
THIRUVANANTHAPURAM-33.**

**R1 TO R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA
R4 & R5 BY SRI.MURALI PURUSHOTHAMAN, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-09-2015 ALONG WITH WPC.24259/2015 & CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 25504 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 : THE TRUE COPY OF RESOLUTION NO.IV(1)DATED 5.8.2015 OF
MEZHUVELI GRAMA PANCHAYAT.
- EXT.P2 : TRUE COPY OF THE NOTIFICATION NO.35576/EM 3/2014/LSGD
DTD.29.6.2015 PUBLISHED IN THE GOVERNMENT GAZETTE NO.1568
OF VOLUME IV DTD.29.6.2015.
- EXT.P3 : TRUE COPY OF THE RESOLUTION DATED 8.7.215 OF THE
FIRST PETITIONER PANCHAYAT.
- EXT.P4 : TRUE COPY OF THE NOTIFICATION NO.255/2015/LSGD DTD.3.8.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 25504 of 2015

Dated this the 27th day of July, 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 alleges that the application submitted by him for the permission to construct a commercial building to the second respondent was rejected as per Ext.P3 order, for the sole reason that the area of the proposed commercial building is shown in the document and possession as 'Nilam' and is included in the draft data bank scheme of 2008. The petitioner further alleges that Ext.P3 order rejecting the application to construct the commercial building, for the reason that the proposed land is described as 'Nilam' in the records without adhering to the ground realities that it is only a garden land and granting permission to construct other building in the adjacent land is totally unjustifiable. It is very

much apparent from the photographs that the land is a garden land and there are coconut trees, areaca nut trees and other country wood trees in the land. From the fact that the age of the coconut trees appear more than 30 years, it can only be presumed that the property is only a garden land. It is further alleged that no paddy or other cultivation has been carried on in the said land for more than 30 years and that there are residential and commercial buildings in the adjoining lands and there are no water channels in the property enabling flow of water to other lands. The denial of the right or permission for construction of commercial building by the respondents merely on the ground that the area is described as 'Nilam' in the documents without adhering to the ground reality that the land is a garden land surrounded by buildings, both commercial as well as residential and the fact that there is no cultivation of paddy about 30 years back amounts to deprivation of right to property since the petitioner has the right to use the land for his own purpose without violating the law of land. The policy of the respondents are totally against the principle of natural

justice. Ext. P3 order issued by the second respondent without any right is liable to be quashed and declared null and void. 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 Corporation opposing the application, would submit that the property is included in the draft data bank.

5. However, the learned counsel for the petitioner inviting my attention to Ext.P5 photographs, would submit that the petitioner's property as well as the surrounding property was reclaimed years back, 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-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.

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.P3 is quashed.

The respondent corporation 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.