

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 28007 of 2014 (A)

PETITIONER(S) :

K.M.JOSEPH,
KANDATHIPARAMBIL HOUSE, VAIKOM, KOTTAYAM,
REPRESENTED BY HIS FATHER AND POWER OF ATTORNEY-
V.MATHAI.

BY ADVS.SRI.DEVAN RAMACHANDRAN,
SRI.K.M.ANEESH &
SRI.ADARSH KUMAR.

RESPONDENT(S) :

1. THE VAIKOM MUNICIPALITY,
VAIKOM, KOTTAYAM,
REPRESENTED BY ITS SECRETARY-680 141.
2. THE SECRETARY,
VAIKOM MUNICIPALITY, VAIKOM,
KOTTAYAM-686 141.

BY ADV. SMT.A.SREEKALA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT-P1: TRUE COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT NO.E1/1494/13 DATED 19/03/2013.
- EXHIBIT-P2: TRUE COPY OF THE ORDER ISSUED BY THE VILLAGE OFFICER, NADUVILA NO.406/12 DATED 22/08/2012.
- EXHIBIT-P3: TRUE COPY OF THE REPORT NO.3034/12 ISSUED BY THE REVENUE DIVISIONAL OFFICE, PALA DATED 25/10/2012.
- EXHIBIT-P4: TRUE COPY OF THE REPORT NO.760/2012 DATED 17/11/2012 ISSUED BY THE VILLAGE OFFICER, NADUVILA.
- EXHIBIT-P5: TRUE COPY OF THE JUDGMENT W.P.(C) NO.8310/2013 DATED 3.7.2013.
- EXHIBIT-P6: TRUE COPY OF THE ORDER NO.B-A-269/12-13 ISSUED BY THE 2ND RESPONDENT DATED 4/10/2013.
- EXHIBIT-P7: TRUE COPY OF THE ORDER OT THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DATED 24.6.2014.
- EXHIBIT-P8: THE TRUE COPY OF THE JUDGMENT W.P.(C) NO.18056/2014 DATED 22.07.2014.
- EXHIBIT-P9: TRUE COPY OF THE ORDER NO.B.A-269/12-13 DATED 17.9.2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 28007 of 2014

Dated this the 1st day of June, 2015

J U D G M E N T

Ext.P9, 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 about 69 cents of property comprised in Sy.Nos.158/1A1, 157/1B, 157/10, 157/18, 158/1A and 158/1B in Naduvila Village within the local limits of the respondent Municipality. The petitioner submitted an application for building permit, which was rejected by the 2nd respondent as per Ext.P1 for the reason that the nature of about 37 cents of land, out of the 69 cents, is recorded in the Basic Tax Register and the possession certificates issued with respect to the properties by the Naduvila Village Office as paddy field ('nilam). According to the petitioner, the land in fact is remaining as garden land for the past several decades.

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The petitioner has produced Exts.P3 and P4 reports to substantiate his claim. The petitioner approached this Court with WP(C) No.8310/2013 challenging Ext.P1; and this Court, as per Ext.P5 judgment, set aside Ext.P1 and directed the 2nd respondent herein to inspect the property and to verify whether the same is suitable for paddy cultivation. In compliance of the same, the 2nd respondent inspected the property of the petitioner and found that the land is not fit for paddy cultivation since it is surrounded by garden land having tall trees and several concrete buildings. It was also found that Ext.P3 report of the RDO was correct in holding that the property is not fit for cultivation. However, it was concluded that the property has been filled up only after the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008, on the basis of which, the 2nd respondent rejected the application of the petitioner vide Ext.P6. The petitioner challenged Ext.P6 before the Tribunal for Local Self Government Institutions,

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Thiruvananthapuram in Appeal No.1007/2013 and the Tribunal vide Ext.P7 order dated 24.06.2014, set aside Ext.P6 and directed the petitioner to approach the Local Level Monitoring Committee with an application and the said Committee was directed to verify whether the property of the petitioner is suitable for paddy cultivation. Aggrieved by Ext.P7, the petitioner again approached this Court with WP(C) No.18056/2014; and this Court, vide Ext.P8 judgment, quashed the direction to approach the Local Level Monitoring Committee and directed the 2nd respondent to consider the application de hors Ext.P7 order. The 2nd respondent thereafter considered the application of the petitioner and dismissed the same vide Ext.P9 order. It is with this background, the petitioner has approached this Court.

3. Arguments have been heard.

4. 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

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present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted for construction.

5. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjai 5th Ward Nellupadaka 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.

6. 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.

Therefore, this writ petition is allowed. Ext.P9 is

quashed.

The respondent municipality 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

bka/-