

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 29147 of 2014 (P)

PETITIONER(S) :

**BADHARUDEEN, AGED 57 YEARS,
S/O.MOMU, PULICHARAM VEETIL HOUSE, CHOWALLOOR,
KANDANASSERRY P.O, THRISSUR DISTRICT.**

BY ADV. SRI.P.RAMACHANDRAN

RESPONDENT(S) :

- 1. KANDANASSERY GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, MATTOM P.O,
THRISSUR DISTRICT- 680 602.**
- 2. THE SECRETARY,
KANDANASSERY GRAMA PANCHAYATH, MATTOM P.O,
THRISSUR DISTRICT- 680 602.**

**BY ADVS. SRI.M.ANIL KUMAR
SMT.PREETHI K.PURUSHOTHAMAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE SALE DEED NO.2053/2005 OF S.R.O KUNNAMKULAM.
- EXHIBIT P2:** TRUE COPY OF THE POWER OF ATTORNEY DATED 21-06-2013.
- EXHIBIT P3:** TRUE COPY OF THE ORDER DATED 25-03-2013 BEARING NO.B5-5746/12 BY THE SECOND RESPONDENT.
- EXHIBIT P4:** PHOTOGRAPHS SHOWING LIE AND NATURE OF THE PROPERTY OF THE PETITIONER.
- EXHIBIT P5:** TRUE COPY OF THE CERTIFICATE DATED 25-05-2012 ISSUED BY THE VILLAGE OFFICER, KANDANASSERY CERTIFYING THE NATIVE OF THE PROPERTY.
- EXHIBIT P6:** TRUE COPY OF THE GAZETTE NOTIFICATION IN RESPECT OF THE FINAL FAIR VALUE OF LAND FOR SURVEY NO.570 OF KANDAMASSERY VILLAGE.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 29147 of 2014

Dated this the 24th day of February, 2015

J U D G M E N T

Ext.P3 order, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is in joint ownership of 20 cents of land comprised in Sy.No.570/1 of Kandanasery Village within the limits of the respondent panchayath in Talappilly Taluk, Thrissur District. The 2nd respondent rejected the application for building submitted by the petitioner as per Ext.P3, stating that the property is described as 'Nilam' as per revenue records; and hence, permission cannot be granted. According to the petitioner, the property is a pucca garden land with full of coconut trees. He produced Ext.P4 photographs, showing the nature of land and Ext.P5 certificate, certifying the nature of the property. Therefore, according to the petitioner, Ext.P3 is per se illegal and hence, liable to be

quashed.

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 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 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.

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

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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.P3 is quashed.

The respondent panchayath 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 orders granting building permit after affording the petitioner an opportunity of being heard without insisting for clearance from any other authority if the respondents find that the property in question is unfit for paddy cultivation at present. 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/-