

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 30401 of 2014 (A)

PETITIONER:

SUNITHA JAYADEVAN,
PUTHUPPULLY HOUSE, MULANGU, THRISSUR-680310.

BY ADVS.SMT.ASHA K.SHENOY
SRI.PRATAP ABRAHAM VARGHESE

RESPONDENTS:

1. THE PARAPPUKKARA GRAMA PANCHAYATH,
PARAPPUKKARA, THRISSUR-680310
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY,
PARAPPUKKARA GRAMA PANCHAYATH, PARAPPUKKARA
THRISSUR-680310.

R1 & 2 BY ADV. SMT.ROOPA RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 30401 of 2014 (A)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 COPY OF POSSESSION CERTIFICATE 30/10/2014 ISSUED BY THE
VILLAGE OFFICER, THOTTIPPAL.

EXT.P2 COPY OF CERTIFICATE OF ACKNOWLEDGEMENT ISSUED BY THE DISTRICT
INDUSTRIES CENTRE, THRISSUR.

EXT.P3 COPY OF THE REGISTRATION CERTIFICATE DATED 12/8/2014 ISSUED
BY THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA.

EXT.P4 COPY OF THE BUILDING PLAN SUBMITTED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT SECRETARY.

EXT.P5 COPY OF LETTER DATED 24/10/2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.30401 of 2014

Dated this the 12th day of August, 2015.

JUDGMENT

The petitioner is aggrieved by the rejection of the application for modification of building on the ground that the petitioner's property is reclaimed paddy field.

2. The petitioner sought permission for modification of a building situated in Sy.No.175/1 of Thottippal Village. The petitioner alleges that the second respondent secretary rejected the application stating that the land in question is reclaimed paddy field. The said order was issued without actual verification of facts; it is alleged. There is a building in the property which was numbered by the second respondent panchayath. The property had evidently been reclaimed long before the coming into force of the Kerala Conservation of Paddy Land and Wet Land Act, 2008; it is alleged. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner

and the learned standing counsel for the respondent panchayath.

4. The learned standing counsel for the respondent panchayath opposed the application on the ground that as per the revenue records, the petitioner's property is a paddy land. In answer to the said submission, the learned counsel for the petitioner would submit that the property was reclaimed years back. It appears from Ext.P5 that the permit was rejected for the reason that the reclamation was within a period of ten years. However, the learned counsel for the petitioner would submit that there are aged trees in the property which would go to show that the property was reclaimed about 50 years back. It was also stated that the petitioner is residing in the property and the present request is only for a modification of the building. It is a settled law as the construction has been permitted by the respondent panchayath in the property, the very nature of the property stands changed and therefore the contention that the modification cannot be permitted on the

ground that the property was existing a paddy field at one point of time cannot be countenanced.

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 for construction.

6. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjal 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 positions

settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

8. 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.P5 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 positive orders granting provisional sanction for carrying out the modifications reflected in Ext.P4 plan, 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.