

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 31474 of 2015 (H)

PETITIONER(S):

**SAJI, W/O. JAMES, VATTAKUZHIL HOUSE,
KALLOORKKAD VILLAGE AND POST,
MUVATTUPUZHA TALUK.**

**BY ADVS.SRI.MATHEW JOHN,
SRI.DOMSON J.VATTAKUZHIL.**

RESPONDENT(S):

- 1. THE VARAPETTY GRAMA PANCHAYATH,
VARAPETTY POST - 686 691, KOTHAMANGALAM,
REPRESENTED BY THE SECRETARY.**
- 2. THE SECRETARY,
THE VARAPETTY GRAMA PANCHAYATH,
VARAPETTY POST - 686 691, KOTHAMANGALAM.**

BY ADV. SRI.PEYUS A.KOTTAM, SC.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 31474 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS:-

**EXHIBIT-P1- TRUE COPY OF THE INTIMATION OF THE 2ND RESPONDENT
DATED 22/08/2015.**

EXHIBIT-P2- TRUE COPY OF THE PHOTOGRAPH SHOWING THE PROPERTY.

EXHIBIT-P3- TRUE COPY OF THE JUDGMENT IN WP(C).NO.27361/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K.HARILAL, J.

W.P.(C) No.31474 of 2015

Dated this the 1st day of December, 2015.

JUDGMENT

The petitioner obtained leasehold right over an extent of 576 Sq.Mtr. of land comprised in Sy.No.10/7/1 of Varapetty Village and on the execution of the lease deed, the petitioner is in possession of the said property, which has been lying as dry land for the last more than 30 years. The petitioner intends to start a petrol pump, in the above said property, and she applied to the 1st respondent Grama Panchayat for building permit. But, the application for building permit has been rejected by Ext.P1 proceedings on the sole ground that the property is shown as Nilam in the Village records. This is the grievance ventilated in this writ petition seeking a writ, order or direction calling for all records leading to Ext.P3 and quash the same and to direct the respondent to grant building permit to the petitioner.

2. Heard the learned counsel for the petitioner

and the learned counsel for the 3rd respondent.

3. The learned counsel for the petitioner advanced arguments in support of the grounds raised in the Memorandum of writ petition.

4. Per contra, the learned counsel for the respondents submits that the Panchayat has taken a decision on the basis of the description of the property in the Revenue Records, which would show that the property is lying as a Nilam.

5. Going by Ext.P3, it is seen that as rightly submitted by the learned counsel for the petitioner, the application seeking building permit has been rejected on the sole ground that the description of the property in the Revenue Records is shown as Nilam. But, Ext.P2 photograph would show that the property is lying as a dry land and cultivated with aged rubber trees. The genuineness of the said photograph is not challenged by the respondent. The question whether the building permit can be denied on the basis of the entries in the Revenue Records alone was considered

by this Court in various decisions.

6. In Muhammed Abdul Basheer v. State of Kerala [2012 (3) KLT 86], this Court held that the present lie of the land has to be taken into consideration, while granting permit for the construction of buildings. In Jalaja Dileep v. Revenue Divisional Officer [2012 (3) KLT 333], it was further held that the description in title deed or Revenue Records is not a sufficient ground to deny building permit, if the land has already been reclaimed before the commencement of the Conservation of Paddy Land and Wetland Act, 2008 and not suitable for paddy cultivation.

7. The principle that can be culled out on a combined reading of the above decisions is that building permit cannot be denied on the basis of the description of the properties shown in the Revenue Records, which would stand not in consonance with the ground reality. If the property is one converted before the commencement of the Conservation of Paddy land and Wetland Act, 2008, certainly, the land will not

fall under the bar provided under Section 14 of the said Act. In such circumstances, the Panchayat is at liberty to take a decision, in accordance with the ground realities, after conducting site inspection in the property, in view of the suitability of the land for paddy cultivation.

8. Consequently, Ext.P1 will stand set side and the Panchayat is directed to conduct site inspection in the land in question within a period of one month from the date of receipt of a copy of this judgment and pass orders accordingly on the basis of the actual lie of the land to be found in the site inspection, within the next one month, after affording an opportunity of being heard to the petitioner.

With the above observation, this writ petition is disposed of.

Sd/-
K. HARILAL, JUDGE

okb.