

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. 32306 of 2014 (K)

PETITIONER(S):

**KHADEEJA K.,
D/O. MAMMED POCKER,
MANATHANTHODI HOUSE, KUZHIYANCHERY,
MORAYUR P.O., MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SRI.K.RAKESH**

RESPONDENT(S):

- 1. THE MORAYUR GRAMA PANCHAYATH,
MORAYUR .P.O., MALAPPURAM DISTRICT,
REPRESENTED BY ITS SECRETARY, PIN - 673 638.**
- 2. THE SECRETARY,
MORAYUR GRAMA PANCHAYATH, MORAYUR P.O.,
MALAPPURAM DISTRICT.**

**BY ADVS. SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI.T.V.VINU
SRI.CHERIAN MATHEW POOTHICOTE**

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

msv/

WP(C).No. 32306 of 2014 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT. P1. TRUE COPY OF THE ORDER REJECTING THE APPLICATION SUBMITTED BY
THE PETITIONER BY THE 2ND RESPONDENT DT, 10-11-2014.**

**EXT. P2. TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTY OF THE
PETITIONER.**

**EXT. P3. TRUE COPY OF THE RELEVANT PAGE OF THE DATA BANK PUBLISHED IN
THE MORAYUR VILLAGE.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 32306 of 2014

Dated this the 24th day of February, 2015

J U D G M E N T

Ext.P1 order, 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 land comprised in Sy.No.250/2 of Morayur Village within the limits of the respondent panchayath. She submitted an application for building permit, which was rejected by the 2nd respondent as per Ext.P1 order stating that the description of the property is 'nanja'. According to the petitioner, her property is not suitable for paddy cultivation and it is reclaimed long back. She points out that in the data bank prepared by the Local Monitoring Committee under Section 5(4) of the Conservation of Paddy Land and Wetland Act, the land is noted as land converted before 2005. The relevant page of data bank published in Morayur Village is produced as Ext.P3. Therefore,

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according to the petitioner, Ext.P1 is illegal and 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-Panjali 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

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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.P1 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 permit after affording the petitioner an opportunity of being heard if they are satisfied that the property in the present form is unfit 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/-