

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 34661 of 2014 (G)

PETITIONER(S) :

MEENU MARY,
AGED 23 YEARS, D/O.P.V.BEHANAN,
POIKKADATH (H), NEDUMBASSERY DESOM,
ATHANY P.O., ERNAKULAM-683585.

BY ADV. SRI.P.JINISH PAUL.

RESPONDENT(S) :

1. THE STATE OF KERALA,
REP. BY PRINCIPAL SECRETARY OF REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. CHIEF TOWN PLANNER,
TOWN PLANNING DEPT., THIRUVANANTHAPURAM-695 001.
3. KORATTY GRAMAPANCHAYATH,
REP. BY ITS SECRETARY, KORATTY-680 308.

R3 BY SRI.PHILIP T.VARGHESE, SC, KORATTY GRAMA PANCHAYATH &
BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1: COPY OF THE SALE DEED BEARING NO.3345/11 OF ANNAMANADA SRO.
- EXT. P2: COPY OF THE POSSESSION CERTIFICATE DATED 23/4/14.
- EXT. P3: COPY OF THE EXTRACT OF BASIC TAX REGISTER 17.12.14 ISSUED BY THE VILLAGE OFFICER.
- EXT. P4: COPY OF THE SETTLEMENT DEED BEARING NO.2935/14 OF ANNAMANADA SRO.
- EXT. P5: COPY OF THE RECEIPT ISSUED BY THE 3RD RESPONDENT PANCHAYAT DATED 26.4.14.
- EXT. P6: COPY OF THE REPLY DATED 21.5.14 ISSUED BY THE 3RD RESPONDENT.
- EXT. P7: COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO COMPANY.
- EXT. P8 SERIES: COPIES OF THE REPORT OF THE VILLAGE OFFICER.
- EXT. P9 SERIES: THE TRUE PHOTOGRAPHS OF THE PETITIONER'S PROPERTY AND THE SURROUNDING PROPERTIES.
- EXT. P10 THE TRUE COPY OF THE NOTICE ISSUED BY THE DY. COLLECTOR (LAND REFORMS) ALONG WITH ENGLISH TRANSLATION.,
- EXT. P11 THE TRUE COPY OF THE SAID JUDGEMENT IN WP(C)NO.7760/2013 DATED 22/05/2013.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 34661 of 2014

Dated this the 5th day of June, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit by the respondent Panchayath on the ground that the previous owner has not obtained any development permit, the petitioner has come up before this Court.

2. The petitioner's father had purchased an extent of 2.73 Ares of dry land comprised in Sy.Nos.535/1, 535/5 and 536/1 of Koratty Kizhakkumury Village vide Ext.P1. The petitioner alleges that even as per Ext.P2 possession certificate and Ext.P3, which is the copy of the basic tax register, it is dry land. It forms part of a large extent of area sought to be developed by M/s. R.M.Co. Infratructure Developers Pvt.Ltd, Thrissur. When applied for building permit, it was rejected as per Ext.P6 for the reason that the Developers/Company has not obtained any development permit. The reason stated for

denying the development permit as per Ext.P7 is that the some portions of the property is lying as paddy land in the data bank which according to the petitioner it is perverse and against the true facts and ground reality since the other major portions and the surrounding properties are lying as dry land and many residential houses, a club with three star facility and housing colonies are existing in the surrounding property. It is alleged that Exts. P8 and P9 series reveals the above fact, and the reason for denial of development permit shall not affect the use of remaining dry land area which covers the major portion of the entire property sought to be developed. Now the entire land is left useless and may similarity situated persons are not in a position to use their land for cultivation. The grant of development permit for the other major portion of dry land by excluding the portion of paddy land is essential to advance proper and substantial justice to the petitioner; it is alleged.

3. Though notice has been served on the respondents, they did not enter appearance.

4. The previous owner was a development company, which developed the plot as a residential area. The petitioner points out that it was the duty of the company to obtain permission from the chief town planner after curing the defects. The provisions of the Kerala Panchayat Building Rules, 2011 provides for developing of land as per certain conditions. The petitioner points out that the company had provided a space for road and recreational purposes complying with the conditions for granting development permit. Still, the rejection of the application for building permit is based on the reason that the certain lands in few survey numbers are lying as paddy land. This according to the petitioner is against the facts and circumstances. The learned counsel for the petitioner invited my attention to Ext.P9 photographs as well as Ext.P8 certificates issued by the Village Officer to show that the petitioner's property as well as the surrendering property is lying as garden land.

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-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.

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 also invited

my attention to Ext.P11 judgment wherein it was observed that the local authority has power to grant regularization under Rule 143 of the Kerala Municipality Building Rules. As the impugned order was passed only for the reason that the property has been subdivided without obtaining an approval of the local authority, this Court is of the definite view that it is only a matter of regularization for which the petitioner can approach the respondent panchayat with a proper application.

On considering the entire facts and circumstances of the case, the writ petition is disposed of permitting the petitioner to submit an application for regularization within a period of one month from the date of receipt of a copy of this judgment. In the event of receipt of such application for regularization, the respondent shall make a local inspection in the locality and if the respondent panchayat is satisfied that the petitioner's property as well as the surrounding property are not fit for any paddy cultivation, development shall be regularised and the building permit shall be granted to the petitioner, on the basis

of regularization. The entire exercise shall be completed within a period of two months from the date of filing of application for regularisation. It shall be open to the petitioner to file a fresh application, if necessary for the building permit after regularization.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.