

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 770 of 2015 (U)

PETITIONER(S):

**NISAR C.M., S/O. ASSAINAR,
AGED 36 YEARS, CHAVARANGATT MEETHAL,
KOZHUKALLUR POST, KOZHIKODE DISTRICT-673 524.**

**BY ADVS.SRI.K.P.SUDHEER,
SRI.ARUN MATHEW VADAKKAN.**

RESPONDENT(S):

**ARIKKULAM GRAMA PANCHAYATH,
ARIKKULAM, KOZHIKODE DISTRICT, PIN-673 620,
REPRESENTED BY ITS SECRETARY.**

BY ADV. SRI.SANTHARAM. P.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 770 of 2015 (U)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 : COPY OF CERTIFICATE DATED 26.12.2013 ISSUED BY THE VILLAGE OFFICER, ARIKKULAM ALONG WITH ITS ENGLISH TRANSLATION.
- P2 : COPY OF ORDER NO.A1-9303/13 DATED 10.01.2014 ISSUED BY THE RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P3 : COPY OF PHOTOGRAPH OF THE PROPERTY.
- P4 : COPY OF JUDGMENT DATED 14.11.2014 IN WP(C).NO. 23418/2014 PASSED BY THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

C.K. ABDUL REHIM, J.

W.P.(c) No. 770 OF 2015-U

DATED THIS THE 14th DAY OF JANUARY, 2015.

J U D G M E N T

Application submitted by the petitioner seeking permit for construction of a commercial complex, submitted before the respondent, was rejected through Ext.P2, stating the reason that, the possession certificate submitted along with building permit application indicates the nature of the land described as 'Nanja' (wet land).

2. Contention of the petitioner is that in the property in which the permit is sought for is a pucca garden land. There exists coconut trees aged 40 years and Arecanut trees aged 15 years. Exhibit P1 certificate issued by the Village officer and Ext.P3 photograph are produced in support of these contentions.

3. Heard; Standing counsel appearing for the respondent.

4. This court had elaborately considered the issue in a recent Division Bench decision in **Aishabeevi and**

another V. Superintendent of police, Ernakulam (2014 (3) KHC 678 (DB)). It is held that, if the land was converted prior to enactment of the Conservation of Paddy Land and Wet Land Act, 2008 the bar contained under Section 14 to grant permit will not be applicable, even if such conversion is made in violation of the Kerala Land Utilization order. It is held that the Conservation Act has no retrospective operation and any conversion made prior to coming into force of the Act, i.e: before 12-08-2008, cannot be said as violative of the Act. It is found that there is no provision contained in the Land Utilization Order or in the Conservation Act rendering such land as an illegally converted land and hence there is no bar to grant permit for building construction on such land or to use the same for any purpose other than agricultural operations. This court held that there is no legal presumption either in the Kerala Land Utilization Order or in the Conservation Act that the land stood converted after the commencement of the KLU order without specific permission is an illegally converted land for which no permit can be granted.

5. In view of the legal position remaining settled as mentioned above, this court is of the opinion that the building permit application need to be considered based on verification of the physical position of the land in question. The permit cannot be denied based on the description of the nature of the land in the revenue records.

6. Hence this writ petition is allowed and Ext.P2 is hereby quashed. The respondent is directed to re-consider the application for the building permit and to take an appropriate decision, in the light of the observations contained herein above. A decision in this regard shall be taken, at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge