

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. 1212 of 2015 (B)

PETITIONER :

**DR.K.M. MEHABOOB,
"RIPPLES", ERANHIKKAL P.O.,
KOZHIKODE DISTRICT
PIN -673021**

**BY SENIOR ADVOCATE SRI.P.K.SURESH KUMAR
BY ADV. SMT.M.R.SREELETHA**

RESPONDENT :

**CORPORATION OF CALICUT
REPRESENTED BY ITS SECRETARY,
KOZHIKODE - 673 032**

BY ADV. SRI.K.D.BABU, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 1212 of 2015 (B)

APPENDIX

PETITIONERS' EXHIBITS :

- EXBT P1- TRUE COPY OF FIVE PHOTOGRAPHS SHOWING THE NATURE AND LIE
 OF THE PROPERTY OF THE PETITIONER.**
- EXBT P2- TRUE COPY OF APPLICATION FOR BUILDING PERMIT SUBMITTED BY
 THE PETITIONER ON 28.8.2014.**
- EXBT P3- TRUE COPY OF ORDER NO.A4/6156/14 DATED 10.10.2014 ISSUED BY
 THE RESPONDENT REJECTING THE APPLICATION FOR BUILDING
 PERMIT OF THE PETITIONER AND ITS ENGLISH TRANSLATION.**
- EXBT P4- TRUE COPY OF CERTIFICATE DATED 27.10.2014 ISSUED BY THE
 VILLAGE OFFICER, ELATHUR AND ITS ENGLISH TRANSLATION**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

C.K. ABDUL REHIM, J.

W.P.(c) No. 1212 OF 2015-B

DATED THIS THE 14th DAY OF JANUARY, 2015.

J U D G M E N T

Exhibit P2 application seeking building permit for construction of a commercial building in a property owned by the petitioner was rejected by the respondent through Ext.P3 proceedings stating the reason that, the description with respect to the nature of the property contained in the revenue records as 'Nilam' (wet land) and the relevant committee to grant permission for such construction has no authority with respect to buildings which exceeds 300 sq.m. in area.

2. Contention of the petitioner is that Ext.P3 is not sustainable in view of the fact that the property in question remains converted long back and there are other building situated nearby to the property, both commercial as well as residential. It is contended that the respondent was duty bound to examine the physical nature and lie of the property in order to ascertain whether it was converted

after enactment of the Conservation of Paddy Land and Wet Land Act, 2008 and should have taken an independent decision without relying on the description of the property in the revenue records.

3. Heard; counsel appearing on behalf of respondent.

4. The issue now remains settled through a Division Bench Decision in **Aishabeevi and another V. Superintendent of police, Ernakulam (2014 (3) KHC 678 (DB)**. This court held that there is no bar to grant building permit under Section 14 of the Act if the land in question was converted prior to commencement of the Act, even if such conversion was made in violation of the Kerala Land Utilization Order. It is found 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 to be violative of the provisions of the Act. This court observed that the question as to whether the land is coming within the definition of the Act is to be determined on the basis of facts as existing on the ground and not on

the basis of description contained in the revenue records. This court further held that there is no provisions rendering the land converted before commencement of the Conservation Act as an illegally converted land and hence there is no bar to permit building construction on such land or to use such land for any purpose other than agricultural purposes. This court further held that there is no legal presumption that in the absence of any provision either in the Kerala Land Utilization Order or in the Conservation Act that the land which stood converted after commencement of the KLU Order, without specific order permitting such conversion, to be an illegally converted land wherein no permit for construction can be granted.

5. In view of the legal position remaining settled as above, rejection of the application based on the reasons mentioned in Ext.P3 cannot be sustained. It is for the Corporation to consider the matter afresh and to take an appropriate decision based on evaluation of the physical position and based on the factual situation existing on the ground, in order to ascertain whether the land in question

was converted prior to commencement of the Conservation of Paddy Land and Wet Land Act, 2008. If it is found that the land in question was converted prior to enactment of the said Act, building permit cannot be denied merely on the ground that description of the land is as wet land in the revenue records.

6. Under the above mentioned circumstances the writ petition is allowed and Ext.P3 is hereby quashed. The respondent is directed to re-consider the application for 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