

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. 1265 of 2015 (G)

PETITIONER :

**MOHANDAS, AGED 60 YEARS
S/O. CHOYI, KUNNATH KUZHI, MANJERI P.O - 676 121
MALAPPURAM DISTRICT.**

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENT(S) :

- 1. MANJERI MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MANJERI P.O.
MALAPPURAM - 676 121.**
- 2. THE SECRETARY
MANJERI MUNICIPALITY, P.O.MANJERI
MALAPPURAM - 676 121.**

R1 & R2 BY ADV. SRI.K.SHIBILI NAHA, 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. 1265 of 2015 (G)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 - TRUE COPY OF THE POSSESSN CERTIFICATE DT. 06.12.14.**
- EXT. P2 - PHOTOGRAPHS SHOWING THE QUALITY, TYPE AND NATURE OF THE LAND COVERED BY EXT. P1.**
- EXT. P3 - TRUE COPY OF THE ORDER NO. E3-18074/14 DT. 22.12.14 PASSED BY THE 2ND RESPONDENT.**
- EXT. P3A - TRUE ENGLISH TRANSLATED COPY OF EXT. P3.**
- EXT. P4 - TRUE OCPY OFTHE SITE INSPECTION REPORT ISSUED BY THE AGRICULTURAL FIELD OFFICER, KRISHI BHAVAN, MANJERI DT. 24.10.14.**
- EXT. P4A - TRUE ENGLISH TRANSLATED COPY OF EXT. P4.**
- EXT. P5 - TRUE COPY OF THE RELEVANT EXTRACT OF THE FAIR VALUE REGISTER.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

C.K. ABDUL REHIM, J.

W.P.(c) No. 1265 OF 2015-G

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 building, in a property owned by the petitioner, was rejected by the 2nd respondent through Ext.P3 notice, stating the reason that description of the nature of the property contained in the revenue records is as 'Nilam' (wet land). It is contended that the 2nd respondent was duty bound to examine the physical position, lie and nature of the property in order to ascertain whether it was converted after enactment of the Conservation of Paddy Land and Wet Land Act, 2008 (for short the Act) and should have taken an independent decision without depending on the description of the property in the revenue records. It is also contended that the property in question is remaining as pucca garden land surrounded by lot of residential buildings. Photographs of

the property is produced in the writ petition, which will indicate that the land remains as pucca garden land and there are other buildings situated in the nearby compounds.

2. Heard; Standing counsel appearing for respondents.

3. This court had elaborately considered the relevant issue, in a recent Division Bench decision of this court, 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 Act, 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 provisions 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 illegally converted land and hence

there is no bar to grant permit for building construction on such land or to use the land 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 Paddy Land 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.

4. In view of the legal position remaining settled as mentioned above, rejection of the application based on the description mentioned in Ext.P3 cannot be sustained. It is for the Municipality to consider the matter afresh and to take an appropriate decision based on physical verification and ascertainment of the facts existing on the ground. If it is convinced that the land in question was converted prior to enactment of the Conservation Act, building permit cannot be denied merely on the ground that description of the land is shown as 'Nilam' in the revenue records.

5. Under the above mentioned circumstances the writ petition is allowed and Ext.P3 is hereby quashed. The 2nd 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