

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C) .No. 4647 of 2015 (E)

PETITIONER(S) :

POONTHOTTATHIL AMIRA,
W/O.VADAKALATHIL HASKAR ALI,
DOWN HILL P.O.,
MALAPPURAM DISTRICT.

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

RESPONDENT(S) :

1. THE MALAPPURAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MALAPPURAM,
MALAPPURAM DISTRICT, PIN - 676 505.
2. THE SECRETARY,
THE MALAPPURAM MUNICIPALITY, MALAPPURAM,
MALAPPURAM DISTRICT, PIN - 676 505.

BY ADV.SRI.ESM.KABEER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1. TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT
DATED 31.01.2015 AS NO.BA-199/14-15.

EXHIBIT P1 (A) . TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P1.

EXHIBIT P2. TRUE COPY OF THE CERTIFICATE ISSUED BY THE
AGRICULTURAL OFFICER, KRISHIBHAVAN, MALAPPURAM DATED
05.11.2014.

EXHIBIT P2 (A) . TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P2.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS. -

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 4647 of 2015

Dated this the 13th day of February, 2015

J U D G M E N T

Ext.P1, 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 R.S.No.274/3 of Panakkad Village, Ernad Taluk within the limits of the respondent municipality. She has applied for building permit, which was rejected by the 2nd respondent as per Ext.P1 for the reason that description of the property is 'nilam' in the records maintained in the village. According to the petitioner, the adjacent properties of the aforementioned property are already developed and it would be unreasonable to insist for paddy cultivation in a land surrounded by buildings. The petitioner further points out that the Agricultural Officer, Malappuram has already issued Ext.P2 certificate stating that the land of the petitioner is a converted land and the conversion was

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done approximately 15 years ago as per the data bank. Therefore, according to the petitioner, Ext.P1 is beyond jurisdiction, 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 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.

6. In **Jalaja Dileep v. Revenue Divisional Officer** (2012(3) KLT 333), this Court observed that the

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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.

Therefore, this writ petition is allowed. Ext.P1 is quashed.

The respondent municipality 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 appropriate orders, after affording the petitioner an opportunity of being heard. 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/-