

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No.4846 of 2015 (E)

PETITIONER:

**PHILIPOSE MATHAI,S/O.MATHAI,AGED 72 YEARS,
"DELIGHT BUNGALOW",EZHAMKULAM NORTH,
PUTHUMALA P.O.,ADOOR.**

**BY ADVS.SRI.R.MANOJ
SMT.SINDHU MANOJ
SMT.BLESSY MOL P.P.**

RESPONDENT'S:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS,
STATE SECRETARIAT,THIRUVANANTHAPURAM - 695 001.**
- 2. THE ADOOR MUNICIPALITY,REPRESENTED BY ITS SECRETARY,
ADOOR MUNICIPALITY,ADOOR - 691 555.**
- 3. THE SECRETARY,ADOOR MUNICIPALITY,ADOOR - 691 555.**

**R1 BY GOVT. PLEADER SRI.G.GOPAKUMAR.
R2 & R3 BY SRI.V.M.SYAM KUMAR, SC, ADOOR MUNICIPALITY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17.06.2015 THE COURT ON 26-06-2015, DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS

**EXT.P1:TRUE COPY OF THE SALE DEED IN FAVOUR OF THE PETITIONER
DATED 7.3.09.**

EXT.P1(a):TRUE TRANSLATION OF EXHIBIT P1.

EXT.P2:TRUE COPY OF THE SALE DEED DATED 27.2.09.

EXT.P2(a):TRUE TRANSLATION OF EXHIBIT P2.

**EXT.P-3:TRUE COPY OF THE PHOTOGRAPH SHOWING THE BUILDING OF
SHERLY AND THE ADJACENT PROPERTY OF THE PETITIONER.**

**EXT.P4:TRUE COPY OF THE PHOTOGRAPH OF THE RESPECTIVE
CONSTRUCTION.**

**EXT.P5 & P5(a):TRUE COPY OF THE REPRESENTATION WITH TRANSLATION
SUBMITTED BY THE PETITIONER AT THE TIME OF RESUBMITTING THE
DOCUMENTS RELATING TO THE APPLICATION FOR BUILDING
SANCTION.**

**EXT.P6:TRUE COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER BY
THE SECRETARY OF THE ADOOR MUNICIPALITY DATED 31.12.14.**

EXT.P6(a):TRUE TRANSLATION OF EXHIBIT P6.

**EXT.P7:TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER BEFORE THE SECRETARY, ADOOR MUNICIPALITY.**

EXT.P7(A):TRUE TRANSLATION OF EXHIBIT P7.

**EXT.P8:TRUE COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER
FROM THE OFFICE OF THE SECRETARY OF THE ADOOR MUNICIPALITY
DATED 21.1.15.**

EXT.P8(A):TRUE TRANSLATION OF EXHIBIT P8.

EXT.P9:TRUE EXTRACT OF THE CIRCULAR NO.4545 DATED 22.1.2011.

EXT.P9(a):TRUE TRANSLATION OF EXHIBIT P9.

EXT.P10:TRUE EXTRACT OF CIRCULAR NO.61519 DATED 27.10.2012.

EXT.P10(a):TRUE TRANSLATION OF EXHIBIT P10.

EXT.P11:TRUE EXTRACT OF CIRCULAR NO.38476 DATED 11.10.2012.

EXT.P11(a):TRUE TRANSLATION OF EXHIBIT P11.

EXT.P12:TRUE EXTRACT OF CIRCULAR NO.1663 DATED 5.10.2013.

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EXT.P12(a):TRUE TRANSLATION OF EXHIBIT P12.

EXT.P13:TRUE EXTRACT OF CIRCULAR NO.67284 DATED 18.2.2014.

EXT.P13(a):TRUE TRANSLATION OF EXHIBIT P13.

**EXT.P14:TRUE COPY OF THE COMMUNICATION AND ENCLOSURE ISSUED TO
THE PETITIONER BY THE AGRICULTURAL OFFICER,KRISHI
BHAVAN,ADOOR.**

RESPONDENT'S EXHIBITS:

**EXT.R2(a):COPY OF THE POSSESSION CERTIFICATE DATED 28.11.2014 BEARING
NO.9177199 ISSUED BY ADOOR VILLAGE OFFICE.**

**EXT.R2(b):COPY OF THE NOTICE DATED 24.2.2015 BEARING NO.E2-10286/14
ISSUED BY THE 2ND RESPONDENT.**

//TRUE COPY//

P.S. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 4846 of 2015

Dated this the 26th of June, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P8 order, by which the Secretary of the respondent municipality has declined sanction for building permit to the petitioner on the ground that the petitioner's property is a wet land.

2. The petitioner is the owner in possession of 9.92 Ares of land as per Ext.P1 sale deed within the local limits of the respondent municipality. The petitioner submitted an application for building permit, which was rejected by the 3rd respondent as per Ext.P8 on the ground that the said property is shown as paddy field in Ext.P1 title deed. According to the petitioner, the said description is in contrast to reality and a verbatim “carry forward” of the tenor of the land shown in the earlier title deeds. He has produced Ext.P3 photograph, which shows that the said land was reclaimed several years back and it is seen

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planted with well grown coconut trees. He further alleges that the neighbouring property owners were given sanction by the respondent municipality to put up construction. The petitioner further places reliance on Exts.P9 to P13 government circulars, by which it can be discerned that there is no absolute prohibition in the matter of granting sanction for putting up of structures in reclaimed paddy lands or wet land and such sanction can in fact be given subject to the conditions contained in the respective Government circulars. Therefore, according to the petitioner, Ext.P8 is liable to be quashed.

3. In the counter affidavit filed by respondents 2 and 3, it is contended as follows;

The petitioner had submitted an online application for obtaining a permit for the construction of a residential building in the property belonging to him having an extent of 9.92 ares comprised in Re-Sy.No.230/7-1, Block No.9 in Adoor Village. The petitioner had also

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submitted the tax receipt, possession certificate and the title deed (Exhibit P1) with respect to the property along with the said application. A true copy of the possession certificate dtd. 28.11.2014 bearing no. 9177199 issued by the Adoor Village Officer is produced herewith marked Exhibit R2 (a). On perusal of the hard copy of the said application and the connected documents, it was noted that in Exhibit P1 title deed as well as the Exhibit R2(a) possession certificate submitted by the petitioner, the land where the building was proposed to be constructed is classified as nilam (wet land). A site inspection was also conducted by the Municipal Engineer of the Municipality. Since it is not possible to grant a permit for construction of a building in wet land, in accordance with law, the Municipality issued Exhibit P8 notice to the petitioner rejecting the application for building permit submitted by the

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petitioner.

Subsequently, on 24.2.2015, the 2nd respondent issued another notice bearing No.E2-10286/14 to the petitioner directing him to obtain a permit from the R.D.O for reclaiming the said wet land and that only on receipt of such an order, the Municipality can consider his application for building permit. A true copy of the notice dtd. 24.2.2015 bearing No. E2-10286/14 issued by the 2nd respondent to the petitioner is produced herewith marked as Exhibit R2(b). It is relevant to note here that till date, the petitioner has not submitted any such permit from the R.D.O before the Municipality; it is contended.

With reference to the statement contained in the WP(C) that "In the property covered by Exhibit P2 sale deed, the vendee, Sherly was given sanction by the Adoor Municipality to put up a residential construction", it is contended that

the nature of the land as per the Exhibit P2 sale deed is shown as “Property having no road access, hilly terrain” and not as “nilam” as is the case with the petitioner's property as seen in Exhibit P1 Sale deed. With regard to Exhibits P9 to P13 circulars produced in the WP as well as the decisions reported in 2014(3) KLT 1078 and 2014 (1) KLT 198, it is contended that the same have no relevance in the instant case in view of the decision reported in 2015 (2) KHC 109 (SC) [Revenue Divisional Officer, Fort Kochi & others V.Jalaja Dileep and another]. In the reported decision of the Hon'ble Supreme Court of India, it has been observed as follows; “If the land is not included in the Data Bank or Draft Bank prepared under the Kerala Civilization of Paddy land and Wetland Act, 2008 and if it is not a “Paddy Land” or “Wet land” as defined under Act 28 of 2008, at the time of commencement of the Act 12 of 2008

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and classification is noted as “Nilam” in the revenue records, the provision of Kerala Land Utilization Order, 1967 will be applicable to such land and the Collector as defined in Clause 2(a) of KLU Order 1967 has the power to grant permission to utilize the land for other purposes”.

4. Arguments have been heard.

5. The rejection of the petitioner's application on the ground that the petitioner's property is a wet land. The learned counsel for the petitioner, inviting my attention to Ext.P14, which is a true copy of the communication and enclosure issued to the petitioner, would submit that the petitioner's property is shown as Item No.384, which is comprised in Re.Sy.No.230/7 of Block No.9. Ext.P14 is sufficient to indicate that the property of the petitioner is not included in the data bank.

6. Though it was strenuously argued by the learned counsel for the respondent municipality that though the petitioner's property is not included in the

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data bank as stated in Ext.P14, the municipality can consider the application for construction of the building in the property belonging to the petitioner only if an order is obtained from the Revenue Divisional Officer. According to this Court, the said argument is misconceived.

7. It is crucial to note that by Ext.P10 Government Order dated 27.10.2012, the Government has imposed certain restrictions regarding the transfer of reclaimed land, where permissions are granted for construction of residential buildings. Therefore, this Court is of the view that the respondent can be directed to grant building permit subject to the conditions made mention of in Ext.P10.

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 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.P8 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 reconsider the application and pass positive orders granting building permit, without insisting for clearance certificate from the Revenue Divisional Officer, after affording the petitioner an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation. 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/-