

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 13656 of 2015 (F)

PETITIONER :

**ABDURAHIMAN,
S/O.ALIKUTTY HAJI, AGED 43 YEARS,
MULANHIPULAKKAL HOUSE, INDIANOR POST,
KOTTAKKAL, MALAPPURAM DISTRICT,
PIN-676 503.**

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

RESPONDENT(S):

- 1. KOTTAKAL MUNICIPALITY,
KOTTAKKAL, MALAPPURAM DISTRICT, PIN-676 503,
REPRESENTED BY ITS SECRETARY.**
- 2. THE LOCAL LEVEL MONITORING COMMITTEE,
KOTTAKKAL MUNICIPALITY, REPRESENTED BY ITS CONVENOR,
(THE AGRICULTURAL OFFICER), KRISHI BHAVAN, KOTTAKKAL,
MALAPPURAM DISTRICT, PIN-676 503.**

**R1 BY ADVS. SRI.ESM.KABEER
SMT.K.M.AMINABEEVI
R2 BY GOVERNMENT PLEADER SRI.T.R.RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 13656 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 :** TRUE COPY OF THE SALE DEED DT. 15-2-2002 REGISTERED AS
DOC.NO.401/2002 OF KOTTAKKAL SRO.
- EXT.P2 :** TRUE COPY OF THE ORDER NO.PW1/6286/15 DT. 27-4-15 ISSUED BY
THE FIRST RESPONDENT
- EXT.P3 :** TRUE COPY OF THE CERTIFICATE DT. 21-4-14 ISSUED BY
AGRICULTURAL OFFICER, KOTTAKKAL.
- EXT.P4 :** TRUE COPY OF THE PHOTOGRAPHS (3 NOS.) OF THE PROPERTY.
- EXT.P5 :** TRUE COPY OF THE RECEIPT DT. 6-4-2013 ISSUED BY 1ST
RESPONDENT MUNICIPALITY TO ONE MULANJIPULAN HAMSA.
- EXT.P6 :** TRUE COPY OF THE RECEIPT DT. 15-5-2014 ISSUED BY 1ST
RESPONDENT TO MULANHIPULAKKAL MOIDEENKUTTY.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC No.13656 of 2015

Dated this the 16th day of June, 2015

JUDGMENT

Ext.P2 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of a property having an extent of 20.46 cents in Re.Sy.No.191/5 (Sy.No.148) of Kottakkal Village in Tirur Taluk. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P2 on the ground that the land is classified as wet land (nanja) in the possession certificate.

3. Arguments have been heard.

4. The learned counsel for the petitioner, inviting my attention to Ext.P4 photographs, submitted that the respondent Municipality has issued building permits to the neighbouring property owners and building number was also assigned to those buildings.

5. 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.

6. As per Ext.P4, it can be seen that the property is not a paddy land. That itself would show that the petitioner's property is not a cultivating paddy field. It is settled position that the applicant can choose the best land suited for construction of his house (***Sunil v Killimangalam-Panjai 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.

7. 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

position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application. Therefore, this writ petition is allowed. Ext.P2 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 re-consider the application and pass orders granting permit, if the respondents are satisfied that the property is not fit for paddy cultivation at present, 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**

CSS/

true copy

P.S.TO JUDGE