

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 16684 of 2015 (T)

PETITIONER(S):

**SHABNA M.
W/O. ABDUL NAZER,
VADAKKANGARA HOUSE,AMAYAMKODE
PAYYANNADU P.O, MALAPPURAM DISTRICT**

BY ADV. SRI.T.PRASAD

RESPONDENT(S):

- 1. THE MANJERI MUNICIPALITY
REPRESENTED BY ITS SECRETARY
MANJERI, MALAPPURAM DISTRICT - 676 121**
- 2. THE LOCAL LEVEL MONITORING COMMITTEE,
MANJERI MUNICIPALITY.,
REPRESENTED BY ITS CONVENOR,
THE AGRICULTURAL OFFICER,
KRISHIBHAVAN, MANJERI,
MALAPPURAM - 676121**
- 3. THE VILLAGE OFFICER,
PAYYANAD VILLAGE
MANJERI - 676122**

**R2 & R3 BY GOVERNMENT PLEADER SRI.K.A.SANGEETHA
R1 BY SRI.K.SHIBILI NAHA, SC, MANJERI MUNICIPALITY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITES

- EXTP1 - TRUE COPY OF THE TAX RECEIPT IN RESPECT OF THE
PETITIONER'S PROPERTY FOR THE YEAR 201415 DATED
10.03.2015 ISSUED BY THE 3RD RESPONDEENT
- EXT P2 - THE TRUE COPY OF THE APPLICATON FOR BUIDLING PERMIT
FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXT P3 - THE TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY
THE 3RD RESPONDENT DATED 11.03.2015.
- EXT P4 - PHOTOGRAPHS OF THE PETITIONER'S PROPERTY
- EXT P5 - HE TRUE COPY OF THE ORDER OF THE NILAM COMMITTEE
DATED 24.10.2014.
- EXT P6 - THE TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT
DATED 19.11.2014

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

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W.P.(C). No. 16684 of 2015

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Dated this the 4th day of June, 2015

JUDGMENT

Aggrieved by the petitioner's application for building permit by the first respondent, the petitioner has come up before this court.

2. The petitioner is the owner in possession of 5 cents of land comprising in Survey No. 87/1B of Payyanad Village of Manjeri Municipality in Malappuram District, who is intending to construct a residential house in the said land. The petitioner submitted an application for building permit before the Local Level Monitoring Committee under Section 9 of the "Kerala Conservation of Paddy Land and Wet Land Act" and Rules, 2008. The petitioner admits that, the land was basically a wet land in Revenue records and in draft data bank. However, under Section 9 of the Act, there is an exemption for granting residential building permit, if the extent of the property of the petitioner is below 10 cents in villages. However, the application was dismissed by the respondent Municipality

without ascertaining the merits. It is with this background, the petition has come up before this court.

3. I have heard the Learned Counsel for the petitioner, the learned Standing Counsel for the first respondent and the Learned Government Pleader in the matter.

4. The learned Government Pleader, inviting my attention to Exhibit P6, which is the order impugned, submits that the first respondent municipality has rejected the petitioner's request on the basis of the report submitted by the Village Officer. The learned Government Pleader also relied on the decision of this Court in **Kizhakkambalam Grama Panchayat v Mariumma** [2015 (2) KLT 516] which laid down the proposition that permission cannot not be granted even in respect of those lands which are reclaimed prior to 2008 as the Kerala Land Utilisation order was in force at that time.

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. It is settled position that the application can choose the best land suited for construction of his house (**Sunil v Killimangalam - Panjal 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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

8. It is evident from Ext.P4 photographs and the P5 report of the Village Officer itself, that trees aged more than 20 years are there in the property of the petitioner. It also appears from the record that the surrounding properties are

also reclaimed.

9. Therefore, this court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, Ext.P3 is set aside. The respondent Municipality is directed to reconsider the petition in application after making an inspection of the petitioner's property and if the first respondent is satisfied that, the property is unfit for paddy cultivation at present, orders shall be passed granting the building permit to the petitioner. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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