

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 17820 of 2015 (B)

PETITIONER:

S.A.SAIDALI AGED 38 YEARS
S/O.LATE SAITH SULIAMAN, VALIYA PARAMBIL HOUSE
THAZHEKODE P.O, KARINGALLATHANI, MALAPPURAM DISTRICT.

BY ADV. SRI.U.K.DEVIDAS

RESPONDENTS:

THE PERINTHALMANNA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, PERINTHALMANNA,
MALAPPURAM DISTRICT. 676 322.

R1 BY ADV. SRI.P.C.SASIDHARAN, SC, PERINTHALMANNA MUNICIPALITY
R BY SRI.P.C.SASIDHARAN, SC, PERINTHALMANNA MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 17820 of 2015 (B)

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1. COPY OF THE POSSESSION CERTIFICATE DATED 28.1.15.

EXHIBIT P2. COPY OF THE RELEVANT PAGE OF THE DATA BANK.

EXHIBIT P3. COPY OF THE ORDER DATED 20.2.15 PASSED BY THE RESPONDENT.

RESPONDENT'S EXHIBITS:

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.17820 of 2015

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Dated this the 13th day of July, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P3 order by which his application for building permit was rejected by the respondent municipality.

2. The petitioner is the owner of 03.53 ares of land comprised in Sy. No.2/5 of the respondent municipality as per Ext.P1. The petitioner alleges that his property is situated on the side of Calicut - Manathumangalam bye-pass road and a portion of the property was acquired by the Government for the said bye-pass. As per Ext.P2, the property is included in the data bank prepared under the Kerala Conservation of Paddy Land and Wetland Act, 2008 as a converted land.

3. The petitioner alleges that the above property is used as a dry land before 1980 onwards and valuable tress aged more than 40 years are there in the property. The petitioner submitted an application for building permit along with the plan to construct a building in the above property which was rejected by Ext.P3 for the reason that the description of land in the revenue records is 'Nanja-

2'. It is with this background, the petitioner has approached this Court.

4. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent municipality.

5. Opposing the application, the learned standing counsel for the respondent municipality would submit that the petitioner's property as per the revenue records is a paddy field and as the petitioner has not obtained valid permission from the authorities concerned under law, he is not entitled to get the permit as prayed for. Therefore, they justified the stand taken in Ext.P3 order.

6. The learned counsel for the petitioner, *per contra*, inviting my attention to Ext.P2 which is the copy of the data bank submitted that the property was reclaimed years back. The learned counsel would submit that the petitioner's property is surrounded by public road and various commercial and residential buildings.

7. 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.

8. It is settled position that the applicant 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.

9. 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.

10. The learned counsel for the petitioner invited my attention also to the decision of this Court in **Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others** [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground

realities and decide upon the suitability for prospective cultivation of such lands.

Therefore, this writ petition is allowed. Ext.P3 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 respondent municipality is also directed to re-consider the application and to grant permission if they are satisfied that the property is not cultivable at present. The petitioner shall be given an opportunity of being heard. 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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