

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

WP(C).No. 18109 of 2015 (K)

PETITIONER :

**KUNHIMUHAMMED @ CHERIYAPPU
S/O.HAMZA, KUZHIKANDAN HOUSE, IRUMBUZHI
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU**

RESPONDENT(S) :

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

**2. THE SECRETARY,
MALAPPURAM MUNICIPALITY,
MALAPPURAM, PIN - 676 505.**

R1 & R2 BY ADV. SRI. E.S.M. KABEER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 18109 of 2015 (K)

APPENDIX

PETITIONERS' EXHIBITS :

**EXT. P1- TRUE COPY OF THE RECEIPT SHOWING THE PAYMENT OF BUILDING
 TAX BY HTE PETITINER DATED 1.6.15.**

**EXT. P2- TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT
 DATED 13.4.2015.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.18109 of 2015

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Dated this the 24th day of June, 2015

JUDGMENT

Ext.P2 order by which the petitioner's application for building permit was rejected is under challenge in this writ petition.

2. The petitioner is the owner in possession of properties in R.S No.535/5 of Malappuram village wherein he had constructed a commercial building after obtaining permit from the respondent municipality; it is alleged. He constructed ground floor of the building and 5 shop rooms have been numbered by the municipality. Ext.P1 is the receipt showing the payment of building tax.

3. For the purpose of constructing the first floor the petitioner made an application to the second respondent which was rejected by Ext.P2 stating the the properties in question is a paddy land as per the revenue records and there is a proposed bye-pass road, having a width of 30 metres, and that the parking area is not shown in the

application. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. One of the reasons pointed out by the respondent municipality in rejecting the petitioner's application for building permit is that the petitioner has not provided sufficient parking space for the additional construction.

5. The learned counsel for the petitioner would submit that the building was constructed on getting permission from the respondent municipality. The building was numbered and building tax was collected. It was pointed out that the allegation that sufficient parking space is not shown is not correct as there is sufficient space for parking as per the building rules.

6. 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.

7. The learned counsel invited my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed on the decision of the Apex Court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222] wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

8. 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 petitioners'

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 to grant permit if the respondent is 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 two months from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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