

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 18490 of 2015 (I)

PETITIONER(S):

**AMAL J.,
S/O.JAMALUDHEEN, VADAKKAYIL HOUSE,
THODUPUZHA VILLAGE, THODUPUZHA,
IDUKKI DISTRICT.**

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. DIRECTOR OF URBAN AFFAIRS,
SWARAJ BHAVAN, NANATHACODE, KOWDIAR P.O.,
THIRUVANANTHAPURAM - 695 003.**
- 3. DISTRICT COLLECTOR,
COLLECTORATE, PAINAVU, IDUKKI - 685 603.**
- 4. THODUPUZHA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
THODUPUZHA MUNICIPALITY, THODUPUZHA - 685 584.**

**R1 TO R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA
R4 BY ADV. SRI.P.K.SOYUZ,SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 18490 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE DEED NO.991/2008 DATED 29/2/2008.

P2: TRUE COPY OF THE CERTIFICATE ISSUED BY THE MEDICAL TRUST HOSPITAL.

P3: TRUE COPY OF THE NOTICE DATED 19/4/2001 ISSUED BY THE 4TH RESPONDENT.

**P4: TRUE COPY OF THE APPLICATION DATED 28/6/2014 THROUGH THE
4TH RESPONDENT.**

P5: TRUE COPY OF THE FAIR VALUE REGISTER.

**P6: TRUE COPY OF THE INFORMATION PROVIDED BY THE SUB REGISTRAR,
KARIKKODE DATED 3/5/2015.**

P7: TRUE COPY OF THE ORDER DATED 2/3/2015 OF THE 4TH RESPONDENT.

P8: TRUE COPY OF THE PHOTOGRAPHS SHOWING THE GROUND REALITY.

P9: TRUE COPY OF THE JUDGMENT IN WPC NO.262/2015

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.18490 of 2015

Dated this the 2nd day of July, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit, the petitioner has come up before this Court.

2. The petitioner is the owner of 33.13 Ares of land in Sy.No.1584/3 in Karikkode Village in Thodupuzha Municipality and he got the same from his father V.P. Jamal during 2008 as per Ext.P1. The petitioner alleges that all the surrounding properties were already reclaimed years back and there is no paddy cultivation in that area at present. The owners of the adjacent properties also have constructed buildings there. In 2001, grandfather of the petitioner reclaimed the property partially by filing the same and at that time, the fourth respondent municipality issued a notice to the grandfather of the petitioner to stop the filling and directed to obtain permission from the third respondent. Thereafter, the father

of the petitioner made an application to the third respondent through the fourth respondent on 28.6.2004 and in the meantime, reclaimed remaining portion also. The petitioner further alleges that on 16.1.2015, he submitted an application to get the building permit, but the fourth respondent rejected the same. The petitioner also produced fair value register which shows that the property is garden land with road access having value of Rs.1,57,500/- per Are. In the Draft Data Bank kept by the fourth respondent also the property is deserted as converted land; it is alleged.

3. I have heard the learned for the petitioner and the learned Standing Counsel for the respondent municipality in the matter.

4. It was submitted by the learned counsel for the petitioner that the property of the petitioner is not a paddy field or wet land and hence the provision of the Kerala Conservation of Paddy and Wet Land Act will not apply. According to the petitioner, the property was reclaimed years

back, ie; even prior to the enactment of the Kerala Conservation of Paddy and Wet Land Act. All the surrounding properties were already reclaimed years back and the buildings have been constructed. According to the petitioner, in 2001, the grandfather of the petitioner reclaimed the property partially by filing the same to use the same for other purposes. It was pointed out that at that time the fourth respondent municipality issued a notice to the grandfather of the petitioner to stop the filling and directed to obtain permission from the third respondent. The learned counsel for the petitioner invited my attention to Exts. P3 and P4 which show that the property was reclaimed years back, ie, even before the commencement of the Kerala Conservation of Paddy and Wet Land Act.

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-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.

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.P7 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 consider the application and pass positive orders granting building permit 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

Scl.