

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 19590 of 2015 (W)

PETITIONER :

**MARIAMMA WILSON, AGED 71 YEARS,
W/O.P.S.VIJAYAN, MANASAKEERTHANAM,
THANNEERPANTHAL, PALAKKAD.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT :

- 1. PALAKKAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, PALAKKAD 678 001.**
- 2. THE DISTRICT TOWN PLANNING OFFICER,
PALAKKAD, CIVIL STATION, PALAKKAD 678 001.**
- 3. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT
OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM 695 001.**

R1 BY ADV. SRI.T.C.SURESH MENON

R1 BY ADV. SRI.P.S.APPU

R2 & R3 BY GOVERNMENT PLEADER SMT. K.A. SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: COPY OF THE POSSESSION CERTIFICATE DATED 2.12.14 ISSUED BY THE VILLAGE OFFICER, YAKKARA VILLAGE.
- EXHIBIT P2: COPY OF THE ORDER DATED FEBRUARY 7, 2015 ISSUED BY THE IST RESPONDENT.
- EXHIBIT P3: COPY OF THE JUDGMENT REPORTED IN 2011(3) KHC 162(DB) OF THIS HONOURABLE COURT.
- EXHIBIT P4: COPY OF THE JUDGMENT DATED 18.11.11 IN WPC 27778/11.
- EXHIBIT P5: COPY OF THE JUDGMENT DATED 11.03.15 IN WPC 5944/2015 OF THIS HONOURABLE COURT.
- EXHIBIT P6: COPY OF THE ORDER DATED 2.6.15 OF THE IST RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19590 of 2015

Dated this the 16th day of July, 2015

J U D G M E N T

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 in possession of a residential plot having an extent of 0.0802 hectares in Yakkara Village in Palakkad Taluk within the local limits of the respondent municipality. The petitioner submitted an application for building permit, which was rejected by the 1st respondent stating that the plinth area of the building is beyond 200m². The municipality is granting building permits to similar properties if the area of the proposed building is less than 200m² in the case of the residential building. According to the petitioner, the regulations relied on by the 1st respondent came into force in 1984. The petitioner alleges that the same has

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become obsolete and has not been implemented in full, despite lapse of several decades; and all the surrounding properties consist of buildings and the area is a pucca dry land. Therefore, according to the petitioner, the stand taken by the municipality is oppressive, arbitrary, discriminatory and unconstitutional. The regulations referred to in Ext.P6 have remained only in paper without any implementation; it is alleged. She points out that as per Ext.P3, zoning regulations can be permitted to be varied, if on actual inspection, it is found that they were not implemented strictly until then. It is with this background, the petitioner has come up before this Court.

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

4. The application was opposed by the respondent municipality on the ground that as per the DTP Scheme, the petitioner's property falls in the area notified for being kept as paddy field. The learned counsel for the

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petitioner would submit that the DTP Scheme of the 1st respondent has become obsolete; and the same has not been implemented in full despite lapse of several decades. According to the learned counsel, there is no point in indefinitely freezing the property without enabling the petitioner to put up a commercial building as is done in the neighbourhood.

5. The learned counsel for the petitioner 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 to 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.

6. The learned counsel for the respondent

municipality would further submit that the property of the petitioner is included in data bank prepared in the light of the Kerala Conservation of Paddy Land and Wetland Act. However, the learned counsel for the petitioner would point out that the respondent municipality had not made any enquiries to ascertain whether the property has been included in the data bank.

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-Panjali 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 positions 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

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

Therefore, this writ petition is dispose of as follows;

- Ext.P6 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 reconsider 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 and the property is not included in the data bank. 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

bka/-