

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937**

**WP(C).No. 19752 of 2015 (T)**  
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**PETITIONER(S) :**  
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**MICKY ABRAHAM, AGED 48 YEARS,  
S/O.ABRAHAM, PULIKKUNNEL HOUSE, THIDANADU KARA,  
KONDOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.SHAJI THOMAS  
SRI.BINU PAUL  
SRI.GEORGE PULIKUTHIYIL**

**RESPONDENT(S) :**  
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- 1. SECRETARY,  
THODUPUZHA MUNICIPALITY, MUNICIPAL OFFICE, THODUPUZHA,  
THODUPUZHA P.O., PIN- 685 584.**
- 2. ASSISTANT ENGINEER,  
THODUPUZHA MUNICIPALITY, MUNICIPAL OFFICE,  
THODUPUZHA P.O., PIN- 685 584.**

**BY ADV. SRI.P.K.SOYUZ,THODUPUZHA MUNICIPALITY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

Msd.

**APPENDIX**

**PETITIONER(S)' EXHIBITS :**  
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**EXHIBIT-P1: TRUE COPY OF SALE DEED NO.2404/12 OF THODUPUZHA SUB  
REGISTRY DATED 16/08/2012.**

**EXHIBIT-P2: TRUE COPY OF TAX RECEIPT FOR PAYING LAND TAX FOR  
THE PROPERTY DATED 04/04/2015.**

**EXHIBIT-P3: TRUE COPY OF THE SITE PLAN SUBMITTED TO  
THE 1ST RESPONDENT.**

**EXHIBIT-P4: TRUE COPY OF BUILDING PLAN SUBMITTED TO  
THE 1ST RESPONDENT.**

**EXHIBIT-P5: TRUE COPY OF THE LETTER REJECTING THE APPLICATION  
DATED 03/03/2014.**

**EXHIBIT-P6: TRUE COPY OF THE RELEVANT PAGE OF THE DRAFT DATA BANK  
REGISTER.**

**EXHIBIT-P7: PHOTOGRAPHS TO SHOW THE SITUATION AND NATURE OF  
THE PROPERTY.**

**RESPONDENT(S)' EXHIBITS :**  
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**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd.

**A.V. RAMAKRISHNA PILLAI, J.**

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W.P.(C) No. 19752 of 2015  
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Dated this the 8<sup>th</sup> day of July, 2015

**J U D G M E N T**

Ext.P5, 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 an extent of 3.24 ares of property comprised in Sy.No.125/2 of Thodupuzha Village within the local limits of the respondent municipality. The petitioner submitted Ext.P3 site plan and Ext.P4 building plan for building permit, which was rejected by the 2<sup>nd</sup> respondent as per Ext.P5 stating that the said land was paddy land as per revenue records. According to the petitioner, the property is converted as garden land much before the commencement of the Kerala Conservation of Paddy Land and Wet Land Act, 2008; and therefore, provisions of that Act is not applicable to the petitioner's land. He further

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points out that the property is situated on the southern side of Thodupuzha - Mangattu Kavala bypass road, abutting the same, which is a four line road. The petitioner alleges that major portions of the road passes through erstwhile paddy land and by the establishment of the road, paddy lands on both sides of the road were fragmented and became unsuitable for paddy cultivation; and hence, the lands were filled up and converted into garden land. It was further pointed out that multi-storied shopping complexes came up on both sides of the said road. The petitioner has produced Ext.P6 extract of draft data bank register, which shows that the property is included in the category of converted lands as on the date of preparation of Ext.P6. Therefore, according to the petitioner, Ext.P5 is illegal and liable to be quashed.

3. Arguments have been heard.

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

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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-Panjai 5th Ward Nellupadaka 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.

7. The learned counsel for the petitioner invited

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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.P5 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

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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**

bka/-