

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 20061 of 2015 (G)

PETITIONER(S) :

**RAJESH BABU, AGED 41 YEARS,
S/O.BALAN, POYYIL HOUSE, ADUTHILA DESOM,
PAZHAYANGADI P.O., KANNUR DISTRICT.**

**BY SRI.RENJITH THAMPAN (SENIOR ADVOCATE)
ADV. SMT.P.R.REENA**

RESPONDENT(S) :

**1. THRISSUR CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
THRISSUR, PIN- 680 001.**

**2. ASSISTANT ENGINEER,
THRISSUR CORPORATION, CORPORATION OFFICE,
THRISSUR, PIN- 680 001.**

**BY ADV. SRI.K.P.VIJAYAN
BY ADV. SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE BASIC TAX RECEIPT DATED 19.06.2014.**
- P2: PHOTOGRAPHS SHOWING PETITIONER'S PROPERTY AND ONE OF RESIDENTIAL HOUSE NEARBY.**
- P3: TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DATED 31.01.2015.**
- P4: TRUE COPY OF THE RELEVANT PORTION OF DRAFT DATA BANK.**
- P5: TRUE COPY OF THE DECISION REPORTED IN 2011(3) KHC 162.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.20061 of 2015

Dated this the 10th day of July, 2015

JUDGMENT

Ext.P3 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of a total extent of 25.5 cents of land in Sy.No.880/3P of Ayyanthole village in Thrissur District. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P3 on the ground that the land is classified as nilam as per revenue records and in the master plan as "inside paddy zone".

3. Arguments have been heard.

4. The learned counsel for the respondents submitted that the property of the petitioner was originally stood as paddy field. The learned counsel for the petitioner, inviting my attention to Ext.P4

data bank, would submit that the property has been reclaimed about 30 years back. The genuineness of the said submission can be understood from Ext.P2 which are the photographs of the property where the petitioner is proposed to construct a residential building.

5. 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 to construct a house.

6. It can be seen from the photographs that the property is not a paddy land and it is having full of aged trees. It is settled position that the applicant can choose the best land suited for construction of his house (***Sunil v Killimangalam-Panjai 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.

7. 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.

8. 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 Corporation 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 orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation. 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

true copy

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p.s.to judge