

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 20480 of 2015 (H)

PETITIONER:

**MINI ANTONY, AGED 42 YEARS,
W/O.ANTONY, KONGAMALA,
MUTHALAKKODAM P.O.THODUPUZHA,
IDUKKI, PIN - 685 605.**

**BY ADVS.SRI.M.B.SANDEEP
SMT.R.PRIYA
SRI.V.VISAL AJAYAN
SRI.B.SURJITH
SRI.ABHILASH JOSE
SRI.M.A.AHAMMAD SAHEER
SMT.R.ANJANA**

RESPONDENT(S):

- 1. THODUPUZHA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
THODUPUZHA, IDUKKI. PIN - 685 584.**
- 2. THE AGRICULTURAL FIELD OFFICER/
CONVENER OF THE LOCAL LEVEL MONITORING
COMMITTEE, KRISHI BHAVAN,
THODUPUZHA MUNICIPALITY, THODUPUZHA,
IDUKKI, PIN - 685 584.**
- 3. THE VILLAGE OFFICER,
THODUPUZHA VILLAGE OFFICE, THODUPUZHA,
IDUKKI, PIN - 685 584.**

**R1 BY SRI.P.K.SOYUZ, SC
R2 & R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: TRUE COPY OF THE SALE DEED NO.598/2004.
- EXT.P-2: TRUE COPY OF THE PHOTOGRAPH OF THE LAND.
- EXT.P-3(A): TRUE COPY OF THE BUILDING PERMIT BO.BA-266/02-03.
- EXT.P-3(B): TRUE COPY OF THE BUILDING PERMIT NO.BA-266/02-03 RENEWED ON 7.12.2005.
- EXT.P-4: TRUE COPY OF THE RECEIPT FOR BUILDING PERMIT APPLICATION.
- EXT.P-5: TRUE COPY OF THE REPLY GIVEN BY THE 1ST RESPONDENT.
- EXT.P-6: TRUE COPY OF THE CERTIFICATE GIVEN BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.20480 of 2015

Dated this the 10th day of August, 2015.

J U D G M E N T

The petitioner is aggrieved by Ext.P5 reply of the 1st respondent Municipality on the application made by the petitioner, on the ground that the petitioner's property is a paddy field as per the revenue records.

2. The petitioner had obtained 2.95 & 2.59 ares of land per sale deed no.598/2004 of Sub Registrar Office, Thodupuzha. The petitioner alleges that the above land was reclaimed about 15 years before the enactment of the Kerala Conservation of Paddy land and Wet land Act, 2008 and the same is described in the Data Bank as 'conversion land'. The petitioner has applied for permit for constructing a building in the same property along with the site plan and other documents. However, the same was rejected by the 1st respondent by Ext.P5 stating that the property is described as 'Nilam' in the revenue records. As per the

application made by the petitioner to the 2nd respondent, it was certified that the land comprising in Re-survey No.85/13/1 has converted before 15 years and having above 20 trees in the property ; it is alleged.

3. I have heard learned counsel for the petitioner and the learned Government Pleader and the Standing counsel for the 1st respondent Municipality.

4. The learned Standing counsel for the respondent Municipality opposing the application for building permit submitted that the petitioner's property is included in the Data Bank and therefore unless the petitioner approaches the Convener of the Local Level Monitoring Committee and the revenue authorities to get the same corrected, the petitioner cannot seek for building permit for construction of building in the said property.

5. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P1 title deed dated 20.2.2004, which shows that when the property was purchased by the petitioner, it was already reclaimed. The learned counsel has also invited my attention to Ext.P2

photograph of the land which shows that there are aged trees in the petitioner's property.

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 to construct a house.

7. It can be seen from Ext.P2 photograph that the property is not a paddy land and it is having full of aged trees. It is settled position that the petitioner can choose the best land suited for construction of his house (**Sunil Vs. 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 Wet Land Act and Rules.

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 petitioner's application.

9. 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.P5 is quashed.

10. The 1st 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 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.

ami/

//True copy//

P.A. to Judge