

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. 20648 of 2015 (E)

PETITIONER(S) :

**MOHAMMED IQBAL, AGED 48 YEARS,
S/O.P.M.ABUBACKER, SHAMSHAD HOUSE, KALLAI (P.O),
PANNIANKARA, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.S.SHANAVAS KHAN
SMT.S.INDU
SMT.F.ANCY**

RESPONDENT(S) :

- 1. THE KOZHIKODE CORPORATION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
KOZHIKODE-673 003.**
- 2. THE SECRETARY,
KOZHIKODE CORPORATION, CORPORATION OFFICE,
KOZHIKODE-673 003.**
- 3. THE DISTRICT LEVEL MONITORING COMMITTEE,
KOZHIKODE, REPRESENTED BY ITS CHAIRMAN-673 003.**

BY ADV. SRI.K.D.BABU, S.C,KOZHIKODE CORPORATION

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

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 :** TRUE COPY OF THE BUILDING PLAN SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXT.P2 :** TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXT.P3 :** TRUE COPY OF THE COMMUNICATION DATED 27-02-2015 OF THE SECOND RESPONDENT.
- EXT.P4 :** TRUE COPY OF THE BUILDING PERMITS ISSUED BY THE SECOND RESPONDENT TO VARIOUS PERSONS FOR CONSTRUCTING THE RESIDENTIAL BUILDING IN THE ADJACENT PROPERTIES OF THE PETITIONER.
- EXT.P5 :** TRUE COPIES PHOTOGRAPHS EVIDENCING THE NATURAL AND LIE OF PETITIONER'S PROPERTY AS WELL AS THE SURROUNDING PROPERTIES.
- EXT.P6 :** TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE LOCAL LEVEL MONITORING COMMITTEE, KOZHIKODE.
- EXT.P7 :** TRUE COPY OF THE ORDER DATED 30-05-2015 OF THE 3RD RESPONDENT.
- EXT.P8 :** TRUE COPY OF THE JUDGMENT DATED 26-05-2015 IN W.P.(C).NO.14662/2015 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20648 of 2015

Dated this the 16th day of July, 2015

J U D G M E N T

Ext.P3 order, 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 2.236 ares of property comprised in Re.Sy.No.84/3 of Vengeri Village in Kozhikode Taluk within the local limits of the respondent corporation. The petitioner submitted an application for building permit, which was rejected by the 2nd respondent as per Ext.P3 order on the ground that the property is described as 'nilam'. According to the petitioner, the property was converted years back and very much prior to the promulgation of Act 28 of 2008. The entire area including the adjacent plots are filled with single and multistoried residential buildings. The petitioner alleges that the said

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fact was not considered by the respondent corporation while passing Ext.P3. The petitioner points out that even on going through Section 5 of the Kerala Conservation of Paddy Land and Wet Land Act, the Committee has power to accord sanction for conversion of paddy land up to 5 cents in corporation area for the purpose of constructing residential building. According to the petitioner, his property is neither a paddy land nor a wet land and comes to 5 cents. Hence, this writ petition.

3. Arguments have been heard.

4. The learned Standing Counsel for the respondent corporation, who opposed the prayer, inviting my attention to Ext.P7, which was issued by the Local Level Monitoring Committee, submitted that as per Ext.P7, granting of building permit would affect the ecological balance of the locality.

5. In answer to the same, the learned counsel for the petitioner invited my attention to Ext.P8 series of photograph, which shows that the petitioner's property

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and the surrounding properties are developed and other buildings have come up in the locality. The learned counsel for the petitioner also invited my attention to Ext.P4 series of building permit, which are issued by the respondent corporation in respect of those buildings in the vicinity.

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 for construction.

7. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjali 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.

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 positions 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

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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 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

bka/-