

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

WP(C).No. 21122 of 2014 (M)

PETITIONER(S)/PETITIONER:

**KUNHALASSAN P., AGED 43 YEARS
S/O. MUHAMMED HAJI, PALAYAKKODAN HOUSE
HAJIYAR PALLI P.O., MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.ABDUL JAWAD
SMT.VINEETHA V.KUMAR**

RESPONDENT(S)/RESPONDENTS:

- 1. THE MALAPPURAM MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MALAPPURAM-676505.**
- 2. THE SECRETARY
MALAPPURAM MUNICIPALITY, MALAPPURAM-676505.**
- 3. THE CHIEF TOWN PLANNER
THIRUVANANTHAPURAM-695001.**

**R3 BY ADV. GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R1 BY SRI.ESM.KABEER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 21122 of 2014 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 :-	TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER PANAKKAD DTD 11/6/2013
EXT.P2 :-	TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER PANAKKAD DTD 11/6/2013
EXT.P3 :-	TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER PANAKKAD DTD 11/6/2013
EXT.P4 :-	TRUE COPY OF THE ORDER DTD 12/3/2013 ISSUED BY THE 2ND RESPONDENT
EXT.P5 :-	TRUE COPY OF THE JUDGMENT DTD 4/4/2013 IN WPC NO 8375/2013
EXT.P6 :-	TRUE COPY OF THE ORDER DTD 9/6/2014 OF THE 2ND RESPONDENT
EXT.P7 :-	TRUE COPY OF THE PROCEEDINGS OF THE SENIOR TOWN PLANNER DTD 28/3/2012

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

A.V.RAMAKRISHNA PILLAI, J

W.P.(C).No.21122 of 2014

Dated this the 6th day of July, 2015

JUDGMENT

Aggrieved by the rejection of the petitioner's application for change of occupancy, by the second respondent, the petitioner come up before this Court.

2. The petitioner is the absolute owner in occupation of the land in Sy.No.352/3, 4 and 289/4, 5 of Panakkad Village. The said land is a garden land. The petitioner's predecessor in interest effected the construction of a commercial building in the land, years ago and has been using the building as a wholesale and retail store. After the land was purchased by the petitioner, he intended to convert the same to be an auditorium. For that purpose, he submitted before the 2nd respondent, an application for change of occupancy. The rejection of the said application is challenged in this case; hence this writ petition.

3. I have heard the learned counsel for the

petitioner and the learned counsel for the respondent Municipality.

4. The learned Government Pleader adverting to the counter affidavit filed by the third respondent submitted that as per the zoning regulation of the Master Plan sanction dated 24.05.1990, the proposed property falls under the paddy zone. Hence the proposed construction cannot be permitted. Further it is argued that even as per the zoning regulation, the construction is not permissible in the area as it falls under the environmentally sensitive area.

5. The learned counsel for the petitioner per contra would submit that the land of the petitioner was a garden land for many years and the physical nature of the land is a dry land and the authorities also treated the same as a dry land. It was pointed out that however when the master plan was prepared, the said land was mistakenly included as paddy land, though no paddy cultivation is possible there. The learned counsel for the petitioner relied on Exts.P1, P2 and P3, in support of his

arguments. It is crucial to note that already there had been a construction on the said land which has been numbered by the respondent Municipality. As the very nature of the land has been changed by the first construction, there is no logic in the stand now taken by the respondent Municipality that it is an environmentally sensitive area.

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. The learned counsel 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.

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.

Therefore, the writ petition is allowed. The second respondent is directed to consider petitioner's application for change of occupancy and pass positive orders, granting the same, within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

VS