

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 20980 of 2015 (V)

PETITIONER:

**LAKSHMANASWAMY C.
S/O.CHITTURI K, AGED 60 YEARS,
RESIDING AT 20/487, KRISHNA KRIPA
KOLAYACODE, PUDUSSERY, PALAKKAD DISTRICT.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENT(S):

**CHITTUR-THATHAMANGALAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, CHITTUR P.O
PALAKKAD 678 101.**

**BY SRI.K.P.VIJAYAN, SC, CHITTUR THATHAMANGALAM MUNICIPALITY.
SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

vmr.

WP(C).No. 20980 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICE,
CHITTUR TO THE PETITIONER DATED 21.4.2015.**

**EXHIBIT P2. TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT TO THE
PETITIONER DATED 4.7.2015.**

**EXHIBIT P3. TRUE COPY OF THE PHOTOGRAPH WHICH SHOWS THE PETITIONERS
PROPERTY AND THE HOUSE STANDING IN THE ADJACENT PLOT DATED NIL.**

**EXHIBIT P4. TRUE COPY OF THE JUDGMENT IN WPC 14858/2015 ON THE FILE OF
THIS HONOURABLE COURT DATED 16.6.2015.**

RESPONDENT(S)' EXHIBITS : NIL.

/TRUE COPY/

P.S.TO JUDGE

vmr.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 20980 of 2015

Dated this the 20th day of July, 2015

J U D G M E N T

Ext.P2, 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 0.0283 hectares of property comprised in Re.Sy.No.8/5 of Chittur Village in Palakkad District within the local limits of the respondent municipality. The petitioner submitted an application for building permit for constructing a residential building, which was rejected by the respondent municipality as per Ext.P2 stating that according to the zoning regulations, the property belonging to the petitioner has been included in the paddy zone. According to the petitioner, the adjacent properties are put to use for construction purposes, for which the municipality has already granted building

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permit. To substantiate the said contention, the petitioner has produced Ext.P3 photograph. Therefore, according to the petitioner, the rejection of building permit on the basis of the description of property in the revenue records ignoring the actual state of affairs is unfair and illegal. Hence, this writ petition.

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 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 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.

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 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

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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.P2 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 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/-