

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 21297 of 2015 (J)

PETITIONER(S) :

**MOHAMMED SHAFI, AGED 47 YEARS,
S/O.HAJI A.HAMZA, ANAPPURAM HOUSE, CHANDRANAGAR (POST),
PALAKKAD- 678 007.**

BY ADV. SRI.P.K.MOHANAN(PALAKKAD)

RESPONDENT(S):

- 1. PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
PALAKKAD DISTRICT, PIN- 678 001.**
- 2. THE SECRETARY,
PALAKKAD MUNICIPALITY, PALAKKAD DISTRICT- 678 001.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 21297 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS :

**P1: A TRUE COPY OF THE REGISTERED SALE DEED NO.3482/2009 OF S.R.O,
OLAVAKKODE, DATED 17/12/2009.**

**P2(A): TRUE COPY OF THE REGISTERED DOCUMENT NO.996/91 OF S.R.O.,
OLAVAKKODE, DATED 14/05/1991.**

**P2(B): TRUE COPY OF THE REGISTERED DOCUMENT NO.997/91 OF S.R.O.,
OLAVAKKODE DATED 14/05/1991.**

**P3: A TRUE COPY OF THE ORDER DATED 05/06/2015 REFUSING BUILDING
PERMIT ISSUED BY THE RESPONDENTS.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21297 of 2015

Dated this the 30th day of July, 2015

J U D G M E N T

Ext.P3, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner, along with his wife and his two children, is the joint owner in possession of an extent of 21.75 cents of property comprised in Re.Sy.No.114B of Palakkad - 1 Village, Vadakkanthara Amsom and Desom, Palakkad Taluk within the local limits of the respondent municipality as per Ext.P1. The petitioner submitted an application for building permit, which was rejected by the respondent municipality as per Ext.P3 on the ground that the survey number of the property is shown as 'paddy cultivation zone' in the master plan. According to the petitioner, the immediate neighbours of the petitioner are granted building permit for construction of buildings and buildings have come up. The petitioner further alleges

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that Ext.P3 is passed without looking into the aspects and similar orders granting permission to neighbouring owners in the same survey number and similarly situated plots were passed by the respondents. It is further pointed out that the property is not at all fit for agricultural activities. Therefore, according to the petitioner, Ext.P3 is illegal and liable to be quashed.

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-Panjali 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 at any time, look into the ground realities and decide upon the suitability for

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prospective cultivation of such lands.

Therefore, this writ petition is allowed. Ext.P3 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/-