

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 21332 of 2015 (N)

PETITIONER:

**ABDUL RASHEED,S/O.ALAVI,AGED 33 YEARS,
KUNDIL HOUSE, KAVATHIKULAM,KOTTAKKAL POST,
MALAPPURAM DISTRICT,PIN-676 503.**

**BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN**

RESPONDENT:

**KOTTAKKAL MUNICIPALITY,KOTTAKKAL,
MALAPPURAM DISTRICT,PIN-676 503
REPRESENTED BY ITS SECRETARY.**

BY SRI.ESM.KABEER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 21332 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS:

- P1: TRUE COPY OF SALE DEED DATED 1-3-2011 REGISTERED AS
DOC.NO.795/2011 OF KOTTAKKAL SRO.**
- P2: TRUE COPY OF ORDER NO.PW1/7798/15 DATED 20-6-2015 ISSUED BY THE
RESPONDENT.**
- P3: TRUE COPY OF PHOTOGRAPHS (3 NOS) OF THE PROPERTY.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.21332 of 2015

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Dated this the 22nd day of July, 2015

JUDGMENT

Ext.P2 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of a parcel of land having an extent of 4.15 ares corresponding to 10 ¼ cents in Re-Sy. No.309/3 of respondent municipality. He acquired the property by virtue of Ext.P1 sale deed. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P2 for the reason that the property is described as nilam in the revenue records and no order permitting filling up of land is produced.

3. Arguments have been heard.

4. The learned standing counsel for the respondent municipality opposed the application on the ground that the property is shown as nilam in the revenue records and for converting the land the petitioner has not obtained any permission from the revenue authorities.

5. The learned counsel for the petitioner, inviting my attention to Ext.P3 photographs, submitted that there are aged

trees in the property. Ext.P3 photos show the present nature of the land of the petitioners and the neighbouring properties. 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.

6. It is settled position that the applicant can choose the best land suited for construction of his house [**Sunil v. Killimangalam-Panjal 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.

7. 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.

8. 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.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 respondent municipality is also directed to reconsider the petitioner's application and to grant permission if they are satisfied that the property is not cultivable at present. The petitioner shall be given an opportunity of being heard. This shall be done within a one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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