

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937**

**WP(C).No. 21896 of 2015 (J)**  
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**PETITIONER(S):**  
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**SAINUDHEEN, S/O.MUHAMMED HAJI,  
AGED 45 YEARS, PUTHANANGADI HOUSE,  
NATTUKALLU P.O., PALAKKAD DISTRICT.**

**BY ADV. SRI.U.K.DEVIDAS.**

**RESPONDENT(S):**  
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**THE PERINTHALMANNA MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY, PERINTHALMANNA,  
MALAPPURAM DISTRICT-676 322.**

**BY ADV. SRI.P.C.SASIDHARAN, SC.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**rs.**

WP(C).No. 21896 of 2015 (J)

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

EXHIBIT P1. COPY OF THE POSSESSION CERTIFICATE DATED 21.10.2014.

EXHIBIT P2. COPY OF THE RELEVANT PAGE OF THE DATA BANK.

EXHIBIT P3. COPY OF THE ORDER DATED 06.03.2015 PASSED BY  
THE RESPONDENT.

EXHIBIT P4. PHOTOGRAPHS OF THE PROPERTY.

**RESPONDENT'S EXHIBITS:-** NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

**A.V. RAMAKRISHNA PILLAI, J.**

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W.P.(C) No. 21896 of 2015  
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Dated this the 28<sup>th</sup> 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 is the owner in possession of an extent of 24 cents of property comprised in Sy.Nos.57/12 & 57/14 of Perinthalmanna Village in Perinthalmanna Taluk within the local limits of the respondent municipality. The petitioner submitted an application for building permit, which was rejected by the respondent as per Ext.P3 for the reason that the land is shown as paddy field in revenue records. The petitioner pointed out that the said property is situated on the side of the Manathumangalam - Ponniyakurssi bye-pass road and is surrounded by commercial buildings; and a portion of the property was acquired by the Government for

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construction of the said bypass road. According to the petitioner, it is used as a dry land before 1990 onwards and there is valuable trees aged more than 20 years. To substantiate his contentions, he has produced Ext.P2 extract of data bank, wherein it is described as converted land, and Ext.P4 series of photographs showing the nature of the land. Therefore, according to the petitioner, Ext.P3 is illegal and liable to be quashed.

3. Arguments have been heard.

4. The application is opposed by the learned Standing Counsel for the respondent municipality on the ground that the property has been entered in the revenue records as 'nilam'.

5. However, in Ext.P2 extract of data bank, the petitioner's property is described as converted land and Ext.P4 series of photographs reveal that the property is a dry land.

6. The decision of this Court in **Mohammed Abdul Basheer C.P. V State of Kerala and another**

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[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-Panjai 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 upon the suitability for 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 respondent is also

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directed to reconsider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondent is 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/-