

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 22502 of 2015 (k)

PETITIONER :

**O.S. ABDUL SATHAR, S/O.SAITHALI, AGED 59 YEARS,
OILAPILLIL HOUSE, PONEKKARA DESOM,
EDAPPALY VADAKKUM BAGAM VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT. PIN-682 031**

BY ADV. SRI.M.A.SHIHAB

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. THRIKAKARA MUNICIPALITY,
REP. BY ITS SECRETARY, KOCHI- 682 030.**

**R1 BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA
R2 BY SRI.S.SHANAVAS KHAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 22502 of 2015 (k)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT P1- TRUE COPY OF THE SALE DEED BEARING NO.272/1996 OF
THRIKAKARA SRO IN RESPECT OF THE 05.00 ARES OF PROPERTY
PURCHASED BY THE PETITIONER.
- EXT P2- TRUE COPY OF THE LAND TAX RECEIPT DATED 09/06/2015 FOR THE
PERIOD OF 2015-16.
- EXT P3- TRUE COPY OF THE PROPERTY TAX DATED 20/07/2015 FOR THE
PERIOD OF 2007 TO 2015.
- EXT P4- TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT
REJECTING THE APPLICATION FOR PERMISSION FOR
CONSTRUCTING THE RESIDENTIAL BUILDING IN THE EXT P1
PROPERTY.
- EXT P5 - TRUE COPY OF THE THREE SERIES OF PHOTOGRAPHS OF THE SAID
LAND.
- EXT P6- TRUE COPY OF THE DRAFT COPY OF THE DATA BANK CONTAINING
THE SAID LAND DESCRIPTION.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22502 of 2015

Dated this the 4th day of August, 2015

J U D G M E N T

Ext.P4, 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 05.00 ares of property comprised in Re.Sy.No.488/9 of Kakkanad Village within the local limits of the respondent municipality as per Ext.P1. According to the petitioner, at the time of purchase of the said property in 1996, the said land had been reclaimed as mentioned in Ext.P1. Thereafter, the petitioner constructed a building in the said land and the said building was numbered as 10/283-B as evident from Ext.P3 tax receipt. The petitioner submitted an application for building permit for constructing a residential apartment before the respondent municipality,

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which was rejected by the 2nd respondent as per Ext.P4 for the reason that the land is shown as 'nilam' in the revenue records. According to the petitioner, the said land is not a paddy field and no cultivation has been conducted in the said land for the last 40 years. Apart from that, the said land was converted before the Conservation of Paddy Land and Wet Land Act, 2008 came into force, and because of that, the petitioner constructed a building in the said land; it is alleged. The petitioner points out that there are aged coconut trees and other trees in the said property and other flats and apartments are constructed in the nearby areas. To substantiate the said contention, the petitioner has produced Ext.P5 photo series. Therefore, according to the petitioner, Ext.P4 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 petitioner's property is included in the

data bank.

5. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P5 photo series, which would indicate that there is a building as well as aged trees in the property. According to the learned counsel for the petitioner, the construction of the building was completed in the year 2005.

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. 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.

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

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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.P4 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/-