

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 22558 of 2015 (T)

PETITIONER:

**MUHAMMED ABDUL KHADER,
ARAFA HOUSE, AMALAGIRI P.O,
KOTTAYAM DISTRICT.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENT(S):

- 1. THE KOTTAYAM MUNICIPALITY,
MUNICIPAL BUILDINGS, KOTTAYAM-1,
REPRESENTED BY ITS SECRETARY - 686 001.**
- 2. THE SECRETARY,
THE KOTTAYAM MUNICIPALITY,
MUNICIPAL BUILDINGS, KOTTAYAM- 686 001.**
- 3. THE ASSISTANT ENGINEER,
KUMARANALLOOR ZONAL OFFICE,
KOTTAYAM MUNICIPALITY,
KOTTAYAM - 686 001.**

BY ADV. SRI.S.RANJIT (KOTTAYAM), SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 - TRUE PHOTOCOPY OF THE SALE DEED NO.3571/2006 DATED 30.11.2006 OF SRO, ADDL. KOTTAYAM.
- P2 - TRUE PHOTOCOPY OF THE SITE PLAN OF THE PROPERTY.
- P3 - TRUE PHOTOCOPY OF THE APPLICATION DATED 24.02.2015 SUBMITTED BY THE PETITIONER.
- P4 - TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE BEARING NO. 1565/15 DATED 16.06.2015.
- P5 - TRUE PHOTOCOPY OF THE DATA BANK PARTICULARS IN RESPECT OF EXT.P1 PROPERTY.
- P6 - TRUE PHOTOCOPY OF THE ORDER BEARING NO.PW3/PW7/KPWI-BA 366/14-15 DATED 07.04.2015 ISSUED BY THE 3RD RESPONDENT.

RESPONDENTS' 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.22558 of 2015

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Dated this the 3rd day of August, 2015

JUDGMENT

Ext.P6 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner submitted Ext.P3 application for building permit to construct an automobile service-cum-commercial building in the property purchased by him as per Ext.P1. The petitioner alleges that the property in respect of which the petitioner had submitted the application for building permit is pucca garden land. As per Ext.P5, the property covered by Ext.p1 is described as land converted in or around 1975. However, the third respondent rejected the application submitted by the petitioner without verifying the nature and character of the property in question. It is with this background, the petitioner has come up before this Court.

3. Arguments have been heard.

4. The learned standing counsel for the respondent municipality opposed the petition on the ground that the property

has been reclaimed illegally by the petitioner and without obtaining consent under the KLU. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P5 which is a copy of the data bank which makes mention of the property of the petitioner also. However, it reveals that the said property was converted prior to 1975.

5. 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.

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.P6 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 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 period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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