

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C) .No. 23313 of 2015 (L)

PETITIONER(S) :

ASYA,
W/O.MOIDEEN, KONGARATHODI HOUSE,
VETIKKATTIRI P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.P.JAYARAM.

RESPONDENT(S) :

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1. SHORNUR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
SHORNUR - 679 121.
 2. THE SECRETARY,
SHORNUR MUNICIPALITY, SHORNUR - 679 121.
 3. THE ASSISTANT ENGINEER,
SHORNUR MUNICIPALITY, SHORNUR - 679 121.
 4. THE VILLAGE OFFICER,
SHORNUR I VILLAGE, SHORNUR - 679 121.
 5. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
BY SRI.P.P.THAJUDHEEN, SC, SHORNUR MUNICIPALITY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1. COPY OF THE SALE DEED NO.586/2006, S.R.O SHORNUR.
- EXHIBIT P2. COPY OF THE APPLICATION DATED 27.12.14 AND THE BUILDING PLAN SUBMITTED BY THE PETITIONER BEFORE THE SHORNUR MUNICIPALITY.
- EXHIBIT P3. COPY OF THE POSSESSION CERTIFICATE DATED 7.10.14 ISSUED FROM SHORNUR I VILLAGE OFFICE.
- EXHIBIT P4. COPY OF THE CERTIFICATE DATED 13.10.14 ISSUED FROM MUNICIPALITY SHORNUR WITH RELEVANT PAGE OF THE DATA BANK PREPARED WITH RESPECT TO PETITIONERS LAND.
- EXHIBIT P5. COPY OF THE ORDER NO.B2-352/14-15 DATED 7.1.15 ISSUED BY SHORNUR MUNICIPALITY.
- EXHIBIT P6(SERIES). COPY OF THE PHOTOGRAPHS SHOWING THE TOPOGRAPHY OF THE PETITIONER'S LAND.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.23313 of 2015

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Dated this the 11th day of August, 2015

JUDGMENT

Ext.P5 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner and her husband are the owners in possession of 5 cents of land comprised Sy. No.30/1 within the limits of respondent municipality. The petitioner alleges that the property is surrounded by commercial building and is on the side of a State Highway. The petitioner further alleges that the said property is classified as dry land as per the data bank prepared by the respondent municipality under the Kerala Conservation of Paddy Land and Wetland Act, 2008.

3. The petitioner and her husband submitted an application for building permit before the local authority. The possession certificate issued from the village office shows the land is classified as wetland. According to the petitioner, this does not reflect the true state of affairs. The petitioner alleges that in view of the possession certificate, the local authority has refused permission to construct the building in the property. This, according to the

petitioner, is despite the classification made by the very same local authority in their own data bank. It is with this background, the petitioner has approached this Court.

4. Arguments have been heard.

5. The learned counsel for the petitioner, inviting my attention to Ext.P6 photographs, submitted that the property is on the side of the State Highway and buildings are constructed in the adjacent properties. Ext.P6 photos show the present nature of the land of the petitioner and the neighbouring properties. The respondents failed to note that they have already allowed the persons residing near the petitioner's property to construct buildings. However, the petitioners were arbitrarily prevented from construction.

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. As per Ext.P6, it can be seen that the property is not a paddy land. 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.

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 position 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.P5 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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