

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 23370 of 2015 (U)

PETITIONER:

**P.V. VIJAYAKUMAR DAS,
S/O.VELAYUDHAN, AGED 48 YEARS,
SREENILAYAM, EDAKKARA.P.O,
MALAPPURAM DISTRICT.**

BY ADV. SRI.K.RAKESH

RESPONDENTS:

- 1. THE KOZHIKKODE CORPORATION,
KOZHIKKODE,
REPRESENTED BY ITS SECRETARY, PIN-673 001.**
- 2. THE SECRETARY,
KOZHIKKODE CORPORATION, KOZHIKKODE.**

**R1 & R2 BY SRI.K.D.BABU,SC,KOZHIKKODE CORPORATION
SRI.P.V.SURENDRANATH,SC,KOZHIKKODE CORPN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 23370 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT, REJECTING THE
APPLICATION SUBMITTED BY THE PETITIONER, DT. 3-6-2015**

**P2 TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTIES OF THE
PETITIONER.**

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 23370 of 2015

Dated this the 7th day of August, 2015.

JUDGMENT

Ext.P1 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner alleges that his property is not suitable for paddy cultivation and it is reclaimed long back. The description of the property in the revenue records is shown as nilam and therefore the application for building permit preferred by the petitioner was rejected by the second respondent vide Ext.P1 order. It is also stated in the order of the second respondent that there is violation of DTP scheme and also Rule 3A. It is further pointed out that the adjacent properties of the aforementioned property are already developed and it would be unreasonable to insist for paddy cultivation in a land surrounded by buildings. The petitioner further points out that the Division Bench of this Court already held that while issuing building permit, the secretary has to

consider the ground reality of the property and building permit cannot be rejected solely on the reason that the description of the property is nilam in the records maintained by the revenue department. There is no bar at all for issuing permit for construction of building in a land which is reclaimed and the same is unsuitable for paddy cultivation; it is alleged. It is with this background, the petitioner has come up before this court.

3. Arguments have been heard.

4. The learned counsel for the respondent corporation opposing the application submitted that the property of the petitioner is covering the DTP scheme and as per the revenue records, it is described as paddy field. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext.P2 photographs, which would reveal that the property has already been reclaimed as aged coconut trees are there in his property.

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 to construct a house.

7. The learned counsel invited my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed to the decision of the Apex court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222] wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

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.

Therefore, this writ petition is allowed. Ext.P1 is quashed.

The respondent corporation is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioners and surrounding properties. The respondents are also directed to consider the application and to grant permit if they are satisfied that the property is not fit for paddy cultivation at present, after affording the petitioner an opportunity of being heard. 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

W.P.(C) No. 23370 of 2015

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Scl.