

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 23679 of 2015 (H)

PETITIONER(S):

**SUJEENDRAN K, AGED 33 YEARS,
S/O.T.KRISHNAN, SREE KAILAS, 7/334,
PIRAYIRI, PALAKKAD DISTRICT.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S):

- 1. PALAKKAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
PALAKKAD 678 001.**
- 2. THE DISTRICT TOWN PLANNING OFFICER,
PALAKKAD, CIVIL STATION, PALAKKAD 678 001.**
- 3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM 695 001.**

**R1 BY ADVS. SRI.T.C.SURESH MENON
SRI.P.S.APPU**

R2 & 3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/8/2015
THE COURT ON 03-11-2015, DELIVERED THE FOLLOWING:**

PJ

WP(C).No. 23679 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE JUDGMENT DATED MAY 26,2015 IN WPC 15476/15 OF THIS HONOURABLE COURT.

EXHIBIT P2. COPY OF THE ORDER DATED JULY 16, 2015 OF THE IST RESPONDENT.

EXHIBIT P3: COPY OF THE PHOTOGRAPHS OF THE PETITIONER'S PLOT.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S.TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 23679 of 2015

Dated this the 3rd day of November, 2015

J U D G M E N T

Ext.P2, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner is the owner of a residential plot having an extent of 6.65 cents of property within the local limits of the respondent municipality. The petitioner submitted an application for building permit, which was rejected by the respondent municipality as per Ext.P2, stating that the property is classified as 'nilam'. According to the petitioner, though the land is described as 'nilam' in the revenue records, it is a pacca garden land. He further pointed out that the said property is not even included in the data bank for the area, prepared in terms of S.5(4)(i) of the Conservation of Paddy Land and Wet Land Act. According to him, Section 14 of the

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Conservation of Paddy Land and Wet Land Act is the only provision, which enables the 1st respondent to reject an application for building permit on the premise that the plot is classified as wetland. It is further pointed out that since the said plot is not included in the data bank, the provisions of the Act do not apply at all. Therefore, according to the petitioner, Ext.P2 has no statutory support and as such, it is beyond the authority of the 1st respondent and, hence, liable to be quashed.

3. Arguments have been heard.

4. Opposing the writ petition, the learned counsel for the respondent municipality would submit that the petitioner's property is a paddy field as per revenue records. However, the learned counsel for the petitioner invited my attention to Ext.P3 series of photograph, which would show the present nature and lie of the property.

5. 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.

6. 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.

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 positions 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.P2 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

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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 respondents are satisfied that the land in its present form is not suitable for paddy cultivation. 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

bka/-