

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

WP(C).No. 24046 of 2015 (E)

PETITIONER:

**SUJEESH K.P,
KALAMULLA PARMBATH HOUSE,
URUVACHAL P.O, MATTANNUR,
KANNUR DISTRICT.**

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S):

- 1. MATTANNUR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MATTANNUR, KANNUR DISTRICT - 670 702.**
- 2. THE SECRETARY,
MATTANNUR MUNICIPALITY, MATTANNUR,
KANNUR DISTRICT - 670 702.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 24046 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1. TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED
 NO.947/2013.**
- EXT.P2. TRUE COPY OF THE ORDER DATED 03/09/2013 ISSUED BY THE
 MINICIPALITY.**
- EXT.P3. TRUE COPY OF THE JUDGMENT IN W.P(C) NO.24848/2013.**
- EXT.P4. TRUE COPY OF THE CERTIFICATE DATED 03/08/2015 ISSUED BY THE
 LEVEL MONITORING COMMITTEE, THE AGRICULTURAL OFFICER.**
- EXT.P5. TRUE COPY OF THE POSSESSION CERTIFICATE ISSUED FROM THE
 PAZHASSI VILLAGE OFFICE.**

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J

WPC No.24046 of 2015

Dated this the 18th day of August, 2015

JUDGMENT

Ext.P2 order rejecting the petitioner's application for building permit is under challenge in this writ petition.

2. The petitioner is the owner in possession of 10 cents of property in Pazhassi Village on the strength of Ext.P1 document. The petitioner submitted an application for building permit before the respondents which was rejected by Ext.P2 on the ground that the property of the petitioner is included in the data bank.

3. According to the petitioner, challenging Ext.P2, WPC No.24848/2013 was filed before this Court and this Court disposed of the same as per Ext.P3 judgment directing the Local Level Monitoring Committee to consider the application

submitted by the petitioner to remove the property of the petitioner from the data bank. The convenor of the Local Level Monitoring Committee issued Ext.P4 stating that the property of the petitioner in Pazhassi Village is not included in the data bank.

4. Though notice has been served on the respondents, they did not turn up.

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 to construct a house.

6. It is settled position that the applicant can choose the best land suited for construction of his house (***Sunil v Killimangalam-Panjali 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.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 directed to reconsider the application and pass orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation. The petitioner shall be given 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**

CSS/

true copy

P.S.TO JUDGE