

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. 24230 of 2015 (C)

PETITIONER(S):

**RAJEENA, AGED 28 YEARS,
W/O.SHEREEF, KUNDIL HOUSE, KOTTAKKAL POST,
MALAPPURAM DISTRICT, PIN-676 503.**

**BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN**

RESPONDENT(S):

**KOTTAKAL MUNICIPALITY,
KOTTAKKAL, MALAPPURAM DISTRICT, PIN-676 503,
REPRESENTED BY ITS SECRETARY.**

BY ADV. SRI. E.S.M.KABEER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 24230 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 : TRUE COPY OF SALE DEED DATED 29-5-2015 REGISTERED AS DOC.NO.2117/2015
OF KOTTAKKAL SRO.**

**P2 : TRUE COPY OF ORDER NO.PW1-10299/15 DATED 24-7-2015 ISSUED BY THE
RESPONDENT.**

**P3 : TRUE COPY OF PHOTOGRAPHS (2 NOS) OF THE PROPERTY OF THE
PETITIONER.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.24230 of 2015

Dated this the 11th day of August, 2015.

J U D G M E N T

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

2. The petitioner is the owner and in possession of a parcel of land having an extent of 1.92 ares in re-survey No.314/1 of Kottakkal Village, Tirur Taluk and the property is covered by Ext.P1 sale deed. The petitioner submitted an application for constructing a residential building before the respondent which was rejected by Ext.P2 on the ground that the land is described as nanja as per revenue records without considering the physical nature of the property which is evident from Ext.P3 photographs. It is also alleged by the petitioner that the respondent Municipality has issued building permit to the neighbouring property owners and building number was also assigned to those

buildings. On the eastern and southern sides of the property there are buildings. On the northern side of the property in question there is a PWD road. According to the petitioner, it is without conducting any site inspection, Ext.P2 order was issued and Ext.P2 is against the dictum laid down by this Court in similar matters. Hence the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner, the learned standing counsel for the respondent and the learned Government Pleader.

4. The learned standing counsel for the respondent Municipality, opposing the writ petition, submitted that as per revenue records, the petitioner's property is a paddy field. In answer to the same, the learned counsel for the petitioner invited my attention to Ext.P3 photographs, which would reveal the present nature of the property in question. The photographs would show that the property is filled with aged trees.

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 can be seen from Ext.P3 photographs that the property is not a paddy land and it is having full of aged trees. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjai 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 respondent is also directed to re-consider 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.

ami/

//True copy//

P.A. to Judge