

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 24658 of 2015 (F)

PETITIONER(S):

**LATHEEF, AGED 45 YEARS,
S/O.USMAN, KULAPURATH HOUSE,
OTTAPALAM-679 101.**

**BY ADVS.SRI.R.SREEHARI,
SRI.M.V.SURESH (KANNUR),
SRI.V.K.SREEJITH.**

RESPONDENT(S):

- 1. OTTAPALAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
OTTAPALAM, PIN-679 101.**
- 2. THE SECRETARY,
OTTAPALAM MUNICIPALITY, MUNICIPAL OFFICE,
OTTAPALAM, PIN-679 101.**

BY ADV. SRI.P.P.THAJUDHEEN, SC.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1. PHOTOCOPY OF DOCUMENT NO.2562/1991 OF SRO, OTTAPPALAM.
- EXHIBIT P2. PHOTOCOPY OF THE ORDER NO.D.DIS H. 5328/96 DATED 28/05/1997 OF RDO, OTTAPPALAM.
- EXHIBIT P3. PHOTOCOPY OF DOCUMENT NO.1632/2000 OF SRO, OTTAPPALAM.
- EXHIBIT P4. PHOTOCOPY OF THE TAX RECEIPT DATED 19/06/2015 ISSUED BY THE VILLAGE OFFICE, OTTAPPALAM-I.
- EXHIBIT P5. PHOTOCOPY OF THE POSSESSION CERTIFICATE DATED 06/07/2015.
- EXHIBIT P6. PHOTOCOPY OF THE BUILDING PLAN SUBMITTED ALONG WITH THE APPLICATION BEFORE THE RESPONDENTS.
- EXHIBIT P7. PHOTOCOPY OF THE ACKNOWLEDGEMENT OF APPLICATION FOR BUILDING PERMIT DATED 07/07/2015 OF THE RESPONDENT.
- EXHIBIT P8. PHOTOCOPY OF THE RECEIPT OF BUILDING PERMIT FEE ISSUED BY THE RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

W.P.(C)No.24658 of 2015

Dated this the 13th day of August, 2015.

J U D G M E N T

The petitioner is aggrieved by the non consideration of his application for building permit submitted before the respondent Municipality, in the light of Ext.P2 order.

2. The petitioner is the absolute owner and is in possession of 10 cents of land in Sy.No.81/1 of Ottappalam I Village in terms of Exts.P1 and P3 documents. Prior to Ext.P3 document, since the property was a wet land and it was converted into a dry land several decades ago, the petitioner along with his brother, obtained Ext.P2 order from the Revenue Divisional Officer, Ottapalam, under the Provisions of Kerala Land Utilisation order for the conversion of 5 cents of land out of the 10 cents. Thereafter, the petitioner filed an application for building permit for the construction of a residential building in the 5 cents of land

out of 10 cents with necessary plan, and fee was paid to the 1st respondent as evidenced by Exts.P6 to P8 on 7.7.2015. Since no action was taken on the said application by the 2nd respondent, the petitioner approached the 2nd respondent and the 2nd respondent orally stated that the petitioner has to obtain an order under the Provisions of Kerala Conservation of Paddy Land and Wet Land Act, 2008, for the purpose of processing the petitioner's application for building permit ; it is alleged. It is with this backdrop, the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondent Municipality.

4. The learned counsel for the petitioner, inviting my attention to Ext.P2 would submit that, the petitioner obtained sanction for conversion of land, as early as on 28.5.1997 to convert 5 cents of land for the construction of a residential building. However, now the petitioner's request is

for considering his application to grant building permit. The respondent Municipality is objecting the same for the reason that the petitioner has not obtained subsequent clearance under the Kerala Conservation of Paddy Land and Wet Land Act, 2008. Such a contention cannot be accepted, since the petitioner obtained the countenance benefited under Ext.P2, which he obtained under the KLU Order.

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-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. The respondent Municipality is directed to re-consider the application and pass orders granting permit. The petitioner shall be given an opportunity of being heard. This shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI,
Judge.

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P.A. to Judge