

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937**

**WP(C).No. 24698 of 2015 (J)**  
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**PETITIONER :**  
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**REETHA  
AGED 77 YEARS, W/O.ANTHONIKUTTY,  
KANICHIKKATTIL HOUSE, CHALAKUDY  
THRISSUR DISTRICT.**

**BY SENIOR ADVOCATE SRI.RENJITH THAMPAN  
BY ADV. SMT.P.RREENA**

**RESPONDENT(S) :**  
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- 1. CHALAKUDY MUNICIPALITY  
REPRESENTED BY ITS SECRETARY, MINICIPAL OFFICE  
CHALAKUDY, THRISSUR DISTRICT, PIN-680 307.**
- 2. SECRETARY  
CHALAKUDY MUNICIPALITY, MUNICIPAL OFFICE, CHALAKUDY  
THRISSUR DISTRICT, PIN-680 307.**

**R1 & R2 BY ADV. SRI.SHEEJO CHACKO, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**Mn**

**...2/-**

**WP(C).No. 24698 of 2015 (J)**  
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**APPENDIX**

**PETITIONERS' EXHIBITS :**  
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- EXT. P1-        TRUE COPY OF THE BUILDING TAX RECEIPT DATED 23.04.2015.**
- EXT. P1(a)-    TRUE COPY OF THE BUILDING TAX RECEIPT DATED 23.04.2015.**
- EXT. P1(b)-    TRUE COPY OF THE LOCATION SKETCH OF THE PETITIONERS' PROPERTY.**
- EXT. P2-        PHOTOGRAPHS SHOWING THE PETITIONER'S PROPERTY AND THE ADJACENT COMMERCIAL BUILDINGS IN THE AREA.**
- EXT. P3-        TRUE COPY OF THE REPORT OF THE ADDITIONAL TAHSILDAR TO THE DISTRICT COLLECTOR DATED 31.10.2014.**
- EXT. P4-        TRUE COPY OF THE RELEVANT PORTION OF DATA BANK PREPARED BY KRISHI BHAVAN, CHALAKUDY.**
- EXT. P5-        TRUE COPY OF THE BUILDING PERMIT ISSUED TO THE ADJACENT PROPERTY OWNER SHRI.PRADEEPKUMAR DATED 20.05.2014.**
- EXT. P6-        TRUE COPY OF THE PROCEEDINGS ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT DATED 12.8.15.**

**RESPONDENT(S)' EXHIBITS :        NIL**  
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**//TRUE COPY//**

**P.A. TO JUDGE**

**Mn**

**A.V.RAMAKRISHNA PILLAI, J.**

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W.P(C) No.24698 of 2015

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Dated this the 20<sup>th</sup> day of August, 2015

**JUDGMENT**

Ext.P6 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 0.061 ares of land comprised in Sy. No.216/1 of Chalakkudy village. The petitioner alleges that the aforesaid property is situated abutting NH-47 in the Potta Ashram Junction within the Chalakkudy Municipality. The petitioner further alleges that the Additional Tahsildar by letter dated 31.10.2014 has informed the District Collector that his property is a reclaimed land and in the data bank prepared under the Kerala Conservation of Paddy Land and Wetland Act, the petitioner's property shown in the ownership of the petitioner's predecessor-in-interest is also described as reclaimed land for the past several years.

3. The petitioner, for constructing a building in her property, submitted an application for building permit which was rejected by the second respondent by Ext.P6 on the ground that the land is classified as a paddy field in the revenue records. It is with this background, the petitioner has approached this Court.

3. Arguments have been heard.

4. Opposing the petition, the learned standing counsel for the respondent municipality would submit that as the petitioner's property is shown as paddy field in the revenue records, the petitioner ought to have approached the authority concerned under the Kerala Land Utilisation Order.

5. In answer to the said submission, the learned Senior Counsel for the petitioner invited my attention to Ext.P4 data bank as well as Ext.P3 report of the Additional Tahsildar submitted that the property of the petitioner has been reclaimed long back. The learned Senior Counsel also invited my attention to Ext.P5 building permit issued to the owner of the adjacent property. Ext.P5 would reveal that the property has been reclaimed.

6. The learned Senior Counsel for the petitioner, inviting my attention to Ext.P2 photographs, further pointed out that buildings were constructed in the adjacent properties. Ext.P2 photos show the present nature of the land of the petitioner and the neighbouring houses. The respondents failed to note that they have already allowed the persons residing near to the petitioners' property to construct residential buildings. However, the petitioner was singled out.

7. 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.

8. As per Ext.P2, it can be seen that the property is not a paddy land. It is settled position that the applicant can choose the best land suited for construction of his house [**Sunil v. Killimangalam-Panjal 5<sup>th</sup> 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. 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.

9. The learned Senior 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.P6 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 municipality is also directed to reconsider the application and to grant permission if they are satisfied that the property is not cultivable at present. The petitioner shall be given an opportunity of being heard. 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**

krj