

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 27742 of 2014 (P)

PETITIONER :

**PREMJITH, S/O. MOHANAN, AGED 32 YEARS,
'RAM KRIPA', KUNNATHURMEDU,
CHIRAKKAD, PALAKKAD.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S):

- 1. THE AMBALAPPARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, AMBALAPPARA,
PALAKKAD DISTRICT-679 512.**
- 2. THE SECRETARY,
AMBALAPPARA GRAMA PANCHAYAT, AMBALAPPARA,
PALAKKAD DISTRICT-678 701.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015,ALONG WITH WP(C).NO.27743 OF 2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

sts

WP(C).No. 27742 of 2014 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE POSSESSION CERTIFICATE RELATING THE PLOT.**
- P2 : COPY OF THE LETTER DTD. 25.9.2014 ISSUED BY THE VILLAGE OFFICER,
AMBALAPPARA II VILLAGE.**
- P3 : COPY OF THE ORDER DTD. 21.10.2014 OF THE 2ND RESPONDENT.**
- P4: COPY OF THE RELEVANT PAGES OF THE DATA BANK OF PADDY AND WET
LANDS OF AMBALAPPARA GRAMA PANCHAYATH.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

C.K. ABDUL REHIM, J.

W.P.(c) Nos. 27742 & 27743 OF 2014-P

DATED THIS THE 14th DAY OF JANUARY, 2015.

J U D G M E N T

Application submitted by the petitioners seeking building permits for construction of residential buildings in a properties owned by the petitioners situated in Ambalappara-II village is not disposed of by the respondents panchayat, is the grievance.

2. It is evident that the 2nd respondent had issued Ext.P3 letter stating that the permit can be granted only after examining as to whether the land in question coming within the purview of Conservation of Paddy Land and Wetland Act, 2008. The petitioners were directed that the construction can be proceeded only after getting permission. Contention of the petitioner is that the land in question remains converted long back and the same is not included in the 'Data Bank' prepared by the Local Level Monitoring Committee as evidenced from Ext.P2 and from Ext.P4 extract of the 'Data Bank'. Mere inclusion of the

property in the revenue records describing its nature as wet land will not preclude the petitioners from obtaining building permit, because the land in question was converted prior to enactment of the Act, is the contention.

3. This court had elaborately considered the issue in a recent Division Bench decision in **Aishabeevi and another V. Superintendent of police, Ernakulam (2014 (3) KHC 678 (DB)**. It is held that, if the land was converted prior to enactment of the Act, the bar contained under Section 14 to grant permit will not apply, even if such conversion is made in violation of provisions of the Kerala Land Utilization order. It is held that the Conservation Act has no retrospective operation and any conversion made prior to coming into force of the Act, i.e: before 12-08-2008, cannot be said as violative of provisions of the Act. It is found that there is no provision contained in the Land Utilization Order or in the Conservation Act rendering such land as illegally converted land and hence there is no bar to grant permit for building construction on such land or to

use it for any purpose other than agricultural operations. This court also held that there is no legal presumption either in the Kerala Land Utilization Order or in the Paddy Land Act to the effect that the land stood converted after commencement of the KLU order without specific permission, is an illegally converted land for which no permit can be granted.

4. In view of the legal position remaining settled as mentioned above, this court is of the opinion that the building permit application need to be considered based on verification of physical position of the land in question and not based on description of the nature of the land contained in the revenue records.

5. Despite receipt of notice from this court the respondents have not chosen to enter appearance or to contest the case.

6. Hence this writ petition is disposed of by quashing Exts.P3 & P4 directing the 2nd respondent to consider the building permit application afresh and to take an

appropriate decision with respect to grant of building permit, in view of the observations contained herein above, after conducting due physical verification. It is to be held that if the respondents are convinced that the land in question was converted prior to 12-08-2008, the petitioners will be entitled for getting the building permit. A decision disposing of the application for building permit shall be taken at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge