

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C) .No. 30988 of 2014 (W)

PETITIONER(S) :

KALLINGAL ABDUL KHADER,
AGED 59 YEARS,
S/O.PALLIYAN HAJI, KALLINGAL HOUSE,
P.O.PALLIKKARA (BEKAL FORT),
KASARAGOD-671 316.

BY ADV. SRI.MAHESH V RAMAKRISHNAN.

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVT.,
LOCAL SELF GOVERNMENT DEPT.,
THIRUVANANTHAPURAM-695 001.
2. KANHANGAD MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
P.O. KANHANGAD,
KASARAGOD-671 315.

R1 BY ADV. SRI.T.K VIPINDAS
R2 BY ADV. SRI.T.K.VIPINDAS
BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1: COPY OF THE REGD.SALE DEED NO.3823 OF 1996, S.R.O., HOSDURG DATED 1.10.1996.
- EXT. P2: COPY OF THE SITE PLAN OF THE PROPERTY PREPARED BY THE VILLAGE OFFIER, BALLA.
- EXT. P3: COPY OF THE BUILDING PERMIT DATED 31.07.1997 ISSUED BY THE 2ND RESPONDENT MUNICIPALITY TO THE PETITIONER.
- EXT. P4: COPY OF THE BUILDING PERMIT DATED 24.05.2001 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT. P5: COPY OF THE DEMAND NOTICE DATED 13.03.2000 ISSUED BY TAHSILDAR, NILESWAR UNDER SEC.10 OF THE KERALA BUILDING TAX ACT.
- EXT. P6: COPY OF THE CERTIFICATE DATED 9.7.2014 ISSUED BY THE VILLAGE OFFICER, BALLA TO THE PETITIONER.
- EXT. P7: COPY OF THE CERTIFICATE DATED 9.7.2014 ISSUED BY THE AGRICULTURAL FIELD OFFICER, KRISHI BHAVAN, KANHANGAD TO THE PETITIONER.
- EXT. P8: COPY OF THE OFFICE NOTE DATED 02.05.2014 OF FILE NO.BA-52/14-15 OF THE 2ND RESPONDENT MUNICIPALITY, WHICH WAS ISSUED TO THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.
- EXT. P9: THE PHOTOGRAPHS OF THE PROPERTY.
- EXT. P10: COPY OF THE JUDGMENT DATED 24.3.2014 IN WPC.NO.6291 OF 2014.
- EXT. P11: TRUE COPY OF THE REGISTERED SALE DEED NO.4280/1985 DATED 14/11/1995.
- EXT. P12: TRUE COPY OF THE REGISTERED SALE DEED NO.3405/1994 DATED 01/10/1996.
- EXT. P13: TRUE COPY OF THE REGISTERED SALE DEED NO.3823/1994 DATED 01/10/1996.
- EXT. P14: TRUE COPY OF THE REGISTERED SALE DEED NO.3824/94 DATED 01/10/1996.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.30988 of 2014

Dated this the 10th day of June, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's application for building permit, the petitioner has come up before this Court.

2. The petitioner is an applicant for building permit before the 2nd respondent municipality. The petitioner alleges that the site for proposed construction is dry land. Exts.P6 and P7 certificates issued by the competent authorities show that the land is not included in the data bank prepared under the Conservation of Paddy Land and Wet Land Act, 2008. Ext.P3 building permit dated 31.7.1997 was earlier granted by the municipality for construction of a three storied building to be used in a lodge in a portion of the land in question and the said building is now existing therein. Ext.P4 building permit was granted for construction of a residential quarters in the property on the western side of the land in question. Ext.P8

office note shows that though the building inspector, after inspection of the site, recommended grant of building permit, the Municipal Engineer endorsed that the application has to be referred to the Revenue Divisional Officer for getting NOC. The petitioner alleges that once it is shown that the land in question is not included in the data bank prepared under the Conservation of Paddy Land and Wet Land Act, 2008, there is no need of NOC by the RDO as there is no such requirement under the Municipality Building Rules.

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

4. The learned counsel for the petitioner invited my attention to Exts. P6 and P7 and would argue that the property is not included in the data bank.

5. The learned counsel for the respondent municipality per contra, would submit that as the property is nilam as per the basic tax register, the only option before the respondent was to make reference to the Revenue Divisional Officer.

6. 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 for construction.

7. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjal 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.

8. 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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

Therefore, this writ petition is allowed. The respondent municipality is directed to conduct a local inspection of the property to ascertain the present lie as well as the condition of the property of the petitioner and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondents are satisfied that the land in its present form is not suitable for paddy cultivation. 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

Scl.