

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 32731 of 2014 (N)

PETITIONER :

**ABDUNAZAR, AGED 44 YEARS,
S/O.MOHAMMED, KAIPPALLI HOUSE, VETTATHOOR,
MANNARMALA P.O., MALAPPURAM DISTRICT.**

**BY ADVS.SRI.U.K.DEVIDAS
SMT.P.M.SHAHIDA**

RESPONDENT :

**THE PERINTHALMANNA MUNICIPALITY
REPRESENTED BY ITS SECRETARY, PERINTHALMANNA
MALAPPURAM DISTRICT - 676 322.**

BY ADV. SRI.P.C.SASIDHARAN, SC, PERINTHALMANNA MUNICIPALITY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE ASSIGNMENT DEED NO. 3280/2012
DATED 23/5/2012.
- EXT.P2: PHOTOSTAT COPY OF THE BASIC TAX RECEIPT ISSUED BY THE
RESPONDENT TO THE PETITIONER DATED 24/4/2014.
- EXT.P3: PHOTOSTAT COPY OF THE POSSESSION CERTIFICATE
DATED 24/10/2014.
- EXT.P4: PHOTOSTAT COPY OF THE PURCHASE CERTIFICATE DATED 15/9/2009.
- EXT.P5: PHOTOSTAT COPY OF THE RECEIPT DATED 13/9/2012.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.32731 of 2014

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Dated this the 29th day of July, 2015

JUDGMENT

Aggrieved by the inaction on the part of the respondent municipality in taking action on the petitioner's application for building permit, the petitioner has come up before this Court.

2. The petitioner has purchased 6.3967 ares of land comprised in Sy. No.75/11 of respondent municipality as per Ext.P1. According to the petitioner, the above property is a dry land and the description of the same in Ext.P1 is 'jenmam parambu'. Copy of the property tax receipt is produced as Exts.P2 and P3. The petitioner further alleges that even though the description of land in Ext.P3 and revenue records are shown as Nanja-I, the above land is not included in the draft data bank prepared by the authorities concerned.

3. The petitioner further alleges that the description of the above land in Ext.P4 purchase certificate also is parambu. The

petitioner submitted application on 13.9.2012 for building permit along with the plan before the respondent municipality. The respondent municipality has taken the stand the description of the land in the revenue records is Nanja-I. It is with this background, the petitioner has come up before this Court.

4. Arguments have been heard.

5. The learned standing counsel for the respondent municipality submitted that the municipality has rejected the application on the report of the local level monitoring committee that the property of the petitioner has not been reclaimed and, therefore, the construction of a commercial building is impermissible in the said land.

6. The learned counsel for the petitioner inviting my attention to Ext.P1 which is the copy of the assignment deed, submitted that the schedule of Ext.P1 shows that the category of the property is a garden land.

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. The learned counsel for the petitioner would submit that the petitioner's property is used as a dry land and there are valuable tress aged more than 40 years. It is settled position that the applicant can choose the best land suited for construction of his house [**Sunil v. Killimangalam-Panjali 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.

9. 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.

10. 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 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 consider 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

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