

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 35500 of 2015 (J)

PETITIONER(S) :

**P.A.ABDUL MAJEED, AGED 42 YEARS,
S/O.ABDUL KATHER, RAHATH, R.C.ROAD,
YAKKARA, PALAKKAD.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S) :

- 1. PALAKKAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,
PALAKKAD - 678 001.**
- 2. THE DISTRICT TOWN PLANNING OFFICER,
PALAKKAD, CIVIL STATION, PALAKKAD - 678 001.**
- 3. THE LOCAL LEVEL MONITORING COMMITTEE
CONSTITUTED UNDER THE KERALA CONSERVATION OF PADDY AND
WETLAND ACT FOR PALAKKAD MUNICIPALITY, REPRESENTED BY ITS
CONVENOR, PALAKKAD - 678 001.**
- 4. THE DISTRICT LEVEL MONITORING COMMITTEE
CONSTITUTED UNDER THE KERALA CONSERVATION OF PADDY AND
WETLAND ACT, REPRESENTED BY ITS CONVENOR,
PALAKKAD, PALAKKAD DISTRICT. PIN - 678 001.**
- 5. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM, PIN - 695 001.**

R1 BY ADVS. SRI.T.C.SURESH MENON

SRI.P.S.APPU

SRI.A.R.NIMOD

R2 TO R5 BY SR.GOVERNMENT PLEADER SMT.K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 35500 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P-1: A TRUE COPY OF THE POSSESSION CERTIFICATE
 DATED SEPTEMBER 17, 2015 ISSUED BY THE VILLAGE OFFICER,
 PALAKKAD - 1 VILLAGE IN NAME OF THE PETITIONER.**
- EXT.P-2: A TRUE COPY OF THE ORDER DATED NOVEMBER 11, 2015 ISSUED
 BY THE 1ST RESPONDENT.**
- EXT.P-3: A TRUE COPY OF THE JUDGEMENT REPORTED IN 2011 (3) KHC
 162 (DB) OF THIS HON'BLE COURT.**
- EXT.P-4: A TRUE COPY OF THE JUDGEMENT DATED 18.11.2011 IN
 W.P.(C).NO.27778/2011.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

K. HARILAL, J.

W.P. (C) No. 35500 of 2015-J

Dated this the 3rd day of December, 2015

JUDGMENT

The petitioner is the owner in possession of the land having an extent of 0.0386 Hectares in Palakkad-1 Village in Palakkad Taluk by virtue of Ext.P1. According to the petitioner, the said land is situated inside a residential colony and is surrounded by residential and commercial buildings. Hence the petitioner also decided to construct a residential building in the said plot and applied for a building permit. But the 1st respondent rejected the said application, by Ext.P2, stating that according to the Master Plan and the data bank, the survey number in which the said land is comprised of, is described as 'paddy land' and thereby' permission cannot be

granted for the construction of the residential apartment.

2. The learned Standing Counsel for the 1st respondent Municipality submits that the permission was denied mainly on the reason that the land is included in the data bank. The impugned order does not show that the competent officer of the Municipality has visited the plot so as to ascertain the actual lie of the land. Merely on the reason that the property is included in the data bank, without considering the ground realities, which would show the actual lie of the land, the permission cannot be denied mechanically without application of mind. Going by the Kerala Conservation of Paddy Land and Wetland Act, 2008 (for short 'the Act'), there is a bar against the grant of building permit under Sec.14 of the Act, if the property has been converted after the commencement of the Act. Needless to say, on the other hand, building permit can be granted. So,

it was incumbent upon the Municipality to get satisfied that the property has been reclaimed after the commencement of the Act for refusing the grant of building permit.

3. This Court has considered the question whether building permit can be denied on the mere reason that the property has been included in the data bank, in the decision reported in *Shahanaz Shukkoor v. Chelannur Grama Panchayat* [2009 (3) KLT 899] held as follows:

“The Kerala Conservation of Paddy Land and Wetland Act, 2008, deals with the conversion of lands which are wetland or paddy fields, on the basis of actual fact situation and not depending on the description of the property in the revenue records. The definition of the terms 'paddy field' and 'wetland' in the said Act is sufficient material to hold that the said statute operates on the basis of the facts as they exist on ground realities and not on any quality

or type of land, depending on its description in the title document”.

4. In *Praveen v. Land Revenue Commissioner* [2010 (2) KLT 617 (DB)], this Court held that mere description of the property in the revenue records by itself may not be conclusive and may not estop a party from producing materials to show otherwise.

In view of the above decisions, I am of the opinion that the building permit can be denied only after making a local site inspection of the property and got satisfied of the fact that the land has been converted after the commence of the said Act.

5. In the above view of the matter, Ext.P2 will stand set aside and the 1st respondent Municipality is directed to conduct a site inspection so as to ascertain whether the property has been reclaimed after the commencement of the Act, within a period of one month from the date of receipt of a copy of this judgment and thereafter, pass an order afresh

on the basis of the report to be filed,
after the inspection, within a period of next one
month.

This writ petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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//true copy//

P.S. to Judge