

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WP(C).No. 3329 of 2015 (M)

PETITIONER :

- 1. P.M.RAJAN, AGED 73 YEARS,
BEENA MANZIL, VAIKOM P. O., KOTTAYAM DIST**
- 2. MR. MOHAMMED
RAZHEED MANZIL, VAIKOM P. O., KOTTAYAM DIST**

**BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.ADARSH KUMAR**

RESPONDENTS :

- 1. VAIKOM MUNICIPALITY
REP BY ITS SECRETARY, VAIKOM, KOTTAYAM DIST**
- 2. THE SECRETARY
VAIKOM, MUNICIPALITY, VAIKOM
KOTTAYAM DIST**

**BY ADV. SRI.GEORGE KARITHANAM VARGHESE
BY ADV. SRI.C.I.ABRAHAM
BY ADV. SRI.JOSE KURIAKOSE (VILANGATTIL)**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

P1:- TRUE COPY OF THE RECEIPT ISSUED BY THE RESPONDENT TO THE 1ST PETITIONER DTD 19/6/2013.

P1(A):- TRUE COPY OF THE RECEIPT ISSUED BY THE RESPONDENT TO THE 2ND PETITIONER DTD 19/6/2013.

P2:- TRUE COPY OF THE ORDER ISSUED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT DTD 24/6/2014.

P2(A):- TRUE COPY OF THE ORDER ISSUED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT DTD 24/6/2014.

P3:- TRUE COPY OF THE ORDER ISSUED BY THE RESPONDENT TO THE 1ST PETITIONER DTD 19/9/2014.

P3(A):- TRUE COPY OF THE ORDER ISSUED BY THE RESPONDENT TO THE 2ND PETITIONER DTD 19/9/2014

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 3329 of 2015

Dated this the 8th day of July, 2015

J U D G M E N T

Exts.P3 & P3(a) orders, by which the petitioners' applications for building permit were rejected, are under challenge.

2. The 1st petitioner and the 2nd petitioner are the owners in possession of an extent of 6 cents of land each comprised in Sy.Nos.157/5E/2 and 157/5a respectively of Naduvila Village within the local limits of the respondent municipality. They submitted applications seeking permit for constructing a residential building, which were rejected by the respondent municipality. They challenged the orders of rejection before the Tribunal for Local Self Government Institutions; and the Tribunal allowed the appeals and quashed the rejection orders and directed the 2nd respondent to conduct a site inspection and to prepare a report and thereafter, to consider the

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applications for building permit in accordance with law. However, though the respondents reconsidered the matter, the applications are again rejected stating that the properties are agricultural low lying land and that the properties on the south and north sides of the petitioners' are 'nilam nikarth' and that there are no trees on the properties. The petitioners point out that the direction of the tribunal was to ascertain the nature of the land and to consider the applications on the basis of the nature of the land at present; and this Court, in several judgments, clarified that the present nature of the land should be considered at the time of considering the application for building permit and not the description of the property in records. They further point out that the 2nd respondent has not stated anything about the present nature of the land. Therefore, according to the petitioners, the 2nd respondent merely rejected the applications without applying mind without stating any reason. Hence, this writ petition.

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3. Arguments have been heard.

4. 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.

5. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjal 5th Ward Nellupadaka 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.

6. 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

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aforesaid legal positions settled by this Court escaped the attention of the authorities while rejecting the petitioners' applications.

7. The learned counsel for the petitioners 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. Exts.P3 P3 (a) are quashed.

The respondent municipality is directed to conduct a

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local inspection of the property regarding the present lie as well as the condition of the property of the petitioners and surrounding properties. The respondents are also directed to reconsider the applications and pass positive orders granting building permit after affording the petitioners an opportunity of being heard if the respondents are satisfied that the lands 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

bka/-