

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. 4351 of 2015 (T)

PETITIONER(S) :

ALAVIKUTTY,
AGED 43 YEARS, S/O.BEERAN HAJI,
20/60, UROTHODI HOUSE,
MINARVA PADI, NILAMBUR, MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU.

RESPONDENT(S) :

1. THE NILAMBUR MUNICIPALITY,
REPRESENTED BY THE SECRETARY, NILAMBUR,
MALAPPURAM DISTRICT, PIN - 679 329.
2. THE SECRETARY,
THE NILAMBUR MUNICIPALITY, NILAMBUR,
MALAPPURAM DISTRICT, PIN - 679 329.

R1,R2 BY ADV. SRI.BABU CHERUKARA &
R1,R2 BY ADV. SRI.PRAMOD KUMAR.

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

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT.P1: TRUE COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER BY THE
2ND RESPONDENT DATED 18/12/2014.

EXT.P1(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P1.

EXT.P2: TRUE COPIES OF THE PHOTOGRAPHS OF THE PROPERTIES OF THE
PETITIONER AND THE ADJACENT BUILDINGS.

RESPONDENT(S) ' EXHIBITS :

EXT.R1(A): TRUE COPY OF THE CIRCULAR ISSUED BY THE PRINCIPAL SECRETARY TO
LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM BEARING
NO.59655/R.A 1/08/LSGD DATED 23/09/2008.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.4351 of 2015

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Dated this the 29th day of July, 2015

JUDGMENT

Ext.P1 by which the petitioner's application for building permit was rejected is under challenge in this writ petition.

2. The petitioner, who owns properties in R.S No.54/2 of respondent municipality, submitted an application for building permit for constructing a commercial building which was rejected by the second respondent by Ext.P1 communication stating that since the properties are described as nilam in the DTP Scheme, the application cannot be granted. The possession certificate produced along with the application shows the nature of the properties to be nilam and, therefore, it was informed that the petitioner cannot construct any building.

3. In the counter affidavit filed by the second respondent, they would contend that the the petitioner has submitted an application for a permit to construct a commercial building having a plinth area of 103.26 M2. They further contend that the application could not be allowed since the building which was proposed to be constructed is in a reclaimed land. According to the respondent, in a

reclaimed land construction can be allowed for an area of only upto 300 M2 as per Ext.R1(a) Circular issued by the Principal Secretary to Local Self Government Department, Thiruvananthapuram. They would further contend that in the possession certificate issued by the village officer, the property is described as "Thanneer thadam".

4. Arguments have been heard.

5. The learned counsel for the petitioner, inviting my attention to Ext.P3 photographs, submitted that buildings were constructed in the adjacent properties. Ext.P3 photos show the present nature petitioner's property and the neighbouring houses. The respondents failed to note that they have already allowed the persons who are residing near petitioner's property to construct buildings, but the petitioner was arbitrarily prevented from constructing a building.

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. As per Ext.P3, it can be seen that the property is not a paddy land and it is having full of aged trees. That itself would show

that Ext.P1 is not a cultivating paddy field. It is settled position that the applicant can choose the best land suited for construction of his house [**Sunil v. Killimangalam-Panjai 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 position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

9. 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. Ext.P1 is quashed. 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 re-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 one month from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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