

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 5672 of 2015 (H)

PETITIONER(S):

- 1. SREE HARI K.S., AGED 34 YEARS
S/O.SREEDHARAN K, RESIDING AT KOLATHEKKATTU HOUSE
P.O.KANIMANGALAM
PIN - 680 027, THRISSUR TALUK AND DISTRICT.**
- 2. ANJANA SREE HARI, AGED 28 YEARS
W/O.SREE HARI, RESIDING AT KOLATHEKKATTU HOUSE
P.O.KANIMANGALAM
PIN - 680 027, THRISSUR TALUK AND DISTRICT.**

BY ADV. SMT.P.KPRIYA

RESPONDENT(S):

- 1. THE CORPORATION OF THRISSUR
REPRESENTED BY ITS SECRETARY - 680 001.**
- 2. ASSISTANT ENGINEER
DEPARTMENT OF TOWN PLANNING
THRISSUR CORPORATION - 680 001.**

**BY ADVS. SRI.K.P.VIJAYAN, SC
SRI.V.N.HARIDAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1:** THE TRUE COPY OF THE SALE DEED NO.1319/2013 DATED 15.3.2013,
OF S.R.O. THRISSUR.
- EXT.P-2:** THE TRUE COPY OF THE REVENUE TAX RECEIPT DATED 15.10.2014
- EXT.P-2(A):** THE TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P2.
- EXT.P-3:** THE TRUE COPY OF THE PHOTO SHOWING OF THE PRESENT NATURE
OF THE LAND OF THE PETITIONERS AND THE NEIGHBOURING
HOUSES.
- EXT.P-4:** THE TRUE COPY OF THE INFORMATION SEND BY THE 2ND
RESPONDENT TO THE PETITIONER DATED 6.2.2015
- EXT.P-4(A):** THE TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P4.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 5672 of 2015

Dated this the 19th day of March, 2015

J U D G M E N T

Ext.P4, by which the petitioners' application for building permit was rejected, is under challenge in this writ petition.

2. The petitioners are the joint owners of a property as per Ext.P1 sale deed of SRO, Thrissur, within the limits of the respondent corporation. The petitioners submitted an application for building permit, which was rejected by the 2nd respondent as per Ext.P4 on the ground that the land is classified as paddy field as per revenue records. The petitioners allege that Ext.P4 is issued without considering the present physical nature of the property. The petitioners produced Ext.P3 photograph showing the nature of land. The petitioners further point out that the neighbouring plots are filled by the owners concerned and residential buildings were build by them. Cultivation of paddy in the property of the petitioners has not been carried on since

..2..

several years and the property is unfit for paddy cultivation. Therefore, according to the petitioners, Ext.P4 is per se illegal, arbitrary and unsustainable in law.

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-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.

6. In **Jalaja Dileep v Revenue Divisional Officer** (2012(3) KLT 333), this Court observed that the description

..3..

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 petitioners' application.

Therefore, this writ petition is allowed. Ext.P4 is quashed.

The respondent corporation is directed to conduct a 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 consider the application and pass positive orders granting building permit after affording the petitioners 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

bka/-