

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 7031 of 2015 (D)

PETITIONER(S) :

1. MUNAVAR,
S/O.MUHAMMED HAJI, ANIKKADAN HOUSE,
VALAMKUZHAL P.O.,
PERINTHALMANNA, MALAPPURAM DISTRICT.
2. ILLIAS,
S/O.MUHAMMED HAJI, ANIKKADAN HOUSE,
VALAMKUZHAL P.O.,
PERINTHALMANNA, MALAPPURAM DISTRICT.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA.

RESPONDENT(S) :

PERINTHALMANNA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MALAPPURAM DISTRICT-679 357.

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1 TRUE COPY OF THE ORDER PASSED BY THE R.D.O NO K.DIS
2650/2003/D DATED 30-04-2003.

EXHIBIT P2 TRUE COPY OF THE RODER PASSED BY THE R.D.O NO K.DIS
2651/2003/D DATED 30-04-2003.

EXHIBIT P3 TRUE COPY OF THE CERTIFICATE NO 897/2015 ISSUED BY THE
VILLAGE OFFICER DATED 16-02-2015.

EXHIBIT P4 TRUE COPY OF THE POSSESSION CERTIFICATE NO 1085/2014
DATED 10-02-2014.

EXHIBIT P5 TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT
SUBMITTED BY THE PETITIONERS DATED 13-2-2014.

EXHIBIT P6 TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT DATED
16-04-2014.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 7031 of 2015

Dated this the 27th day of May, 2015

J U D G M E N T

Ext.P6 order, by which the petitioners' application for building permit was rejected, is under challenge in this writ petition.

2. The petitioners are in possession and enjoyment of 23.50 cents comprised in Sy.Nos.72/3/, 32/3 and 68 within the local limits of the respondent Municipality. The petitioners submitted Ext.P5 application for building permit, which was rejected by the respondent as per Ext.P6 order stating that as per Sec.14 of the Kerala Conservation of Paddy Land and Wet Land Act, 2008, no permission could be granted for constructing a residential house in the property, which is classified as 'nanja II'. The petitioners allege that they have purchased the said land from the persons, who obtained Exts.P1 and P2 orders under the Keralal Land Utilization Order for effecting conversion of land in the year 2004. The petitioners have also produced

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Ext.P3, which would show that there are constructions in the neighbouring land. Therefore, according to the petitioners, Ext.P6 is beyond jurisdiction, illegal and liable to be quashed.

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-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.

6. In **Jalaja Dileep v Revenue Divisional Officer**

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(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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioners' application.

Therefore, this writ petition is allowed. Ext.P6 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 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/-