

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C) .No. 9330 of 2015 (M)

PETITIONER(S) :

1. UMMER K. ,
AGED 60 YEARS, S/O.MUHAMMED,
KONARI HOUSE, CHANDAKUNNU, NILAMBUR,
MALAPPURAM DISTRICT.
2. RIYAS K. ,
S/O.UMMER, KONARI HOUSE,
CHANDAKUNNU, 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.

BY ADV. SRI.BABU CHERUKARA &
BY ADV. SRI.PRAMOD KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-06-2015, 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 4.3.2015.

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.

EXT.P3- TRUE COPY OF THE JUDGMENT DATED 24.9.2014 IN WP(C)
NO.24767/2014 OF THIS HON'BLE COURT.

EXT.P4- TRUE COPY OF THE ORDER OF EXEMPTION GRANTED BY THE RDO,
PERINTHALMANNA DATED 31.8.2005.

EXT.P4 (A)- TRUE ENGLISH TRANSLATION OF EXHIBIT P4.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.9330 of 2015

Dated this the 18th day of June, 2015.

JUDGMENT

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

2. The petitioners wanted to construct a building for which, they had made an application for building permit to the respondents. The petitioners allege that the second respondent by Ext.P1 communication informed the petitioners that since the properties are described as nilam in the revenue records, their application for building permit cannot be considered. The petitioners further allege that their properties have never been used for paddy cultivation, though the description of the properties are mentioned to be nilam in the revenue records. The properties have been remaining as dry land for the last several decades and the property is barred in three sides by plots having buildings. The property is by the side of a public road. The adjoining residential buildings are constructed in the

properties comprised in the same survey number, after getting permission from the municipality. The petitioners produced Ext.P2 photographs showing the nature of land. Therefore, according to the petitioners, Ext.P1 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**

(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.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 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

Scl.