

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 14014 of 2015 (B)

PETITIONER(S):

- 1. GANGADHARAN.V.S., AGED 78 YEARS,
S/O. SANKARAN, VALLATH HOUSE,
P.O. THALORE, THRISSUR-680 306.**
- 2. JAYAPAL V.G., AGED 43 YEARS,
S/O GANGADHARAN, VALLATH HOUSE,
P.O. THALORE, THRISSUR-680 306.**
- 3. RADHA C.K., AGED 71 YEARS,
W/O. GANGADHARAN, VALLATH HOUSE,
P.O. THALORE, THRISSUR-680 306.**

**BY ADVS.SRI.MILLU DANDAPANI,
SMT ANNA THOMAS.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. NENMANIKKARA GRAMA PANCHAYAT,
PALIYEKKARA, CHITTISSERY P.O.,
THRISSUR DISTRICT-680 301,
REPRESENTED BY ITS SECRETARY.**
- 3. SECRETARY,
NENMANIKKARA GRAMA PANCHAYAT, PALIYEKKARA,
CHITTISSERY P.O., THRISSUR DISTRICT-680 301.**
- 4. LOCAL LEVEL MONITORING COMMITTEE,
REPRESENTED BY CONVENOR, AGRICULTURAL OFFICE,
KRISHIBHAVAN, NENMANIKKARA, THRISSUR-680 301.**

**R1 & R4 BY GOVT. PLEADER SRI.T.R. RAJESH.
R2 & R3 BY ADVS. SRI.C.HARIKUMAR,
SMT.C.B.ANUROOPA.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1: TRUE COPY OF THE APPLICATION FOR BUILDING PERMIT
SUBMITTED BY THE PETITIONER ON 24.04.2015.
- EXHIBIT P2: TRUE COPY OF THE RECEIPT OF REMITTANCE OF APPLICATION FEE
OF EXT.P1.
- EXHIBIT P3: TRUE COPY OF THE TAX RECEIPT DATED 10.04.2015 FOR
PROPERTIES IN SY.NO.517/4.
- EXHIBIT P3(A): TRUE COPY OF THE TAX RECEIPT DATED 10.04.2015 FOR
PROPERTIES IN SY.NO.518.
- EXHIBIT P4: PHOTOGRAPHS OF THE PROPERTY.
- EXHIBIT P5: TRUE COPY OF THE RELEVANT EXTRACT OF THE DRAFT DATA BANK.
- EXHIBIT P6: TRUE COPY OF THE ORDER DATED 27.04.2015 ISSUED BY
THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 14014 of 2015

Dated this the 10th day of June, 2015

J U D G M E N T

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

2. The petitioners are the owners in possession of 150.66 cents of property comprised in Re.Sy.Nos.517/4 & 518 of Mukundapuram Taluk within the local limits of the respondent panchayath. The petitioners submitted an application for building permit, which was rejected by the 3rd respondent as per Ext.P6 stating that construction activities shall not be undertaken in properties classified as 'nilam' as per the provisions of Sections 3, 11 and 14 of the Kerala Conservation of Paddy Land and Wet Land Act, 2008. According to the petitioners, the property was reclaimed as garden land more than two decades ago. They point out that the description of the property in revenue records is not relevant for the purpose of Conservation of the Paddy Land and Wet Land Act, 2008. Aggrieved by Ext.P6 rejection order, the petitioners have come up before this Court.

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3. Arguments have been heard.

4. The learned counsel for the petitioners, inviting my attention to Ext.P5, which is the relevant extract of the draft data bank, would submit that even as per the draft data bank prepared by the 4th respondent, the property of the petitioners is described as 'garden land'.

5. 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.

6. 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.

7. 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 panchayath 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 one month from today.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-