

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 14781 of 2015 (W)

PETITIONERS :

- 1. SELI MUHIYUDIN, AGED 26 YEARS,
S/O. MUTHIYUDIN, HAFIL HOUSE, PANAIKULAM,
ALANGAD VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT**
- 2. M.K MUHAMMED, AGED 53 YEARS,
S/O. KOCHU METHIAN, MATHASSERI HOUSE, MAMANGALAM,
ERNAKULAM DISTRICT NOW RESIDING AT MEERA MAHAL,
MCB ROAD, KALOOR**

**BY ADVS.SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE**

RESPONDENTS :

- 1. THE STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM**
- 2. THE ADDITIONAL TAHSILDAR,
NORTH PARAVUR TALUK OFFICE, 'PARAVUR
ERNAKULAM DISTRICT**
- 3. THE ALANGAD GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE ALANGAD GRAMA PANCHAYAT,
NEERIKODE, ALANGAD, ERNAKULAM DISTRICT**
- 4. THE SECRETARY,
OFFICE OF THE ALANGAD GRAMA PANCHAYAT, NEERIKOD,
ALANGAD, ERNAKULAM DISTRICT.**

**R1 & R2 BY GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA
R3 & R4 BY ADV. SRI.DINESH MATHEW J.MURICKEN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE PHOTOCOPY OF SALE DEED NO 5311/2002 OF SRO,ALANGAD
DATED 20-11-2002
- P2: TRUE PHOTOCOPY OF SALE DEED NO 2513/2002 OF SRO,ALANGAD
DATED 13-05-2002
- P3: TRUE PHOTOCOPY OF BUILDING PERMIT APPLICATION DATED 24-04-2015.
- P4: TRUE PHOTOCOPY OF LETTER DATED 29-04-2015 ISSUED BY THE 4TH
RESPONDENT.
- P5: TRUE PHOTOCOPY OF BASIC TAX RECEIPT DATED 21-04-2015 IN RESPECT
OF THE PROPERTY OF THE PETITIONER.
- P6: TRUE PHOTOCOPY OF BASIC TAX RECEIPT DATED 21-04-2015 IN RESPECT
OF THE PROPERTY OF THE 2ND PETITIONER.
- P7: TRUE PHOTOCOPY OF LETTER DATED 27-06-2013 ISSUED BY THE 2ND
RESPONDENT.
- P8: TRUE PHOTOCOPY OF LETTER ISSUED BY THE 2ND RESPONDENT.
- P9: PHOTOGRAPHS THREE IN NUMBERS SHOWING THE NATURE OF LAND OF
THE PETITIONERS PROPERTY

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.14781 of 2015

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Dated this the 2nd day of June, 2015

JUDGMENT

Ext.P4 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 the property purchased as per Exts.P1 and P2 and they are paying basic tax as per Exts.P5 and P6. They submitted Ext.P3 application for building permit before the respondents which was rejected by Ext.P4 letter by the 4th respondent for the reason that in the Basic Tax Register, the land is mentioned as 'nilam'. The petitioners point out that without conducting a physical inspection, the application for building permit was rejected by the 4th respondent. They further allege that though the property is shown as 'nilam' in the revenue records, the property is a dry land for the last more than 20 years.

3. Arguments have been heard.

4. The learned counsel for the petitioners invited my attention to Ext.P9 photographs which would show the present nature and appearance of the petitioners' property and the neighbouring

houses. It is evident from Exts.P1 and P2 sale deeds that even in the year 2002, the petitioners' property was dry land from where the earth was removed for making bricks and the property was not at all 'nilam'.

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. As per Ext.P9, 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 the petitioners' property 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. Therefore, this writ petition is allowed. Ext.P4 is quashed.

The respondent panchayat 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 property. The respondents are also directed to re-consider Ext.P3 application and pass appropriate orders, after affording the petitioners an opportunity of being heard. 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

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