

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 16123 of 2015 (M)

PETITIONER(S):

- 1. KOCHAMMINI, W/O.LONA, AGED 75 YEARS,
KOMBAN HOUSE, SANTHA NIVAS,
GURUVAYOOR, THRISSUR DISTRICT.**
- 2. K.L. JOSE @ KOMBAN JOSE, S/O.LONA,
AGED 55 YEARS, MIDHILAPURI, RAMANATHAPURAM,
PUTHUR, PALAKKAD DISTRICT.**
- 3. PAUL, S/O.LONA, AGED 52 YEARS,
KOMBAN HOUSE, GURUVAYOOR,
THRISSUR DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR,
SMT.SMITHA BABU.**

RESPONDENT(S):

- 1. THE GURUVAYOOR MUNICIPALITY,
REPRESENTED BY THE SECRETARY, GURUVAYOOR,
THRISSUR DISTRICT, PIN- 680 101.**
- 2. THE SECRETARY,
GURUVAYOOR MUNICIPALITY, GURUVAYOOR,
THRISSUR DISTRICT, PIN- 680 101.**

BY ADV. SRI.P.A.AHAMMED, SC.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: TRUE COPY OF THE COMMUNICATION ISSUED BY THE
SECOND RESPONDENT AS NO.BA.105/14-15 DATED 02.02.2015.
- P2: TRUE COPIES OF THE BUILDING TAX RECEIPTS DATED 16.07.2014
ISSUED BY THE 2ND RESPONDENT FOR THE PAYMENT OF BUILDING TAX
IN THE EXISTING BUILDING OF THE PROPERTIES.
- P3: TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER,
GURUVAYOOR VILLAGE, DATED 07.03.2015.
- P4: TRUE COPY OF THE PHOTOGRAPHS OF THE PROPERTIES AND THE
EXISTING RESIDENTIAL BUILDING IN THE PROPERTIES.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.16123 of 2015

Dated this the 16th day of June, 2015

JUDGMENT

Ext.P1 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioners are the joint owners in possession of the property comprised in Sy.Nos.120/1A and 34/4 of the Guruvayoor Village. The petitioners submitted an application for building permit before the respondents which was rejected by Ext.P1 on the ground that in the properties, a thodu was marked and on the further reason that under the Master Plan, the properties are shown as paddy land.

3. Arguments have been heard.

4. The learned counsel for the petitioners, inviting my attention to Ext.P4 and P4(2) photographs, submitted that the properties of the petitioners are pucca dry lands and the properties are surrounded by several other residential as well as commercial buildings.

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 can be seen from Exts.P4 and P4(2) photographs that the properties are not paddy lands. It is settled position that the applicants can choose the best land suited for construction (***Sunil v Killimangalam-Panjal 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*** (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 petitioners' application. Therefore, this writ petition is allowed. Ext.P1 is quashed.

The respondent Municipality is directed to conduct a local inspection of the properties regarding the present lie as well as the condition of the properties of the petitioners and surrounding properties. The respondents are also directed to re-consider the application and to grant permit if the respondents are satisfied that the properties are not cultivable at present. The petitioners shall be given 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

CSS/

true copy

P.S.TO JUDGE