

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No.17195 of 2015 (y)

PETITIONER:

**SUNIL LAL,AGED 52 YEARS,S/O.SANKU,KAVALLUR HOUSE,
EDATHIRINJI VILLAGE & DESOM,MUKUNDHAPURAM TALUK,
THRISSUR DISTRICT,REPRESENTED BY HIS WIFE/
POWER OF ATTORNEY HOLDER MRS.ANITHA SUNIL LAL,
AGED 45 YEARS,W/O.SUNIL LAL,KAVALLUR HOUSE,
EDATHIRINJI VILLAGE & DESOM,
MUKUNDHAPURAM TALUK,THRISSUR DISTRICT.**

BY ADV.SRI.RAJESH CHAKYAT

RESPONDENT'S:

- 1. THE IRINJALAKUDA MUNICIPALITY,
MUNICIPAL OFFICE,IRINJALAKUDA,THRISSUR DISTRICT,
PIN-680 121,REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,IRINJALAKUDA MUNICIPALITY,
MUNICIPAL OFFICE,IRINJALAKUDA,
THRISSUR DISTRICT,PIN-680 121.**

**BY SRI.K.K.CHANDRAN PILLAI (SENIOR S.C)
ADV.SRI.ARUN ANTONY.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.17195 of 2015 (y)

APPENDIX

PETITIONER'S EXHIBITS:

- P1: A TRUE COPY OF THE BASICS TAX RECEIPT DATED 16-5-2015.
- P2: TRUE COPIES OF SOME OF THE PHOTOGRAPH OF THE NEIGHBORING BUILDINGS AND PETITIONERS PROPERTY.
- P3: A TRUE COPY OF THE COMMUNICATION ISSUED BY THE RESPONDENT MUNICIPALITY DATED 29-5-2015.
- P4: A TRUE COPY OF THE JUDGMENT IN WPC.NO.13529/2014 DATED 7-7-2014.
- P5: A TRUE COPY OF THE JUDGMENT IN WPC.NO.25575/2013 DATED 13-11-2013.
- P6: A TRUE COPY OF THE RELEVANT PAGES OF THE DATA BANK OF PROPERTIES IN SURVEY NO.325 OF IRINJALAKUDA VILLAGE.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.17195 of 2015

Dated this the 30th day of June, 2015.

JUDGMENT

Ext.P3 order, by which the petitioner's application for building permit was rejected, is under challenge in this writ petition.

2. The petitioner purchased two items of property in Sy.No.325 of Irinjalakuda Village. The petitioner alleges that both these properties together are having an extent of 5.21 Ares and the present physical statues of the land is garden land. Since the area is so developed and full of residential and commercial buildings, have come in the area the petitioner decided to build a commercial building and submitted a building permit application before the respondent municipality. However, without considering the present condition of the land, the respondent rejected the application and communicated the fact to the petitioner as Ext.P3.

3. I have heard the learned counsel for the petitioner

and the learned Standing Counsel for the respondent municipality.

4. The learned counsel for the petitioner inviting my attention to additional Exhibit (Ext.P6) filed along with I.A.No.8960 of 2015, would submit that the petitioner's property is comprised in Sy.No.325 of Irinjalakuda Village and it is evident from Ext.P6 which is the copy of the data bank that the property comprised in survey number is a reclaimed land.

5. The learned Standing Counsel for the respondent municipality per contra would submit that the petitioner's property is not included in Ext.P6.

6. The learned counsel for the petitioner invited my attention to Ext.P2 photographs of the petitioner's property and Exts.P4 and P5 judgments which would indicate that at present the property of the petitioner is not fit for any paddy cultivation.

7. 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.

8. It is settled position that the applicant can choose the best land suited for construction of his house (**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.

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 positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

Therefore, this writ petition is allowed. Ext.P3 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 petitioner and surrounding properties. The respondents are also directed to consider the application and pass positive orders granting building permit after affording the petitioner 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.