

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 17478 of 2015 (H)

PETITIONERS:

1. LEENA P,
CHEEROTH HOUSE, KODIMATHA PO, KOTTAYAM DISTRICT
2. RAHUL T.R
THOTTIYIL HOUSE, CHOONDAKUNNU PO, ERUVECHY
KANNUR DISTRICT.
3. SURESH KUMAR T.R
THOTTIYIL HOUSE, NEDATHOM PO
TALIPARAMBA, KANNUR DISTRICT.
4. K.V.HARIDAS
RAJABHAVANAM, PARAMPUZHA PO, KOTTAYAM,
KOTTAYAM DISTRICT.
5. VANI KRISHNAN
VIJAYA SADANAM, M.L.ROAD, KOTTAYAM, KOTTAYAM DISTRICT
6. GEETHA V.R,
314, 5TH CROSS, 5TH MAIN 7TH SECTOR
HSR LAYOUT, BANGLORE, KARNATAKA STATE.
7. SYARI
KUNCHIRAKKATTIL, KIDNGOOR PO
KOTTAYAM, KOTTAYAM DISTRICT.
8. CHITRA V NAIR
THAZHUNALLILIL, THIRUVANCHOOR PO, KOTTAYAM DISTRICT
9. GIJY JOY
BHAGAVATHYKUNNEL, ANAKKARA PO, IDUKKI DISTRICT
10. PRADEESH M.V,
MAZHUVANCHERIYIL HOUSE, CHOONDAKUNNU PO, ERUVECHY
KANNUR DISTRICT

BY ADVS.M/S.SRI.N.RAGHURAJ
SRI.BIJU SUKUMARAN
SMT.K.AMMINIKUTTY

RESPONDENTS:

1. THE VIJAYAPURAM GRAMA PANCHAYATH,VADAVATHOOR P.O,
KOTTAYAM 686 010, REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY, VIJAYAPURAM GRAMA PANCHAYAT,
VADAVATHOOR .P.O, KOTTAYAM 686 010.

R1&2 BY ADV. SRI.JOSE PALLATTUKARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 TRUE PHOTOCOPY OF THE LOCATION SKETCH OF THE PROPERTIES

EXT.P2 TRUE PHOTOCOPY OF THE APPLICATION DATED 30/1/15 SUBMITTED BY
THE PETITIONERS

EXT.P3 TRUE PHOTOGRAPHS OF THE PROPERTIES COVERED BY EXT.P1 SKETCH.

EXT.P4 TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONERS TO THE
2ND RESPONDENT

EXT.P5 TRUE PHOTOCOPY OF THE ORDER BEARING NO A2-933/15 DATED 26/2/15

EXT.P6 TRUE PHOTOCOPY OF THE JUDGMENT DATED 25/7/14 IN WPC NO
16573/14 (V)

RESPONDENT(S) ' EXHIBITS

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.17478 of 2015

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Dated this the 22nd day of July, 2015

JUDGMENT

Ext.P5 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioners are the owners in possession of 41.60 ares of land. They preferred an application for plot division permit (layout approval) before the second respondent to develop the property into plots for constructing residential villas/houses. This rejected by the second respondent for the reason that the property in question is described as paddy land in the revenue records and, therefore, no such permit can be granted in view of the provisions of Section 14 of the Kerala Conservation of Paddy Land and Wetland Act, 2008. It is with this background, the petitioners have approached this Court.

3. Though notice has been served on the respondents, they did not turn up.

4. Arguments have been heard.

5. The learned counsel for the petitioners, inviting my attention to Ext.P3 photographs, submitted that residential buildings were constructed in the nearby properties. Ext.P3 photos show the present nature of the land of the petitioners and the neighbouring properties. 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 to construct a house.

6. As per Ext.P3, it can be seen that the property is not a paddy land and it is having aged trees. That itself would show that the 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-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.

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 petitioner's application.

8. The learned counsel for the petitioners invited my attention also to the decision of this Court in **Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others** [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

Therefore, this writ petition is allowed. Ext.P5 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 properties. The respondent panchayat is also directed to re-

consider the petitioners' application and to grant permission if they are satisfied that the property is not cultivable at present. The petitioners shall be given an opportunity of being heard. This shall be done within a one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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