

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 18254 of 2015 (F)

PETITIONER :

- 1. ABDUL SALEEM, AGED 42 YEARS,
S/O.CHEKKUTTY HAJI, POOVILPETTY HOUSE,
MULLANPARA, MANJERI**
- 2. SAJITH, AGED 44 YEARS,
S/O.PARAPPAN ALAVI, SAJI NIVAS,
P. O. KARAKKUNNU, VIA MANJERI**

BY ADV. SRI.K.R.RANJITH

RESPONDENTS :

- 1. MANJERI MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
MANJERI - 676121, MALAPPURAM DISTRICT**
- 2. SECRETARY, MANJERI,
MUNICIPALITY, MANJERI 676121**

BY SRI.K.SHIBILI NAHA, SC,

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE TAX RECEIPT ISSUED BY VILLAGE OFFICER
DTD 14/8/2014
- P2:- A TRUE COPY OF THE SITE PLAN.
- P3:- TRUE COPY OF PHOTOGRAPHS DEPICTING THE LIE AND NATURE OF THE
PROPERTY.
- P4:- NOTICE ISSUED BY THE 2ND RESPONDENT.
- P5:- EXTRACT OF THE FARE VALUE CERTIFICATE

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.18254 of 2015

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Dated this the 9th day of July, 2015

JUDGMENT

Ext.P4 rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioners are the co-owners of the property having an extent of 10 cents comprised in R.S No.52-35/2 (old Sy. No.48/1B) of respondent municipality. The petitioners have applied for building permit along with plan before the respondents which was rejected by Ext.P4 on the ground that the nature of the land in question is described as paddy field in the revenue records. It was further stated that the area comes under the mixed zone of Thurackal DTP Scheme.

3. Though the respondent municipality has entered appearance, no counter affidavit has been filed.

4. Arguments have been heard.

5. The learned counsel for the petitioners inviting my attention to Ext.P3, submitted that the property of the petitioners is neither a paddy land nor a wetland as defined under the Kerala

Conservation of Paddy Land and Wetland Act and the property is one which was reclaimed long before the commencement of the Act. It was further submitted that the revenue authorities have assessed the land and fixed a fair value of ₹9,88,000/- per are and categorised it as a residential zone as per Ext.P5. The learned counsel further submitted that buildings have come up in the adjacent properties. The genuineness of the said submission can be understood from Ext.P2 which is the copy of the site plan of the area where the petitioners proposed to construct the building in which the details of neighbouring houses are also shown. Ext.P4 photos show the present nature of the land of the petitioners and the neighbouring houses. The respondents failed to note that they have already allowed the persons who are residing near Ext.P1 property to construct buildings, but the petitioners were arbitrarily prevented from construction.

6. 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.

7. 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 51]. 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.

9. The other reason pointed out in Ext.P4 is that the property is included in mixed zone of Thurackal DTP Scheme. In this Connection, the learned counsel invited my attention to a Division Bench decision of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] wherein it was held that no building permit can be refused to any person because there is a proposal to acquire the land in future. Reliance was also placed on the decision of the Apex

Court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222] wherein it was held that refusing to grant permits relying on obsolete DTP schemes is a clear violation of the provisions of the Constitution.

10. The learned counsel for the petitioner 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.P4 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 petitioners and surrounding properties. The respondents are also directed to re-consider the

application and to grant building permit to the petitioners if the respondent is 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 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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