

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 19254 of 2015 (F)

PETITIONERS :

- 1. MURALIDHARAN, AGED 64 YEARS,
S/O.VELAYUDHAN, PEREMMAKATIL HOUSE, XV/374
IRINJALAKUDA.P.O, PIN-680121.**
- 2. MADHUSOODHANAN, AGED 55 YEARS,
S/O.SHEKHARAN, HOUSE NO.IV/349, NANDIKARA.P.O.,
PIN-680301.**
- 3. SUBHRAMANIYAN, AGED 41 YEARS,
S/O.RAMAN, HOUSE NO.V/502, NELLAI.P.O., PIN-680305.**
- 4. SIDDHARTHAN, AGED 62 YEARS,
S/O.VELAYUDHAN, XV/400, IRINJALAKUDA.P.O.,
PIN-680121.**

**BY ADVS.SRI.AGINOV MATHAPPAN
SMT.K.SHERIN MOHAN**

RESPONDENTS :

- 1. IRINJALAKUDA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
IRINJALAKUDA.P.O., PIN-680121.**
- 2. THE SECRETARY,
IRINJALAKUDA MUNICIPALITY,
IRINJALAKUDA.P.O., PIN-680121.**
- 3. THE REVENUE DIVISIONAL OFFICER,
IRINJALAKUDA.P.O., PIN-680125.**

**BY SRI.ARUN ANTONY
R2 BY GOVERNMENT PLEADER SMT. K.A. SANJEETHA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE SALE DEED NO.2965/14/I OF IRINJALAKUDA SRO
DATED 29.11.2013
- P2: TRUE COPY OF THE BASIC TAX RECEIPT DATED 20.01.2015 FOR THE
YEAR 2014-15
- P3: TRUE COPY OF THE POSSESSION CERTIFICATE NO.5106407, DATED
13.01.2014.
- P4: TRUE COPY OF THE PRIOR SALE DEED NO.653/1/97 DATED 6.3.1997 OF
IRINJALAKUDA,SRO.
- P5: TRUE COPY OF THE PRIOR SALE DEED NO.628/01/2006 DATED 22.02.2006
OF IRINJALAKUDA,SRO
- P6: TRUE COPY OF THE PRIOR SALE DEED NO.267/01/2008 DATED 20.01.2008 OF
IRINJALAKUDA,SRO.
- P7: TRUE COPY OF THE ORDER OF REJECTION ISSUED BY THE 2ND
RESPONDENT SECRETARY OF MUNICIPALITY IRINJALAKUDA
DATED 13.02.2015
- P8: THE PHOTOGRAPHS OF THE LAND(8 NOS.)
- P9: TRUE EXTRACT OF THE RELEVANT PAGE OF THE DATA BANK.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J

WPC No.19254 of 2015

Dated this the 3rd day of July, 2015

JUDGMENT

Ext.P7 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioners are the owners in possession of 11.71 Ares of land comprised in Sy.Nos.603/2 of Manavalasseri Village in Thrissur District vide Sale Deed No.2965/13/1 of Irinjalakkuda Sub Registry Office. The petitioners submitted an application for building permit before the respondents which was rejected by Ext.P7 on the ground that the land is classified as nilam as per revenue records.

3. Arguments have been heard.

4. The learned counsel for the petitioners, inviting my attention to Ext.P8 photographs, submitted that the property of the petitioners

remains as garden land surrounded by various residential and commercial buildings. The learned counsel for the petitioner also invited my attention to Ext.P9 which is the copy of the data bank and submitted that the petitioner's property comes under survey number 603. The petitioners purchased the property from one Nellissery Mini and one Chunkan Philomina whose names are noted in Ext.P9. However, the nature of the property is not made mention of in ExtP9. Though it was strenuously argued that the petitioners' property is classified as nilam, the evidence on record shows otherwise.

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 Ext.P8 photographs that the property is not a paddy land. 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.

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.P7 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 re-consider the application and pass orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation. 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