

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 19938 of 2015 (N)

PETITIONER(S):

- 1. G.K. KAMALA DEVI, AGED 77 YEARS,
D/O. PARVATHY PILLAI, RESIDING AT PRIYA, H-31,
AISHARYA GARDENS, PEROORKAD P.O., TRIVANDRUM- 695 003.**
- 2. H. VISWANATH, AGED 29 YEARS,
S/O HARI KUMAR, RESIDING AT LAKSHMI VIHAR,
KAVADIYAR P.O., TRIVANDRUM- 695 003.**

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT ANNEX, TRIVANDRUM - 695 001.**
- 2. TRIVANDRUM CORPORATION,
REPRESENTED BY ITS SECRETARY, TRIVANDRUM - 695 001.**

**R1 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R2 BY ADV. SRI.P.K.MANOJKUMAR, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 19938 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: THE TRUE PHOTOGRAPHS SHOWING THE LIE AND NATURE OF THE
PROPERTY.**

**EXT.P2 TRUE COPY OF THE CERTIFICATE NO. KBT 27/2014-15 DATED 7/4/2015
ISSUED BY THE AGRICULTURE OFFICER KRISHI BHAWAN TRIVANDRUM TO
THE PETITIONER.**

**EXT.P3: TRUE COPY FO THE ORDER NO. E10/BA/0167/15 DATED 15/6/2015 ISSUED BY
THE SECRETARY, TRIVANDRUM CORPORTATION ISSUED TO THE
PETITIONER**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms^v/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19938 of 2015

Dated this the 13th day of July, 2015

J U D G M E N T

The petitioners have come up before this Court aggrieved by Ext.P3 order, by which the petitioners' application for building permit has been rejected by the respondent corporation.

2. The 1st petitioner was the owner in possession of 25 cents of property comprised in Sy.Nos.3038 and 3038/1 of Kavadiyar Village within the local limits of the respondent corporation. The 1st petitioner acquired the said property as per the registered will bearing No.55/1976 of the Thiruvananthapuram SRO executed by her mother. Out of this 25 cents, the 1st petitioner assigned 5 cents of property in favour of the 2nd petitioner and his wife, Divya Viswanath, as per settlement deed No.2217/2012 of Pattom SRO. This 25 cents of property is lying in the heart of Thiruvananthapuram city and is situated within 500 meters from Kavadiyar - Kuravankonam Road as per Ext.P1.

..2..

According to the petitioners, their property is lying as dry land for the last more than 60 years, that too, without any manner of cultivation and apart from that, no manner of cultivation is possible in this property since the same situated in the middle of Thiruvananthapuram city. All surrounding properties are fully developed and commercial and residential buildings have come up there. According to them, even though the said property is lying as dry land for more than 60 years, still it is described as 'nilam' in the basis tax register. They further point out that in the data bank prepared by the authorities, the land is not included as per Ext.P2. The petitioners submitted an application for building permit for construction of a multistoried residential apartment, which was rejected by the respondent corporation as per Ext.P3 for the reason that the land is described as paddy land in the basic tax register. It is with this background, the petitioners have come up before this Court.

3. Arguments have been heard.

4. The learned Standing Counsel for the respondent

..3..

corporation, on instructions, submitted that as per BTR, the petitioners' property is shown as 'nilam' and therefore, permission cannot be granted.

5. In answer to the same, the learned counsel for the petitioner invited my attention to Ext.P2 certificate issued by the Agricultural Officer, which reveals that the petitioners' property is described as garden land as per the BTR. The learned counsel also invited my attention to Ext.P1 series of photographs, which shows that buildings have come up in the adjacent properties.

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-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.

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 petitioners' application.

9. 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.P3 is quashed.

The respondent corporation 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 corporation is also directed to reconsider the application and pass positive orders granting building permit after affording the petitioner an opportunity of being heard if the respondent corporation is 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

bka/-